

HOUSE BILL NO. 443

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 as amended. Report adopted.
February 8, 1985	Bill printed and placed on members' desks.
February 9, 1985	Second reading, pass consideration. On motion, taken from second reading and rereferred to Committee on Judiciary.
February 11, 1985	Committee recommend bill do pass. Report adopted. Statement of Intent attached. Bill printed and placed on members' desks.
February 12, 1985	Second reading, do pass. Considered correctly engrossed.
February 14, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 15, 1985 .Introduced and referred to
Committee on Judiciary.

March 28, 1985 Committee recommend bill be
concurrent in as amended. Report
adopted.

March 30, 1985 Second reading, concurred in.

April 1, 1985 Third reading, concurred in.
Ayes, 31; Noes, 16.

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. 443
 2 INTRODUCED BY J. Brown Reynolds
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE, IN CHILD
 6 SUPPORT CASES BEING ENFORCED BY THE DEPARTMENT OF REVENUE,
 7 THE WITHHOLDING OF THE OBLIGOR'S INCOME WHENEVER AN
 8 ARREARAGE OCCURS THAT IS EQUAL TO OR IN EXCESS OF THE AMOUNT
 9 OF SUPPORT PAYABLE FOR 1 MONTH; AND PROVIDING AN EFFECTIVE
 10 DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Short title. [Sections 1 through 21] may be
 14 cited as the "Child Support Enforcement Act of 1985".

15 Section 2. Purpose. The purpose of [sections 1 through
 16 21] is to provide a more effective and efficient way to
 17 guarantee the support of dependent children by the person or
 18 persons primarily responsible for such support by ensuring
 19 that the support of children is the highest priority in the
 20 allocation of a responsible parent's income.

21 Section 3. Definitions. As used in [sections 1 through
 22 21], the following definitions apply:

- 23 (1) "Department" means the department of revenue
 24 provided for in 2-15-1301.
 25 (2) "Income" means any form of periodic payment to a

1 person, including but not limited to earnings, wages,
 2 compensation as an independent contractor, interest due or
 3 to become due, trust income, annuities, pension or other
 4 retirement program payments, and any other payments which
 5 are due or to become due to an obligor from any source.

6 However, income does not include:

7 (a) any amount required by law to be withheld, other
 8 than creditor claims, including federal, state, and local
 9 taxes and social security; and

10 (b) any amounts exempted from judgment, execution, or
 11 attachment by federal or state law.

12 (3) "Obligee" means either a person to whom a duty of
 13 support is owed or a public agency of this or another state
 14 to which a person has assigned the right to receive current
 15 and accrued support payments.

16 (4) "Obligor" means a person who owes a duty to make
 17 payments under a support order.

18 (5) "Payor" means any payor of income to an obligor on
 19 a periodic basis and includes any person, firm, corporation,
 20 association, employer, trustee, political subdivision, state
 21 agency, or any agent thereof, who is subject to the
 22 jurisdiction of the courts of this state under Rule 4B of
 23 the Montana Rules of Civil Procedure.

24 (6) "Support order" means an order of the district
 25 court of the state of Montana, an order of a court of



1 appropriate jurisdiction of another state, an administrative
 2 order established pursuant to proceedings under part 2 of
 3 this chapter, or an order established by administrative
 4 hearing process of an agency of another state with functions
 5 similar to those of the department set forth in part 2 of
 6 this chapter, that provides a set and determinable amount
 7 for temporary or final periodic payment of funds for the
 8 support of a child. Support order further includes the
 9 following:

10 (a) an order for reimbursement of public assistance
 11 money paid by a public agency for the benefit of a minor
 12 child;

13 (b) an order for maintenance to be paid to a former
 14 spouse when the former spouse is the custodial parent of a
 15 child for whom child support is awarded under the same
 16 order; and

17 (c) an order requiring payment of interest due on
 18 unpaid judgments for child support.

19 Section 4. Income withholding. (1) Whenever an
 20 obligation for support is being enforced by the department
 21 pursuant to Title IV-D of the Social Security Act and the
 22 obligation has been established by order of a court or
 23 administrative process, income due or to become due within
 24 this state to the obligor is subject to withholding
 25 procedures under [sections 1 through 21].

1 (2) When the requirements of [sections 1 through 21]
 2 have been met, the department, without necessity for
 3 amendment of the support order or further order by a court
 4 or other entity, shall issue an order directing the
 5 obligor's employer or other payor to withhold and deliver to
 6 the department such amount of the obligor's income as will
 7 be sufficient to meet the support obligation imposed by the
 8 support order and to defray arrearages due when the
 9 withholding order takes place.

10 (3) The provisions for income withholding under
 11 [sections 1 through 21] take precedence over any other law
 12 or court order.

13 Section 5. Initiation of income withholding
 14 procedures. (1) In each case in which the department is
 15 enforcing a support order assigned to the state pursuant to
 16 53-2-613 or in which the department is collecting support on
 17 behalf of an obligee who has applied for services under
 18 40-5-203, the department shall monitor and track all support
 19 payments required by the support order. If at any time these
 20 records indicate that the obligor owes any combination of
 21 unpaid support equal to or in excess of 1 month's support
 22 payment, the department shall commence withholding from the
 23 obligor's income.

24 (2) To accomplish the purpose of subsection (1), the
 25 department by written notice to the obligor may direct an

1 obligor who does not owe unpaid child support equal to or in
 2 excess of 1 month's support payment to pay all support
 3 through the department, notwithstanding any court order
 4 directing payments to be made to the obligee or clerk of
 5 court. After receipt of the notice, the obligor may not be
 6 credited for payments that are not made to the department as
 7 directed and any inconsistent payments must be considered a
 8 gift and in addition to the support order.

9 Section 6. Notice of intent to withhold income. (1)
 10 Prior to service of an order on the payor to commence income
 11 withholding, the department shall serve upon the obligor a
 12 notice of the intended withholding action. The notice must
 13 contain a statement:

14 (a) of the amount to be withheld, including a
 15 computation showing the period and total amount of the
 16 arrearages as of the date of the notice;

17 (b) that withholding applies to all current and
 18 subsequent payors;

19 (c) of the obligor's right to a hearing under [section
 20 7] to contest the implementation of income withholding on
 21 the ground that withholding, including the amounts to be
 22 withheld, is not proper because of mistake of fact; and

23 (d) of the period of time within which the obligor
 24 must request a hearing and that failure to request the
 25 hearing within the time limit will result in income

1 withholding orders being served upon the payor.

2 (2) The notice must be served upon the obligor
 3 personally or by certified mail.

4 Section 7. Hearing. (1) The obligor may within 10 days
 5 of being served with notice of the intended income
 6 withholding under [section 6] file with the department a
 7 written request for an administrative hearing to be held
 8 pursuant to the contested case provisions of Title 2,
 9 chapter 4, part 6.

10 (2) If the obligor requests a hearing within the time
 11 allowed, income withholding may not take effect until the
 12 conclusion of the hearing or the date of the hearing if the
 13 obligor fails to appear at a scheduled hearing.

14 (3) Venue for the administrative hearing may be in the
 15 county where the obligor resides if the obligor resides in
 16 this state, the county in which the payor or the payor's
 17 agent is located, or the county in which the department or
 18 any of its regional offices is located.

19 (4) The administrative hearing must be held by
 20 teleconferencing methods unless the obligor or the
 21 department expressly requests an in-person hearing before
 22 the hearing examiner.

23 (5) For purposes of the hearing process, arrearages of
 24 support must be computed on the basis of the amount owed and
 25 unpaid on the date the obligor was served with the notice of

1 intent to withhold income, and the fact that the obligor may
2 have later paid the arrearage does not remove from the
3 hearing examiner the authority to direct the department to
4 order income withholding.

5 (6) The obligor within 45 days of service of the
6 notice of intent to withhold income must be informed of the
7 hearing decision on whether income withholding will take
8 place.

9 Section 8. Order to withhold income. (1) If the
10 obligor fails to request a hearing within 10 days or fails
11 to appear at a scheduled hearing or if the hearing examiner
12 determines that the obligor owes a combination of unpaid
13 support equal to or in excess of 1 month's support payment,
14 the department shall immediately serve an order to withhold
15 and deliver income upon any payor or combination of payors.
16 The order must:

17 (a) direct the payor and successor payors to withhold
18 from the obligor's income each month the amount specified in
19 the order if sufficient funds are available;

20 (b) direct the payor to deliver the amount withheld to
21 the department in the same month in which the funds were
22 withheld;

23 (c) state that the order is binding on the payor until
24 further notice by the department; and

25 (d) state the rights and duties of the payor under

1 this part.

2 (2) An order to withhold and deliver the obligor's
3 income made under this section is binding upon the payor.
4 immediately upon service of the order upon the payor.
5 Service of the order to withhold may be made either
6 personally or by certified mail.

7 (3) Whenever there is more than one payor, the
8 department may, in its discretion, apportion the total
9 amount to be withheld each month among payors.

10 Section 9. Determination of amount of income to be
11 withheld. (1) Except as provided in subsection (2), the
12 amount of funds to be withheld each month from the obligor's
13 income must be:

14 (a) the amount of money necessary to pay current
15 installments of support as they become due and payable; plus

16 (b) the amount of money which, when deducted in equal
17 amounts each month, will pay all outstanding support
18 arrearages and interest, if any, within 2 years; plus

19 (c) a fee not to exceed \$5 each month, which may be
20 withheld by the payor as compensation for the administrative
21 costs of each withholding.

22 (2) The maximum amounts withheld from the obligor's
23 wages or salaries may not exceed the maximum amount
24 permitted under section 303(b) of the federal Consumer
25 Credit Protection Act, 15 U.S.C. 1673(b).

1 (3) At any time, if the obligor can show that
 2 substantial hardship will result if the maximum permissible
 3 withholding is implemented or continued, the department for
 4 cause shown may in its discretion determine a lesser amount
 5 to be withheld each month in satisfaction of support
 6 arrearages.

7 Section 10. Duties of payor. (1) A payor who has been
 8 served with an order to withhold and deliver income shall
 9 deduct the amount designated in the order beginning not
 10 later than the first pay period that occurs after 14 days
 11 from the service of the order. The payor shall promptly
 12 deliver the amount withheld to the department as directed by
 13 the order or in accordance with any subsequent modification
 14 of the order received from the department.

15 (2) If the obligor's pay periods are at intervals of
 16 less than 1 month, the payor may withhold an equal amount at
 17 each pay period cumulatively sufficient to pay the monthly
 18 withholding as directed by the withholding order.

19 (3) Whenever the payor is obligated to withhold income
 20 for more than one obligor, the payor may combine all amounts
 21 withheld into a single payment for that month with the
 22 portion thereof which is attributable to each obligor
 23 separately designated.

24 (4) Whenever there is more than one order for
 25 withholding against a single obligor, the payor must comply

1 with the orders in the sequence in which they were served
 2 upon the payor and must honor all withholding orders to the
 3 extent that the total amount withheld from the obligor's
 4 wages or salary does not exceed the limits set in [section
 5 9].

6 (5) The payor must promptly notify the department of
 7 the termination of the obligor's employment or other source
 8 of income and provide the obligor's last-known address and
 9 the name and address of the obligor's new employer or other
 10 source of income, if known to the payor.

11 Section 11. Civil liability for failure to comply with
 12 income withholding order. (1) A payor who fails to withhold
 13 and deliver support money from the obligor's income when
 14 ordered to do so under [section 8] is liable to the
 15 department for any amount up to the accumulated amount the
 16 payor should have withheld and delivered.

17 (2) No payor who complies with an order to withhold
 18 under [sections 1 through 21] is liable for wrongful
 19 withholding to the obligor or to any other person claiming
 20 rights derived from the obligor.

21 Section 12. Obligor rights protected. No employer may
 22 discharge, discipline, or refuse to hire an obligor because
 23 of the institution of income withholding on the obligor's
 24 income or the initiation of proceedings under [sections 1
 25 through 21]. Any person who violates this section may be

1 fined not more than \$500 and not less than \$150 and may be
2 required to make full restitution to the aggrieved obligor,
3 including reinstatement and backpay.

4 Section 13. Priority of income withholding. An order
5 to withhold and deliver income under [sections 1 through 21]
6 takes priority over any:

7 (1) wage or income deduction order under any other
8 law;

9 (2) voluntary or involuntary assignment of wages or
10 income;

11 (3) other voluntary deductions from the obligor's
12 income;

13 (4) levies, writs of execution, or garnishments of the
14 obligor's income; and

15 (5) any other claims by creditors.

16 Section 14. Modification or termination of withholding
17 orders. (1) The department may at any time modify the order
18 to withhold income to:

19 (a) reflect payment in full of the arrearages by
20 income withholding or otherwise;

21 (b) recognize an increase or decrease in the support
22 order; or

23 (c) indicate any other reason the amount to be
24 withheld is to be reduced or changed.

25 (2) An income withholding order terminates only when

1 the department is no longer authorized under the law to
2 collect support or, when appropriate, services rendered
3 under 40-5-203 have come to an end or when the obligation to
4 pay support is terminated and all arrearages are paid in
5 full, whichever occurs first.

6 Section 15. Payment records. (1) The department, in
7 collecting, disbursing, or receiving payments pursuant to
8 orders to withhold income, shall maintain complete,
9 accurate, and clear records of all payments and
10 disbursements.

11 (2) Certified payment records maintained by the
12 department must, without further proof or foundation, be
13 admitted into evidence in any legal proceedings under
14 [sections 1 through 21]. Such records constitute prima facie
15 evidence of the amount of support paid and arrearages that
16 have accrued since the department began to monitor support
17 payment in a case.

18 Section 16. Registration of interstate income
19 withholding orders. (1) Whenever an obligor, whether or not
20 he resides in this state, derives income within this state
21 and an order for income withholding of the obligor's income
22 has been issued by a public agency of another state as a
23 means to enforce support orders under Title IV-D of the
24 Social Security Act, that agency may register the income
25 withholding order with the department. Upon registration of

1 the foreign withholding order, it must be treated in the
2 same manner and have the same effect as an income
3 withholding order issued by the department.

4 (2) The application for registration of a foreign
5 order for income withholding must include:

6 (a) a certified copy of the support order, with all
7 modifications thereof;

8 (b) a certified copy of the income withholding order;

9 (c) a sworn statement of the facts entitling the
10 agency to issue an income withholding order, including a
11 statement of the amount of arrearages and a statement that
12 all procedural due process requirements of the foreign
13 jurisdiction for issuance of such income withholding order
14 have been carried out in full;

15 (d) the name, address, and social security number of
16 the obligor;

17 (e) the name and address of the obligor's employer or
18 of any other payor of income to the obligor if the order for
19 income withholding of the foreign jurisdiction extends to
20 such other income; and

21 (f) the name and address of the agency or person to
22 whom support payments collected by the department under
23 income withholding procedures should be transmitted.

24 (3) When the foreign income withholding order is
25 registered, the department shall serve the order upon the

1 payor, with directions to the payor to comply with the order
2 and to deliver the withheld amounts to the department.

3 Section 17. Application for interstate withholding.

4 (1) Whenever an obligor resides in this state and derives
5 income within this state and a support order issued in
6 another jurisdiction is being enforced by a public agency of
7 that jurisdiction pursuant to Title IV-D of the Social
8 Security Act, that agency may apply to the department for
9 income withholding services.

10 (2) The application for interstate income withholding
11 must include:

12 (a) a certified copy of the support order, with all
13 modification thereof;

14 (b) an affidavit by the obligee containing a statement
15 that the obligor is delinquent in the payment of support in
16 an amount equal to at least 1 month's support payment and a
17 computation of the period and total amount of the arrearage
18 as of the date of the application;

19 (c) a certified copy of the payment record if such
20 records are maintained by the agency or any other agency
21 within that jurisdiction;

22 (d) the name, address, and social security number of
23 the obligor;

24 (e) the name and address of all known payors within
25 this state; and

1 (f) the name and address of the agency or person to
2 whom support payments collected by the department under
3 income withholding procedures should be sent.

4 (3) Upon receipt of the application, the department
5 shall commence procedures to establish orders for income
6 withholding, including notice and opportunity for hearing
7 under [sections 1 through 21]. The department shall further
8 advise the obligor that the income withholding was requested
9 on the basis of an application from another jurisdiction.

10 (4) In any hearing based on an application under this
11 section, the certified copy of the support order and
12 affidavit, without further proof or foundation, constitutes
13 prima facie evidence that the support order is valid and
14 that the obligee or public agency is entitled to an order of
15 income withholding and that the amount of current support
16 payments and arrearages are as stated.

17 (5) In accordance with [section 7], a final decision
18 on whether or not income withholding is appropriate must be
19 rendered within 45 days of service of notice on the obligor.
20 If, however, because of the interstate aspects of the case,
21 the hearing examiner is unable to resolve a dispute over the
22 amount of arrearages within such time and the hearing
23 examiner has found that the obligor is delinquent in an
24 amount equal to at least 1 month's support payment, the
25 hearing examiner shall authorize immediate service of the

1 order for withholding as to current support and may continue
2 the hearing on the disputed amounts beyond the 45-day limit.

3 Section 18. Additional duties of department in
4 interstate income withholding. (1) Unless the public agency
5 of the foreign jurisdiction makes application to the
6 department for additional services, the department is not
7 required to locate the obligor or to locate payors of income
8 to the obligor. If the application for interstate service
9 provided for in [sections 16 and 17] fails to provide this
10 information or the information is determined to be
11 incorrect, the department may return the application without
12 further proceeding under [sections 1 through 21].

13 (2) If the department determines that the obligor is
14 no longer employed in this state or no longer derives income
15 within this state, the department shall promptly notify the
16 agency which requested income withholding of the changes and
17 shall forward to that agency all information it has with
18 respect to the obligor's new address and the name and
19 address of the obligor's new employer or other source of
20 income.

21 (3) The department shall promptly transmit payments
22 received on an income withholding order to the agency or
23 person designated in the interstate application.

24 Section 19. Initiation of income withholding in other
25 jurisdictions. Whenever the department is authorized or

1 required under the laws of this state to enforce and collect
 2 on a support order and the obligor is employed or has a
 3 source of income in another state, the department shall
 4 request the agency responsible for income withholding in
 5 that state to implement income withholding procedures. The
 6 department shall compile and transmit to the withholding
 7 agency of the other state all documentation required by the
 8 law of that state necessary for the purpose of obtaining an
 9 income withholding order in that state. The department shall
 10 also transmit to the withholding agency a certified copy of
 11 any subsequent modification of the support order.

12 Section 20. Remedies additional to those now existing.
 13 The remedy provided in [sections 1 through 21] is in
 14 addition to and not in substitution for any other remedy
 15 that may otherwise be available to the department, and the
 16 department may simultaneously pursue other remedies to
 17 enforce a support obligation or to collect support
 18 arrearages.

19 Section 21. Rulemaking authority. The department shall
 20 adopt rules and forms to participate in and carry out the
 21 provisions of [sections 1 through 21].

22 Section 22. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
 2 invalid applications.

3 Section 23. Codification instruction. Sections 1
 4 through 21 are intended to be codified as an integral part
 5 of Title 40, chapter 5, and the provisions of Title 40,
 6 chapter 5, apply to sections 1 through 21.

7 Section 24. Effective date. Section 21 and this
 8 section are effective on passage and approval, except that
 9 rules adopted under section 21 may not be made effective
 10 prior to October 1, 1985.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN202-85

Form BD-10

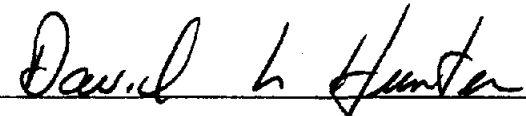
In compliance with a written request received January 24, 19 85, there is hereby submitted a Fiscal Note for H.B. 443 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

An act to require, in child support cases being enforced by the Department of Revenue, the withholding of the obligor's income whenever an arrearage occurs that is equal to or in excess of the amount of support payable for 1 month, and providing an effective date.

ASSUMPTIONS

- 1) Assume the same individuals who are eligible for the tax offset will also be eligible for wage assignment.
- 2) Assume 20% growth in number of people who are eligible for wage assignment.
- 3) Average payment for AFDC is \$117.78.
Average payment for Non-AFDC is \$161.31.
- 4) Assume 48% of those individuals who are eligible for wage assignment will be forced to pay child support through wage assignment.
- 5) Individuals who must pay child support through a wage assignment work only nine months a year.
- 6) Assume S.B. 119 will pass. This bill abolishes collection and application fees for Non-AFDC applicants.
- 7) Assume an increase of 816 Non-AFDC cases per year.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 29, 1985
HB 443

EFFECT ON REVENUE

	<u>Under</u> <u>Current Law</u>	<u>FY86</u> <u>Under</u> <u>Proposed Law</u>	<u>Difference</u>	<u>Under</u> <u>Current Law</u>	<u>FY87</u> <u>Under</u> <u>Proposed Law</u>	<u>Difference</u>
Child Support Enforcement Program (AFDC)	\$ 0	\$566,205	\$566,205	\$ 0	\$1,358,989	\$1,358,989
(Non-AFDC)	\$ 0	\$ 57,533	\$ 57,533	\$ 0	\$ 149,183	\$ 149,183
TOTALS	\$ 0	\$623,748	\$623,738	\$ 0	\$1,508,172	\$1,508,172

EXPENDITURES

Personal Services	\$ 0	\$ 97,809	\$ 97,809	\$ 0	\$ 86,543	\$ 86,543
TOTALS	\$ 0	\$ 97,809	\$ 97,809	\$ 0	\$ 86,543	\$ 86,543
<u>NET EFFECT</u>	\$ 0	\$525,929	\$525,929	\$ 0	\$1,421,629	\$1,421,629

FUND INFORMATION:

General Fund Revenue Increase	\$ 0	\$525,929	\$525,929	\$ 0	\$1,421,629	\$1,421,629
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EFFECT ON COUNTY/LOCAL REVENUE

AFDC Collections - .0756 of the total collections go to the counties.

Proposed:

Revenue Increase	<u>FY86</u> \$133,516	<u>FY87</u> \$320,460
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APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 443

INTRODUCED BY J. BROWN, BERGENE, CHRISTIAENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE, IN CHILD SUPPORT CASES BEING ENFORCED BY THE DEPARTMENT OF REVENUE, THE WITHHOLDING OF THE OBLIGOR'S INCOME WHENEVER AN ARREARAGE OCCURS THAT IS EQUAL TO OR IN EXCESS OF THE AMOUNT OF SUPPORT PAYABLE FOR 1 MONTH; TO REQUIRE THE DEPARTMENT TO FORWARD ANY CHILD SUPPORT PAYMENTS TO THE OBLIGEE WITHIN 10 DAYS OF RECEIPT OF THE PAYMENT FROM THE OBLIGOR; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Short title. [Sections 1 through 21] may be cited as the "Child Support Enforcement Act of 1985".

Section 2. Purpose. The purpose of [sections 1 through 21] is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

Section 3. Definitions. As used in [sections 1 through 21], the following definitions apply:

(1) "Department" means the department of revenue

provided for in 2-15-1301.

(2) "Income" means any form of periodic payment to a person, including but not limited to earnings, wages, compensation as an independent contractor, interest due or to become due, trust income, annuities, pension or other retirement program payments, and any other payments which are due or to become due to an obligor from any source. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(3) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(4) "Obligor" means a person who owes a duty to make payments under a support order.

(5) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

1 (6) "Support order" means an order of the district
 2 court of the state of Montana, an order of a court of
 3 appropriate jurisdiction of another state, an administrative
 4 order established pursuant to proceedings under part 2 of
 5 this chapter, or an order established by administrative
 6 hearing process of an agency of another state with functions
 7 similar to those of the department set forth in part 2 of
 8 this chapter, that provides a set and determinable amount
 9 for temporary or final periodic payment of funds for the
 10 support of a child. Support order further includes the
 11 following:

12 (a) an order for reimbursement of public assistance
 13 money paid by a public agency for the benefit of a minor
 14 child;

15 (b) an order for maintenance to be paid to a former
 16 spouse when the former spouse is the custodial parent of a
 17 child for whom child support is awarded under the same
 18 order; and

19 (c) an order requiring payment of interest due on
 20 unpaid judgments for child support.

21 Section 4. Income withholding. (1) Whenever an
 22 obligation for support is being enforced by the department
 23 pursuant to Title IV-D of the Social Security Act and the
 24 obligation has been established by order of a court or
 25 administrative process, income due or to become due within

1 this state to the obligor is subject to withholding
 2 procedures under [sections 1 through 21].

3 (2) When the requirements of [sections 1 through 21]
 4 have been met, the department, without necessity for
 5 amendment of the support order or further order by a court
 6 or other entity, shall issue an order directing the
 7 obligor's employer or other payor to withhold and deliver to
 8 the department such amount of the obligor's income as will
 9 be sufficient to meet the support obligation imposed by the
 10 support order and to defray arrearages due when the
 11 withholding order takes place.

12 (3) The provisions for income withholding under
 13 [sections 1 through 21] take precedence over any other law
 14 or court order.

15 Section 5. Initiation of income withholding
 16 procedures. (1) In each case in which the department is
 17 enforcing a support order assigned to the state pursuant to
 18 53-2-613 or in which the department is collecting support on
 19 behalf of an obligee who has applied for services under
 20 40-5-203, the department shall monitor and track all support
 21 payments required by the support order. If at any time these
 22 records indicate that the obligor owes any combination of
 23 unpaid support equal to or in excess of 1 month's support
 24 payment, the department shall commence withholding from the
 25 obligor's income.

(2) To accomplish the purpose of subsection (1), the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court. After receipt of the notice, the obligor may not be credited for payments that are not made to the department as directed and any inconsistent payments must be considered a gift and in addition to the support order.

(3) WHENEVER AN OBLIGATION FOR SUPPORT IS PAID THROUGH THE SUPPORT ENFORCEMENT AND COLLECTIONS UNIT OF THE DEPARTMENT, THE DEPARTMENT MUST FORWARD PAYMENT TO THE OBLIGEE WITHIN 10 DAYS OF THE DEPARTMENT'S RECEIPT OF PAYMENT FROM THE OBLIGOR.

Section 6. Notice of intent to withhold income. (1) Prior to service of an order on the payor to commence income withholding, the department shall serve upon the obligor a notice of the intended withholding action. The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under [section 7] to contest the implementation of income withholding on the ground that withholding, including the amounts to be withheld, is not proper because of mistake of fact; and

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor.

(2) The notice must be served upon the obligor personally or by certified mail.

Section 7. Hearing. (1) The obligor may within 10 days of being served with notice of the intended income withholding under [section 6] file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) If the obligor requests a hearing within the time allowed, income withholding may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.

(3) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

1 (4) The administrative hearing must be held by
2 teleconferencing methods unless the obligor or the
3 department expressly requests an in-person hearing before
4 the hearing examiner.

5 (5) For purposes of the hearing process, arrearages of
6 support must be computed on the basis of the amount owed and
7 unpaid on the date the obligor was served with the notice of
8 intent to withhold income, and the fact that the obligor may
9 have later paid the arrearage does not remove from the
10 hearing examiner the authority to direct the department to
11 order income withholding.

12 (6) The obligor within 45 days of service of the
13 notice of intent to withhold income must be informed of the
14 hearing decision on whether income withholding will take
15 place.

16 Section 8. Order to withhold income. (1) If the
17 obligor fails to request a hearing within 10 days or fails
18 to appear at a scheduled hearing or if the hearing examiner
19 determines that the obligor owes a combination of unpaid
20 support equal to or in excess of 1 month's support payment,
21 the department shall immediately serve an order to withhold
22 and deliver income upon any payor or combination of payors.
23 The order must:

24 (a) direct the payor and successor payors to withhold
25 from the obligor's income each month the amount specified in

1 the order if sufficient funds are available;

2 (b) direct the payor to deliver the amount withheld to
3 the department in the same month in which the funds were
4 withheld;

5 (c) state that the order is binding on the payor until
6 further notice by the department; and

7 (d) state the rights and duties of the payor under
8 this part.

9 (2) An order to withhold and deliver the obligor's
10 income made under this section is binding upon the payor
11 immediately upon service of the order upon the payor.
12 Service of the order to withhold may be made either
13 personally or by certified mail.

14 (3) Whenever there is more than one payor, the
15 department may, in its discretion, apportion the total
16 amount to be withheld each month among payors.

17 Section 9. Determination of amount of income to be
18 withheld. (1) Except as provided in subsection (2), the
19 amount of funds to be withheld each month from the obligor's
20 income must be:

21 (a) the amount of money necessary to pay current
22 installments of support as they become due and payable; plus

23 (b) the amount of money which, when deducted in equal
24 amounts each month, will pay all outstanding support
25 arrearages and interest, if any, within 2 years; plus

1 (c) a fee not to exceed \$5 each month, which may be
 2 withheld by the payor as compensation for the administrative
 3 costs of each withholding.

4 (2) The maximum amounts withheld from the obligor's
 5 wages or salaries may not exceed the maximum amount
 6 permitted under section 303(b) of the federal Consumer
 7 Credit Protection Act, 15 U.S.C. 1673(b).

8 (3) At any time, if the obligor can show that
 9 substantial hardship will result if the maximum permissible
 10 withholding is implemented or continued, the department for
 11 cause shown may in its discretion determine a lesser amount
 12 to be withheld each month in satisfaction of support
 13 arrearages.

14 Section 10. Duties of payor. (1) A payor who has been
 15 served with an order to withhold and deliver income shall
 16 deduct the amount designated in the order beginning not
 17 later than the first pay period that occurs after 14 days
 18 from the service of the order. The payor shall promptly
 19 deliver the amount withheld to the department as directed by
 20 the order or in accordance with any subsequent modification
 21 of the order received from the department.

22 (2) If the obligor's pay periods are at intervals of
 23 less than 1 month, the payor may withhold an equal amount at
 24 each pay period cumulatively sufficient to pay the monthly
 25 withholding as directed by the withholding order.

1 (3) Whenever the payor is obligated to withhold income
 2 for more than one obligor, the payor may combine all amounts
 3 withheld into a single payment for that month with the
 4 portion thereof which is attributable to each obligor
 5 separately designated.

6 (4) Whenever there is more than one order for
 7 withholding against a single obligor, the payor must comply
 8 with the orders in the sequence in which they were served
 9 upon the payor and must honor all withholding orders to the
 10 extent that the total amount withheld from the obligor's
 11 wages or salary does not exceed the limits set in [section
 12 9].

13 (5) The payor must promptly notify the department of
 14 the termination of the obligor's employment or other source
 15 of income and provide the obligor's last-known address and
 16 the name and address of the obligor's new employer or other
 17 source of income, if known to the payor.

18 Section 11. Civil liability for failure to comply with
 19 income withholding order. (1) A payor who fails to withhold
 20 and deliver support money from the obligor's income when
 21 ordered to do so under [section 8] is liable to the
 22 department for any amount up to the accumulated amount the
 23 payor should have withheld and delivered.

24 (2) No payor who complies with an order to withhold
 25 under [sections 1 through 21] is liable for wrongful

1 withholding to the obligor or to any other person claiming
2 rights derived from the obligor.

3 Section 12. Obligor rights protected. No employer may
4 discharge, discipline, or refuse to hire an obligor because
5 of the institution of income withholding on the obligor's
6 income or the initiation of proceedings under [sections 1
7 through 21]. Any person who violates this section may be
8 fined not more than \$500 and not less than \$150 and may be
9 required to make full restitution to the aggrieved obligor,
10 including reinstatement and backpay.

11 Section 13. Priority of income withholding. An order
12 to withhold and deliver income under [sections 1 through 21]
13 takes priority over any:

- 14 (1) wage or income deduction order under any other
15 law;
- 16 (2) voluntary or involuntary assignment of wages or
17 income;
- 18 (3) other voluntary deductions from the obligor's
19 income;
- 20 (4) levies, writs of execution, or garnishments of the
21 obligor's income; and
- 22 (5) any other claims by creditors.

23 Section 14. Modification or termination of withholding
24 orders. (1) The department may at any time modify the order
25 to withhold income to:

1 (a) reflect payment in full of the arrearages by
2 income withholding or otherwise;

3 (b) recognize an increase or decrease in the support
4 order; or

5 (c) indicate any other reason the amount to be
6 withheld is to be reduced or changed.

7 (2) An income withholding order terminates only when
8 the department is no longer authorized under the law to
9 collect support or, when appropriate, services rendered
10 under 40-5-203 have come to an end or when the obligation to
11 pay support is terminated and all arrearages are paid in
12 full, whichever occurs first.

13 Section 15. Payment records. (1) The department, in
14 collecting, disbursing, or receiving payments pursuant to
15 orders to withhold income, shall maintain complete,
16 accurate, and clear records of all payments and
17 disbursements.

18 (2) Certified payment records maintained by the
19 department must, without further proof or foundation, be
20 admitted into evidence in any legal proceedings under
21 [sections 1 through 21]. Such records constitute prima facie
22 evidence of the amount of support paid and arrearages that
23 have accrued since the department began to monitor support
24 payment in a case.

25 Section 16. Registration of interstate income

1 withholding orders. (1) Whenever an obligor, whether or not
 2 he resides in this state, derives income within this state
 3 and an order for income withholding of the obligor's income
 4 has been issued by a public agency of another state as a
 5 means to enforce support orders under Title IV-D of the
 6 Social Security Act, that agency may register the income
 7 withholding order with the department. Upon registration of
 8 the foreign withholding order, it must be treated in the
 9 same manner and have the same effect as an income
 10 withholding order issued by the department.

11 (2) The application for registration of a foreign
 12 order for income withholding must include:

13 (a) a certified copy of the support order, with all
 14 modifications thereof;

15 (b) a certified copy of the income withholding order;

16 (c) a sworn statement of the facts entitling the
 17 agency to issue an income withholding order, including a
 18 statement of the amount of arrearages and a statement that
 19 all procedural due process requirements of the foreign
 20 jurisdiction for issuance of such income withholding order
 21 have been carried out in full;

22 (d) the name, address, and social security number of
 23 the obligor;

24 (e) the name and address of the obligor's employer or
 25 of any other payor of income to the obligor if the order for

1 income withholding of the foreign jurisdiction extends to
 2 such other income; and

3 (f) the name and address of the agency or person to
 4 whom support payments collected by the department under
 5 income withholding procedures should be transmitted.

6 (3) When the foreign income withholding order is
 7 registered, the department shall serve the order upon the
 8 payor, with directions to the payor to comply with the order
 9 and to deliver the withheld amounts to the department.

10 Section 17. Application for interstate withholding.

11 (1) Whenever an obligor resides in this state and derives
 12 income within this state and a support order issued in
 13 another jurisdiction is being enforced by a public agency of
 14 that jurisdiction pursuant to Title IV-D of the Social
 15 Security Act, that agency may apply to the department for
 16 income withholding services.

17 (2) The application for interstate income withholding
 18 must include:

19 (a) a certified copy of the support order, with all
 20 modification thereof;

21 (b) an affidavit by the obligee containing a statement
 22 that the obligor is delinquent in the payment of support in
 23 an amount equal to at least 1 month's support payment and a
 24 computation of the period and total amount of the arrearage
 25 as of the date of the application;

1 (c) a certified copy of the payment record if such
2 records are maintained by the agency or any other agency
3 within that jurisdiction;

4 (d) the name, address, and social security number of
5 the obligor;

6 (e) the name and address of all known payors within
7 this state; and

8 (f) the name and address of the agency or person to
9 whom support payments collected by the department under
10 income withholding procedures should be sent.

11 (3) Upon receipt of the application, the departmen
12 shall commence procedures to establish orders for income
13 withholding, including notice and opportunity for hearing
14 under [sections 1 through 21]. The department shall further
15 advise the obligor that the income withholding was requested
16 on the basis of an application from another jurisdiction.

17 (4) In any hearing based on an application under this
18 section, the certified copy of the support order and
19 affidavit, without further proof or foundation, constitutes
20 prima facie evidence that the support order is valid and
21 that the obligee or public agency is entitled to an order of
22 income withholding and that the amount of current support
23 payments and arrearages are as stated.

24 (5) In accordance with [section 7], a final decision
25 on whether or not income withholding is appropriate must be

1 rendered within 45 days of service of notice on the obligor.
2 If, however, because of the interstate aspects of the case,
3 the hearing examiner is unable to resolve a dispute over the
4 amount of arrearages within such time and the hearing
5 examiner has found that the obligor is delinquent in an
6 amount equal to at least 1 month's support payment, the
7 hearing examiner shall authorize immediate service of the
8 order for withholding as to current support and may continue
9 the hearing on the disputed amounts beyond the 45-day limit.

10 Section 18. Additional duties of department in
11 interstate income withholding. (1) Unless the public agency
12 of the foreign jurisdiction makes application to the
13 department for additional services, the department is not
14 required to locate the obligor or to locate payors of income
15 to the obligor. If the application for interstate service
16 provided for in [sections 16 and 17] fails to provide this
17 information or the information is determined to be
18 incorrect, the department may return the application without
19 further proceeding under [sections 1 through 21].

20 (2) If the department determines that the obligor is
21 no longer employed in this state or no longer derives income
22 within this state, the department shall promptly notify the
23 agency which requested income withholding of the changes and
24 shall forward to that agency all information it has with
25 respect to the obligor's new address and the name and

1 address of the obligor's new employer or other source of
2 income.

3 (3) The department shall promptly transmit payments
4 received on an income withholding order to the agency or
5 person designated in the interstate application.

6 Section 19. Initiation of income withholding in other
7 jurisdictions. Whenever the department is authorized or
8 required under the laws of this state to enforce and collect
9 on a support order and the obligor is employed or has a
10 source of income in another state, the department shall
11 request the agency responsible for income withholding in
12 that state to implement income withholding procedures. The
13 department shall compile and transmit to the withholding
14 agency of the other state all documentation required by the
15 law of that state necessary for the purpose of obtaining an
16 income withholding order in that state. The department shall
17 also transmit to the withholding agency a certified copy of
18 any subsequent modification of the support order.

19 Section 20. Remedies additional to those now existing.
20 The remedy provided in [sections 1 through 21] is in
21 addition to and not in substitution for any other remedy
22 that may otherwise be available to the department, and the
23 department may simultaneously pursue other remedies to
24 enforce a support obligation or to collect support
25 arrearages.

1 Section 21. Rulemaking authority. The department shall
2 adopt rules and forms to participate in and carry out the
3 provisions of [sections 1 through 21].

4 Section 22. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 23. Codification instruction. Sections 1
11 through 21 are intended to be codified as an integral part
12 of Title 40, chapter 5, and the provisions of Title 40,
13 chapter 5, apply to sections 1 through 21.

14 Section 24. Effective date. Section 21 and this
15 section are effective on passage and approval, except that
16 rules adopted under section 21 may not be made effective
17 prior to October 1, 1985.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

STATEMENT OF INTENT

HOUSE BILL 443

House Judiciary Committee

A statement of intent is required for this bill because it gives the department of revenue rulemaking authority.

The intent of this bill and federal Public Law 93-378, the Child Support Enforcement Amendments of 1984, on which it is based is to ensure that the support of children is the highest priority in the allocation of a responsible parent's income through the timely and automatic initiation of income withholding procedures whenever a delinquency occurs equal to at least 1 month's support payment. This bill requires the department to monitor and track support payments as they become due for the purpose of detecting delinquencies and further to promptly respond to such delinquency with income withholding procedures. To expedite the process of income withholding, any hearings are to be held under the contested case procedures of the Montana Administrative Procedure Act. Further, income withholding procedures are to be made available for interstate applications.

More specifically, it is the intent of the bill to grant to the department of revenue the following:

(1) the authority to establish rules and procedures related to the administrative hearing process, including but

not limited to procedures for requesting a hearing, for discovery, and for teleconferencing;

(2) the authority to adopt guidelines for the exercise of discretion in reducing the amount to be withheld in satisfaction of arrearages;

(3) the authority to establish procedures for the monitoring, tracking, and dispensing of support payments and payments received from income withholdings; and

(4) the authority to establish procedures for the implementation of interstate withholding.

1 HOUSE BILL NO. 443

2 INTRODUCED BY J. BROWN, BERGENE, CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE, IN CHILD
6 SUPPORT CASES BEING ENFORCED BY THE DEPARTMENT OF REVENUE,
7 THE WITHHOLDING OF THE OBLIGOR'S INCOME WHENEVER AN
8 ARREARAGE OCCURS THAT IS EQUAL TO OR IN EXCESS OF THE AMOUNT
9 OF SUPPORT PAYABLE FOR 1 MONTH; TO REQUIRE THE DEPARTMENT TO
10 FORWARD ANY CHILD SUPPORT PAYMENTS TO THE OBLIGEE WITHIN 10
11 DAYS OF RECEIPT OF THE PAYMENT FROM THE OBLIGOR; AND
12 PROVIDING AN EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 Section 1. Short title. [Sections 1 through 21] may be
16 cited as the "Child Support Enforcement Act of 1985".17 Section 2. Purpose. The purpose of [sections 1 through
18 21] is to provide a more effective and efficient way to
19 guarantee the support of dependent children by the person or
20 persons primarily responsible for such support by ensuring
21 that the support of children is the highest priority in the
22 allocation of a responsible parent's income.23 Section 3. Definitions. As used in [sections 1 through
24 21], the following definitions apply:

25 (1) "Department" means the department of revenue

1 provided for in 2-15-1301.

2 (2) "Income" means any form of periodic payment to a
3 person, including but not limited to earnings, wages,
4 compensation as an independent contractor, interest due or
5 to become due, trust income, annuities, pension or other
6 retirement program payments, and any other payments which
7 are due or to become due to an obligor from any source.
8 However, income does not include:

9 (a) any amount required by law to be withheld, other
10 than creditor claims, including federal, state, and local
11 taxes and social security; and

12 (b) any amounts exempted from judgment, execution, or
13 attachment by federal or state law.

14 (3) "Obligee" means either a person to whom a duty of
15 support is owed or a public agency of this or another state
16 to which a person has assigned the right to receive current
17 and accrued support payments.

18 (4) "Obligor" means a person who owes a duty to make
19 payments under a support order.

20 (5) "Payor" means any payor of income to an obligor on
21 a periodic basis and includes any person, firm, corporation,
22 association, employer, trustee, political subdivision, state
23 agency, or any agent thereof, who is subject to the
24 jurisdiction of the courts of this state under Rule 4B of
25 the Montana Rules of Civil Procedure.

1 (6) "Support order" means an order of the district
 2 court of the state of Montana, an order of a court of
 3 appropriate jurisdiction of another state, an administrative
 4 order established pursuant to proceedings under part 2 of
 5 this chapter, or an order established by administrative
 6 hearing process of an agency of another state with functions
 7 similar to those of the department set forth in part 2 of
 8 this chapter, that provides a set and determinable amount
 9 for temporary or final periodic payment of funds for the
 10 support of a child. Support order further includes the
 11 following:

12 (a) an order for reimbursement of public assistance
 13 money paid by a public agency for the benefit of a minor
 14 child;

15 (b) an order for maintenance to be paid to a former
 16 spouse when the former spouse is the custodial parent of a
 17 child for whom child support is awarded under the same
 18 order; and

19 (c) an order requiring payment of interest due on
 20 unpaid judgments for child support.

21 Section 4. Income withholding. (1) Whenever an
 22 obligation for support is being enforced by the department
 23 pursuant to Title IV-D of the Social Security Act and the
 24 obligation has been established by order of a court or
 25 administrative process, income due or to become due within

1 this state to the obligor is subject to withholding
 2 procedures under [sections 1 through 21].

3 (2) When the requirements of [sections 1 through 21]
 4 have been met, the department, without necessity for
 5 amendment of the support order or further order by a court
 6 or other entity, shall issue an order directing the
 7 obligor's employer or other payor to withhold and deliver to
 8 the department such amount of the obligor's income as will
 9 be sufficient to meet the support obligation imposed by the
 10 support order and to defray arrearages due when the
 11 withholding order takes place.

12 (3) The provisions for income withholding under
 13 [sections 1 through 21] take precedence over any other law
 14 or court order.

15 Section 5. Initiation of income withholding
 16 procedures. (1) In each case in which the department is
 17 enforcing a support order assigned to the state pursuant to
 18 53-2-613 or in which the department is collecting support on
 19 behalf of an obligee who has applied for services under
 20 40-5-203, the department shall monitor and track all support
 21 payments required by the support order. If at any time these
 22 records indicate that the obligor owes any combination of
 23 unpaid support equal to or in excess of 1 month's support
 24 payment, the department shall commence withholding from the
 25 obligor's income.

1 (2) To accomplish the purpose of subsection (1), the
 2 department by written notice to the obligor may direct an
 3 obligor who does not owe unpaid child support equal to or in
 4 excess of 1 month's support payment to pay all support
 5 through the department, notwithstanding any court order
 6 directing payments to be made to the obligee or clerk of
 7 court. After receipt of the notice, the obligor may not be
 8 credited for payments that are not made to the department as
 9 directed and any inconsistent payments must be considered a
 10 gift and in addition to the support order.

11 (3) WHENEVER AN OBLIGATION FOR SUPPORT IS PAID THROUGH
 12 THE SUPPORT ENFORCEMENT AND COLLECTIONS UNIT OF THE
 13 DEPARTMENT, THE DEPARTMENT MUST FORWARD PAYMENT TO THE
 14 OBLIGEE WITHIN 10 DAYS OF THE DEPARTMENT'S RECEIPT OF
 15 PAYMENT FROM THE OBLIGOR.

16 Section 6. Notice of intent to withhold income. (1)
 17 Prior to service of an order on the payor to commence income
 18 withholding, the department shall serve upon the obligor a
 19 notice of the intended withholding action. The notice must
 20 contain a statement:

21 (a) of the amount to be withheld, including a
 22 computation showing the period and total amount of the
 23 arrearages as of the date of the notice;

24 (b) that withholding applies to all current and
 25 subsequent payors;

1 (c) of the obligor's right to a hearing under [section
 2 7] to contest the implementation of income withholding on
 3 the ground that withholding, including the amounts to be
 4 withheld, is not proper because of mistake of fact; and
 5 (d) of the period of time within which the obligor
 6 must request a hearing and that failure to request the
 7 hearing within the time limit will result in income
 8 withholding orders being served upon the payor.

9 (2) The notice must be served upon the obligor
 10 personally or by certified mail.

11 Section 7. Hearing. (1) The obligor may within 10 days
 12 of being served with notice of the intended income
 13 withholding under [section 6] file with the department a
 14 written request for an administrative hearing to be held
 15 pursuant to the contested case provisions of Title 2,
 16 chapter 4, part 6.

17 (2) If the obligor requests a hearing within the time
 18 allowed, income withholding may not take effect until the
 19 conclusion of the hearing or the date of the hearing if the
 20 obligor fails to appear at a scheduled hearing.

21 (3) Venue for the administrative hearing may be in the
 22 county where the obligor resides if the obligor resides in
 23 this state, the county in which the payor or the payor's
 24 agent is located, or the county in which the department or
 25 any of its regional offices is located.

1 (4) The administrative hearing must be held by
2 teleconferencing methods unless the obligor or the
3 department expressly requests an in-person hearing before
4 the hearing examiner.

5 (5) For purposes of the hearing process, arrearages of
6 support must be computed on the basis of the amount owed and
7 unpaid on the date the obligor was served with the notice of
8 intent to withhold income, and the fact that the obligor may
9 have later paid the arrearage does not remove from the
10 hearing examiner the authority to direct the department to
11 order income withholding.

12 (6) The obligor within 45 days of service of the
13 notice of intent to withhold income must be informed of the
14 hearing decision on whether income withholding will take
15 place.

16 Section 8. Order to withhold income. (1) If the
17 obligor fails to request a hearing within 10 days or fails
18 to appear at a scheduled hearing or if the hearing examiner
19 determines that the obligor owes a combination of unpaid
20 support equal to or in excess of 1 month's support payment,
21 the department shall immediately serve an order to withhold
22 and deliver income upon any payor or combination of payors.
23 The order must:

24 (a) direct the payor and successor payors to withhold
25 from the obligor's income each month the amount specified in

1 the order if sufficient funds are available;

2 (b) direct the payor to deliver the amount withheld to
3 the department in the same month in which the funds were
4 withheld;

5 (c) state that the order is binding on the payor until
6 further notice by the department; and

7 (d) state the rights and duties of the payor under
8 this part.

9 (2) An order to withhold and deliver the obligor's
10 income made under this section is binding upon the payor
11 immediately upon service of the order upon the payor.
12 Service of the order to withhold may be made either
13 personally or by certified mail.

14 (3) Whenever there is more than one payor, the
15 department may, in its discretion, apportion the total
16 amount to be withheld each month among payors.

17 Section 9. Determination of amount of income to be
18 withheld. (1) Except as provided in subsection (2), the
19 amount of funds to be withheld each month from the obligor's
20 income must be:

21 (a) the amount of money necessary to pay current
22 installments of support as they become due and payable; plus

23 (b) the amount of money which, when deducted in equal
24 amounts each month, will pay all outstanding support
25 arrearages and interest, if any, within 2 years; plus

1 (c) a fee not to exceed \$5 each month, which may be
 2 withheld by the payor as compensation for the administrative
 3 costs of each withholding.

4 (2) The maximum amounts withheld from the obligor's
 5 wages or salaries may not exceed the maximum amount
 6 permitted under section 303(b) of the federal Consumer
 7 Credit Protection Act, 15 U.S.C. 1673(b).

8 (3) At any time, if the obligor can show that
 9 substantial hardship will result if the maximum permissible
 10 withholding is implemented or continued, the department for
 11 cause shown may in its discretion determine a lesser amount
 12 to be withheld each month in satisfaction of support
 13 arrearages.

14 Section 10. Duties of payor. (1) A payor who has been
 15 served with an order to withhold and deliver income shall
 16 deduct the amount designated in the order beginning not
 17 later than the first pay period that occurs after 14 days
 18 from the service of the order. The payor shall promptly
 19 deliver the amount withheld to the department as directed by
 20 the order or in accordance with any subsequent modification
 21 of the order received from the department.

22 (2) If the obligor's pay periods are at intervals of
 23 less than 1 month, the payor may withhold an equal amount at
 24 each pay period cumulatively sufficient to pay the monthly
 25 withholding as directed by the withholding order.

1 (3) Whenever the payor is obligated to withhold income
 2 for more than one obligor, the payor may combine all amounts
 3 withheld into a single payment for that month with the
 4 portion thereof which is attributable to each obligor
 5 separately designated.

6 (4) Whenever there is more than one order for
 7 withholding against a single obligor, the payor must comply
 8 with the orders in the sequence in which they were served
 9 upon the payor and must honor all withholding orders to the
 10 extent that the total amount withheld from the obligor's
 11 wages or salary does not exceed the limits set in [section
 12 9].

13 (5) The payor must promptly notify the department of
 14 the termination of the obligor's employment or other source
 15 of income and provide the obligor's last-known address and
 16 the name and address of the obligor's new employer or other
 17 source of income, if known to the payor.

18 Section 11. Civil liability for failure to comply with
 19 income withholding order. (1) A payor who fails to withhold
 20 and deliver support money from the obligor's income when
 21 ordered to do so under [section 8] is liable to the
 22 department for any amount up to the accumulated amount the
 23 payor should have withheld and delivered.

24 (2) No payor who complies with an order to withhold
 25 under [sections 1 through 21] is liable for wrongful

1 withholding to the obligor or to any other person claiming
2 rights derived from the obligor.

3 Section 12. Obligor rights protected. No employer may
4 discharge, discipline, or refuse to hire an obligor because
5 of the institution of income withholding on the obligor's
6 income or the initiation of proceedings under [sections 1
7 through 21]. Any person who violates this section may be
8 fined not more than \$500 and not less than \$150 and may be
9 required to make full restitution to the aggrieved obligor,
10 including reinstatement and backpay.

11 Section 13. Priority of income withholding. An order
12 to withhold and deliver income under [sections 1 through 21]
13 takes priority over any:

14 (1) wage or income deduction order under any other
15 law;

16 (2) voluntary or involuntary assignment of wages or
17 income;

18 (3) other voluntary deductions from the obligor's
19 income;

20 (4) levies, writs of execution, or garnishments of the
21 obligor's income; and

22 (5) any other claims by creditors.

23 Section 14. Modification or termination of withholding
24 orders. (1) The department may at any time modify the order
25 to withhold income to:

1 (a) reflect payment in full of the arrearages by
2 income withholding or otherwise;

3 (b) recognize an increase or decrease in the support
4 order; or

5 (c) indicate any other reason the amount to be
6 withheld is to be reduced or changed.

7 (2) An income withholding order terminates only when
8 the department is no longer authorized under the law to
9 collect support or, when appropriate, services rendered
10 under 40-5-203 have come to an end or when the obligation to
11 pay support is terminated and all arrearages are paid in
12 full, whichever occurs first.

13 Section 15. Payment records. (1) The department, in
14 collecting, disbursing, or receiving payments pursuant to
15 orders to withhold income, shall maintain complete,
16 accurate, and clear records of all payments and
17 disbursements.

18 (2) Certified payment records maintained by the
19 department must, without further proof or foundation, be
20 admitted into evidence in any legal proceedings under
21 [sections 1 through 21]. Such records constitute prima facie
22 evidence of the amount of support paid and arrearages that
23 have accrued since the department began to monitor support
24 payment in a case.

25 Section 16. Registration of interstate income

1 withholding orders. (1) Whenever an obligor, whether or not
 2 he resides in this state, derives income within this state
 3 and an order for income withholding of the obligor's income
 4 has been issued by a public agency of another state as a
 5 means to enforce support orders under Title IV-D of the
 6 Social Security Act, that agency may register the income
 7 withholding order with the department. Upon registration of
 8 the foreign withholding order, it must be treated in the
 9 same manner and have the same effect as an income
 10 withholding order issued by the department.

11 (2) The application for registration of a foreign
 12 order for income withholding must include:

13 (a) a certified copy of the support order, with all
 14 modifications thereof;

15 (b) a certified copy of the income withholding order;

16 (c) a sworn statement of the facts entitling the
 17 agency to issue an income withholding order, including a
 18 statement of the amount of arrearages and a statement that
 19 all procedural due process requirements of the foreign
 20 jurisdiction for issuance of such income withholding order
 21 have been carried out in full;

22 (d) the name, address, and social security number of
 23 the obligor;

24 (e) the name and address of the obligor's employer or
 25 of any other payor of income to the obligor if the order for

1 income withholding of the foreign jurisdiction extends to
 2 such other income; and

3 (f) the name and address of the agency or person to
 4 whom support payments collected by the department under
 5 income withholding procedures should be transmitted.

6 (3) When the foreign income withholding order is
 7 registered, the department shall serve the order upon the
 8 payor, with directions to the payor to comply with the order
 9 and to deliver the withheld amounts to the department.

10 Section 17. Application for interstate withholding.

11 (1) Whenever an obligor resides in this state and derives
 12 income within this state and a support order issued in
 13 another jurisdiction is being enforced by a public agency of
 14 that jurisdiction pursuant to Title IV-D of the Social
 15 Security Act, that agency may apply to the department for
 16 income withholding services.

17 (2) The application for interstate income withholding
 18 must include:

19 (a) a certified copy of the support order, with all
 20 modification thereof;

21 (b) an affidavit by the obligee containing a statement
 22 that the obligor is delinquent in the payment of support in
 23 an amount equal to at least 1 month's support payment and a
 24 computation of the period and total amount of the arrearage
 25 as of the date of the application;

1 (c) a certified copy of the payment record if such
2 records are maintained by the agency or any other agency
3 within that jurisdiction;

4 (d) the name, address, and social security number of
5 the obligor;

6 (e) the name and address of all known payors within
7 this state; and

8 (f) the name and address of the agency or person to
9 whom support payments collected by the department under
10 income withholding procedures should be sent.

11 (3) Upon receipt of the application, the department
12 shall commence procedures to establish orders for income
13 withholding, including notice and opportunity for hearing
14 under [sections 1 through 21]. The department shall further
15 advise the obligor that the income withholding was requested
16 on the basis of an application from another jurisdiction.

17 (4) In any hearing based on an application under this
18 section, the certified copy of the support order and
19 affidavit, without further proof or foundation, constitutes
20 prima facie evidence that the support order is valid and
21 that the obligee or public agency is entitled to an order of
22 income withholding and that the amount of current support
23 payments and arrearages are as stated.

24 (5) In accordance with [section 7], a final decision
25 on whether or not income withholding is appropriate must be

1 rendered within 45 days of service of notice on the obligor.
2 If, however, because of the interstate aspects of the case,
3 the hearing examiner is unable to resolve a dispute over the
4 amount of arrearages within such time and the hearing
5 examiner has found that the obligor is delinquent in an
6 amount equal to at least 1 month's support payment, the
7 hearing examiner shall authorize immediate service of the
8 order for withholding as to current support and may continue
9 the hearing on the disputed amounts beyond the 45-day limit.

10 Section 18. Additional duties of department in
11 interstate income withholding. (1) Unless the public agency
12 of the foreign jurisdiction makes application to the
13 department for additional services, the department is not
14 required to locate the obligor or to locate payors of income
15 to the obligor. If the application for interstate service
16 provided for in [sections 16 and 17] fails to provide this
17 information or the information is determined to be
18 incorrect, the department may return the application without
19 further proceeding under [sections 1 through 21].

20 (2) If the department determines that the obligor is
21 no longer employed in this state or no longer derives income
22 within this state, the department shall promptly notify the
23 agency which requested income withholding of the changes and
24 shall forward to that agency all information it has with
25 respect to the obligor's new address and the name and

1 address of the obligor's new employer or other source of
2 income.

3 (3) The department shall promptly transmit payments
4 received on an income withholding order to the agency or
5 person designated in the interstate application.

6 Section 19. Initiation of income withholding in other
7 jurisdictions. Whenever the department is authorized or
8 required under the laws of this state to enforce and collect
9 on a support order and the obligor is employed or has a
10 source of income in another state, the department shall
11 request the agency responsible for income withholding in
12 that state to implement income withholding procedures. The
13 department shall compile and transmit to the withholding
14 agency of the other state all documentation required by the
15 law of that state necessary for the purpose of obtaining an
16 income withholding order in that state. The department shall
17 also transmit to the withholding agency a certified copy of
18 any subsequent modification of the support order.

19 Section 20. Remedies additional to those now existing.
20 The remedy provided in [sections 1 through 21] is in
21 addition to and not in substitution for any other remedy
22 that may otherwise be available to the department, and the
23 department may simultaneously pursue other remedies to
24 enforce a support obligation or to collect support
25 arrearages.

1 Section 21. Rulemaking authority. The department shall
2 adopt rules and forms to participate in and carry out the
3 provisions of [sections 1 through 21].

4 Section 22. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 23. Codification instruction. Sections 1
11 through 21 are intended to be codified as an integral part
12 of Title 40, chapter 5, and the provisions of Title 40,
13 chapter 5, apply to sections 1 through 21.

14 Section 24. Effective date. Section 21 and this
15 section are effective on passage and approval, except that
16 rules adopted under section 21 may not be made effective
17 prior to October 1, 1985.

-End-

STATEMENT OF INTENT

HOUSE BILL 443

House Judiciary Committee

A statement of intent is required for this bill because it gives the department of revenue rulemaking authority.

The intent of this bill and federal Public Law 93-378, the Child Support Enforcement Amendments of 1984, on which it is based is to ensure that the support of children is the highest priority in the allocation of a responsible parent's income through the timely and automatic initiation of income withholding procedures whenever a delinquency occurs equal to at least 1 month's support payment. This bill requires the department to monitor and track support payments as they become due for the purpose of detecting delinquencies and further to promptly respond to such delinquency with income withholding procedures. To expedite the process of income withholding, any hearings are to be held under the contested case procedures of the Montana Administrative Procedure Act. Further, income withholding procedures are to be made available for interstate applications.

More specifically, it is the intent of the bill to grant to the department of revenue the following:

(1) the authority to establish rules and procedures related to the administrative hearing process, including but

not limited to procedures for requesting a hearing, for discovery, and for teleconferencing;

(2) the authority to adopt guidelines for the exercise of discretion in reducing the amount to be withheld in satisfaction of arrearages;

(3) the authority to establish procedures for the monitoring, tracking, and dispensing of support payments and payments received from income withholdings; and

(4) the authority to establish procedures for the implementation of interstate withholding.



THIRD READING

HB 443

1 HOUSE BILL NO. 443

2 INTRODUCED BY J. BROWN, BERGENE, CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE, IN CHILD
6 SUPPORT CASES BEING ENFORCED BY THE DEPARTMENT OF REVENUE,
7 THE WITHHOLDING OF THE OBLIGOR'S INCOME WHENEVER AN
8 ARREARAGE OCCURS THAT IS EQUAL TO OR IN EXCESS OF THE AMOUNT
9 OF SUPPORT PAYABLE FOR 1 MONTH; TO REQUIRE THE DEPARTMENT TO
10 FORWARD ANY CHILD SUPPORT PAYMENTS TO THE OBLIGEE WITHIN 10
11 DAYS OF RECEIPT OF THE PAYMENT FROM THE OBLIGOR; AND
12 PROVIDING AN EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 Section 1. Short title. [Sections 1 through 21] may be
16 cited as the "Child Support Enforcement Act of 1985".17 Section 2. Purpose. The purpose of [sections 1 through
18 21] is to provide a more effective and efficient way to
19 guarantee the support of dependent children by the person or
20 persons primarily responsible for such support by ensuring
21 that the support of children is the highest priority in the
22 allocation of a responsible parent's income.23 Section 3. Definitions. As used in [sections 1 through
24 21], the following definitions apply:

25 (1) "Department" means the department of revenue

1 provided for in 2-15-1301.

2 (2) "Income" means any form of periodic payment to a
3 person, including but not limited to earnings, wages,
4 compensation as an independent contractor, interest due or
5 to become due, trust income, annuities, pension or other
6 retirement program payments, and any other payments which
7 are due or to become due to an obligor from any source.
8 However, income does not include:

9 (a) any amount required by law to be withheld, other
10 than creditor claims, including federal, state, and local
11 taxes and social security; and

12 (b) any amounts exempted from judgment, execution, or
13 attachment by federal or state law.

14 (3) "Obligee" means either a person to whom a duty of
15 support is owed or a public agency of this or another state
16 to which a person has assigned the right to receive current
17 and accrued support payments.

18 (4) "Obligor" means a person who owes a duty to make
19 payments under a support order.

20 (5) "Payor" means any payor of income to an obligor on
21 a periodic basis and includes any person, firm, corporation,
22 association, employer, trustee, political subdivision, state
23 agency, or any agent thereof, who is subject to the
24 jurisdiction of the courts of this state under Rule 4B of
25 the Montana Rules of Civil Procedure.

(6) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support.

Section 4. Income withholding. (1) Whenever an obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established by order of a court or administrative process, income due or to become due within

this state to the obligor is subject to withholding procedures under [sections 1 through 21].

(2) When the requirements of [sections 1 through 21] have been met, the department, without necessity for amendment of the support order or further order by a court or other entity, shall issue an order directing the obligor's employer or other payor to withhold and deliver to the department such amount of the obligor's income as will be sufficient to meet the support obligation imposed by the support order and to defray arrearages due when the withholding order takes place.

(3) The provisions for income withholding under [sections 1 through 21] take precedence over any other law or court order.

Section 5. Initiation of income withholding procedures. (1) In each case in which the department is enforcing a support order assigned to the state pursuant to 53-2-613 or in which the department is collecting support on behalf of an obligee who has applied for services under 40-5-203, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes any combination of unpaid support equal to or in excess of 1 month's support payment, the department shall commence withholding from the obligor's income.

1 (2) To accomplish the purpose of subsection (1), the
 2 department by written notice to the obligor may direct an
 3 obligor who does not owe unpaid child support equal to or in
 4 excess of 1 month's support payment to pay all support
 5 through the department, notwithstanding any court order
 6 directing payments to be made to the obligee or clerk of
 7 court. After receipt of the notice, the obligor may not be
 8 credited for payments that are not made to the department as
 9 directed and any inconsistent payments must be considered a
 10 gift and in addition to the support order.

11 (3) WHENEVER AN OBLIGATION FOR SUPPORT IS PAID THROUGH
 12 THE SUPPORT ENFORCEMENT AND COLLECTIONS UNIT OF THE
 13 DEPARTMENT, THE DEPARTMENT MUST FORWARD PAYMENT TO THE
 14 OBLIGEE WITHIN 10 DAYS OF THE DEPARTMENT'S RECEIPT OF
 15 PAYMENT FROM THE OBLIGOR.

16 Section 6. Notice of intent to withhold income. (1)
 17 Prior to service of an order on the payor to commence income
 18 withholding, the department shall serve upon the obligor a
 19 notice of the intended withholding action. The notice must
 20 contain a statement:

21 (a) of the amount to be withheld, including a
 22 computation showing the period and total amount of the
 23 arrearages as of the date of the notice;

24 (b) that withholding applies to all current and
 25 subsequent payors;

1 (c) of the obligor's right to a hearing under [section
 2 7] to contest the implementation of income withholding on
 3 the ground that withholding, including the amounts to be
 4 withheld, is not proper because of mistake of fact; and

5 (d) of the period of time within which the obligor
 6 must request a hearing and that failure to request the
 7 hearing within the time limit will result in income
 8 withholding orders being served upon the payor.

9 (2) The notice must be served upon the obligor
 10 personally or by certified mail.

11 Section 7. Hearing. (1) The obligor may within 10 days
 12 of being served with notice of the intended income
 13 withholding under [section 6] file with the department a
 14 written request for an administrative hearing to be held
 15 pursuant to the contested case provisions of Title 2,
 16 chapter 4, part 6.

17 (2) If the obligor requests a hearing within the time
 18 allowed, income withholding may not take effect until the
 19 conclusion of the hearing or the date of the hearing if the
 20 obligor fails to appear at a scheduled hearing.

21 (3) Venue for the administrative hearing may be in the
 22 county where the obligor resides if the obligor resides in
 23 this state, the county in which the payor or the payor's
 24 agent is located, or the county in which the department or
 25 any of its regional offices is located.

1 (4) The administrative hearing must be held by
 2 teleconferencing methods unless the obligor or the
 3 department expressly requests an in-person hearing before
 4 the hearing examiner.

5 (5) For purposes of the hearing process, arrearages of
 6 support must be computed on the basis of the amount owed and
 7 unpaid on the date the obligor was served with the notice of
 8 intent to withhold income, and the fact that the obligor may
 9 have later paid the arrearage does not remove from the
 10 hearing examiner the authority to direct the department to
 11 order income withholding.

12 (6) The obligor within 45 days of service of the
 13 notice of intent to withhold income must be informed of the
 14 hearing decision on whether income withholding will take
 15 place.

16 Section 8. Order to withhold income. (1) If the
 17 obligor fails to request a hearing within 10 days or fails
 18 to appear at a scheduled hearing or if the hearing examiner
 19 determines that the obligor owes a combination of unpaid
 20 support equal to or in excess of 1 month's support payment,
 21 the department shall immediately serve an order to withhold
 22 and deliver income upon any payor or combination of payors.
 23 The order must:

24 (a) direct the payor and successor payors to withhold
 25 from the obligor's income each month the amount specified in

1 the order if sufficient funds are available;

2 (b) direct the payor to deliver the amount withheld to
 3 the department in the same month in which the funds were
 4 withheld;

5 (c) state that the order is binding on the payor until
 6 further notice by the department; and

7 (d) state the rights and duties of the payor under
 8 this part.

9 (2) An order to withhold and deliver the obligor's
 10 income made under this section is binding upon the payor
 11 immediately upon service of the order upon the payor.
 12 Service of the order to withhold may be made either
 13 personally or by certified mail.

14 (3) Whenever there is more than one payor, the
 15 department may, in its discretion, apportion the total
 16 amount to be withheld each month among payors.

17 Section 9. Determination of amount of income to be
 18 withheld. (1) Except as provided in subsection (2), the
 19 amount of funds to be withheld each month from the obligor's
 20 income must be:

21 (a) the amount of money necessary to pay current
 22 installments of support as they become due and payable; plus

23 (b) the amount of money which, when deducted in equal
 24 amounts each month, will pay all outstanding support
 25 arrearages and interest, if any, within 2 years; plus

1 (c) a fee not to exceed \$5 each month, which may be
2 withheld by the payor as compensation for the administrative
3 costs of each withholding.

4 (2) The maximum amounts withheld from the obligor's
5 wages or salaries may not exceed the maximum amount
6 permitted under section 303(b) of the federal Consumer
7 Credit Protection Act, 15 U.S.C. 1673(b).

8 (3) At any time, if the obligor can show that
9 substantial hardship will result if the maximum permissible
10 withholding is implemented or continued, the department for
11 cause shown may in its discretion determine a lesser amount
12 to be withheld each month in satisfaction of support
13 arrearages.

14 Section 10. Duties of payor. (1) A payor who has been
15 served with an order to withhold and deliver income shall
16 deduct the amount designated in the order beginning not
17 later than the first pay period that occurs after 14 days
18 from the service of the order. The payor shall promptly
19 deliver the amount withheld to the department as directed by
20 the order or in accordance with any subsequent modification
21 of the order received from the department.

22 (2) If the obligor's pay periods are at intervals of
23 less than 1 month, the payor may withhold an equal amount at
24 each pay period cumulatively sufficient to pay the monthly
25 withholding as directed by the withholding order.

1 (3) Whenever the payor is obligated to withhold income
2 for more than one obligor, the payor may combine all amounts
3 withheld into a single payment for that month with the
4 portion thereof which is attributable to each obligor
5 separately designated.

6 (4) Whenever there is more than one order for
7 withholding against a single obligor, the payor must comply
8 with the orders in the sequence in which they were served
9 upon the payor and must honor all withholding orders to the
10 extent that the total amount withheld from the obligor's
11 wages or salary does not exceed the limits set in [section
12 9].

13 (5) The payor must promptly notify the department of
14 the termination of the obligor's employment or other source
15 of income and provide the obligor's last-known address and
16 the name and address of the obligor's new employer or other
17 source of income, if known to the payor.

18 Section 11. Civil liability for failure to comply with
19 income withholding order. (1) A payor who fails to withhold
20 and deliver support money from the obligor's income when
21 ordered to do so under [section 8] is liable to the
22 department for any amount up to the accumulated amount the
23 payor should have withheld and delivered.

24 (2) No payor who complies with an order to withhold
25 under [sections 1 through 21] is liable for wrongful

1 withholding to the obligor or to any other person claiming
2 rights derived from the obligor.

3 Section 12. Obligor rights protected. No employer may
4 discharge, discipline, or refuse to hire an obligor because
5 of the institution of income withholding on the obligor's
6 income or the initiation of proceedings under [sections 1
7 through 21]. Any person who violates this section may be
8 fined not more than \$500 and not less than \$150 and may be
9 required to make full restitution to the aggrieved obligor,
10 including reinstatement and backpay.

11 Section 13. Priority of income withholding. An order
12 to withhold and deliver income under [sections 1 through 21]
13 takes priority over any:

- 14 (1) wage or income deduction order under any other
15 law;
- 16 (2) voluntary or involuntary assignment of wages or
17 income;
- 18 (3) other voluntary deductions from the obligor's
19 income;
- 20 (4) levies, writs of execution, or garnishments of the
21 obligor's income; and
- 22 (5) any other claims by creditors.

23 Section 14. Modification or termination of withholding
24 orders. (1) The department may at any time modify the order
25 to withhold income to:

1 (a) reflect payment in full of the arrearages by
2 income withholding or otherwise;

3 (b) recognize an increase or decrease in the support
4 order; or

5 (c) indicate any other reason the amount to be
6 withheld is to be reduced or changed.

7 (2) An income withholding order terminates only when
8 the department is no longer authorized under the law to
9 collect support or, when appropriate, services rendered
10 under 40-5-203 have come to an end or when the obligation to
11 pay support is terminated and all arrearages are paid in
12 full, whichever occurs first.

13 Section 15. Payment records. (1) The department, in
14 collecting, disbursing, or receiving payments pursuant to
15 orders to withhold income, shall maintain complete,
16 accurate, and clear records of all payments and
17 disbursements.

18 (2) Certified payment records maintained by the
19 department must, without further proof or foundation, be
20 admitted into evidence in any legal proceedings under
21 [sections 1 through 21]. Such records constitute prima facie
22 evidence of the amount of support paid and arrearages that
23 have accrued since the department began to monitor support
24 payment in a case.

25 Section 16. Registration of interstate income

1 withholding orders. (1) Whenever an obligor, whether or not
 2 he resides in this state, derives income within this state
 3 and an order for income withholding of the obligor's income
 4 has been issued by a public agency of another state as a
 5 means to enforce support orders under Title IV-D of the
 6 Social Security Act, that agency may register the income
 7 withholding order with the department. Upon registration of
 8 the foreign withholding order, it must be treated in the
 9 same manner and have the same effect as an income
 10 withholding order issued by the department.

11 (2) The application for registration of a foreign
 12 order for income withholding must include:

13 (a) a certified copy of the support order, with all
 14 modifications thereof;

15 (b) a certified copy of the income withholding order;

16 (c) a sworn statement of the facts entitling the
 17 agency to issue an income withholding order, including a
 18 statement of the amount of arrearages and a statement that
 19 all procedural due process requirements of the foreign
 20 jurisdiction for issuance of such income withholding order
 21 have been carried out in full;

22 (d) the name, address, and social security number of
 23 the obligor;

24 (e) the name and address of the obligor's employer or
 25 of any other payor of income to the obligor if the order for

1 income withholding of the foreign jurisdiction extends to
 2 such other income; and

3 (f) the name and address of the agency or person to
 4 whom support payments collected by the department under
 5 income withholding procedures should be transmitted.

6 (3) When the foreign income withholding order is
 7 registered, the department shall serve the order upon the
 8 payor, with directions to the payor to comply with the order
 9 and to deliver the withheld amounts to the department.

10 Section 17. Application for interstate withholding.

11 (1) Whenever an obligor resides in this state and derives
 12 income within this state and a support order issued in
 13 another jurisdiction is being enforced by a public agency of
 14 that jurisdiction pursuant to Title IV-D of the Social
 15 Security Act, that agency may apply to the department for
 16 income withholding services.

17 (2) The application for interstate income withholding
 18 must include:

19 (a) a certified copy of the support order, with all
 20 modification thereof;

21 (b) an affidavit by the obligee containing a statement
 22 that the obligor is delinquent in the payment of support in
 23 an amount equal to at least 1 month's support payment and a
 24 computation of the period and total amount of the arrearage
 25 as of the date of the application;

1 (c) a certified copy of the payment record if such
2 records are maintained by the agency or any other agency
3 within that jurisdiction;

4 (d) the name, address, and social security number of
5 the obligor;

6 (e) the name and address of all known payors within
7 this state; and

8 (f) the name and address of the agency or person to
9 whom support payments collected by the department under
10 income withholding procedures should be sent.

11 (3) Upon receipt of the application, the department
12 shall commence procedures to establish orders for income
13 withholding, including notice and opportunity for hearing
14 under [sections 1 through 21]. The department shall further
15 advise the obligor that the income withholding was requested
16 on the basis of an application from another jurisdiction.

17 (4) In any hearing based on an application under this
18 section, the certified copy of the support order and
19 affidavit, without further proof or foundation, constitutes
20 prima facie evidence that the support order is valid and
21 that the obligee or public agency is entitled to an order of
22 income withholding and that the amount of current support
23 payments and arrearages are as stated.

24 (5) In accordance with [section 7], a final decision
25 on whether or not income withholding is appropriate must be

1 rendered within 45 days of service of notice on the obligor.
2 If, however, because of the interstate aspects of the case,
3 the hearing examiner is unable to resolve a dispute over the
4 amount of arrearages within such time and the hearing
5 examiner has found that the obligor is delinquent in an
6 amount equal to at least 1 month's support payment, the
7 hearing examiner shall authorize immediate service of the
8 order for withholding as to current support and may continue
9 the hearing on the disputed amounts beyond the 45-day limit.

10 Section 18. Additional duties of department in
11 interstate income withholding. (1) Unless the public agency
12 of the foreign jurisdiction makes application to the
13 department for additional services, the department is not
14 required to locate the obligor or to locate payors of income
15 to the obligor. If the application for interstate service
16 provided for in [sections 16 and 17] fails to provide this
17 information or the information is determined to be
18 incorrect, the department may return the application without
19 further proceeding under [sections 1 through 21].

20 (2) If the department determines that the obligor is
21 no longer employed in this state or no longer derives income
22 within this state, the department shall promptly notify the
23 agency which requested income withholding of the changes and
24 shall forward to that agency all information it has with
25 respect to the obligor's new address and the name and

1 address of the obligor's new employer or other source of
2 income.

3 (3) The department shall promptly transmit payments
4 received on an income withholding order to the agency or
5 person designated in the interstate application.

6 Section 19. Initiation of income withholding in other
7 jurisdictions. Whenever the department is authorized or
8 required under the laws of this state to enforce and collect
9 on a support order and the obligor is employed or has a
10 source of income in another state, the department shall
11 request the agency responsible for income withholding in
12 that state to implement income withholding procedures. The
13 department shall compile and transmit to the withholding
14 agency of the other state all documentation required by the
15 law of that state necessary for the purpose of obtaining an
16 income withholding order in that state. The department shall
17 also transmit to the withholding agency a certified copy of
18 any subsequent modification of the support order.

19 Section 20. Remedies additional to those now existing.
20 The remedy provided in [sections 1 through 21] is in
21 addition to and not in substitution for any other remedy
22 that may otherwise be available to the department, and the
23 department may simultaneously pursue other remedies to
24 enforce a support obligation or to collect support
25 arrearages.

1 Section 21. Rulemaking authority. The department shall
2 adopt rules and forms to participate in and carry out the
3 provisions of [sections 1 through 21].

4 Section 22. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 23. Codification instruction. Sections 1
11 through 21 are intended to be codified as an integral part
12 of Title 40, chapter 5, and the provisions of Title 40,
13 chapter 5, apply to sections 1 through 21.

14 Section 24. Effective date. Section 21 and this
15 section are effective on passage and approval, except that
16 rules adopted under section 21 may not be made effective
17 prior to October 1, 1985.

-End-

STANDING COMMITTEE REPORT

SENATE

March 28

19 85

MR. PRESIDENT

We, your committee on..... JUDICIARY

having had under consideration..... HOUSE BILL No. 443

third reading copy (blue)
color

(Senator Towe)

INCOME WITHHOLDING FOR DELINQUENT CHILD SUPPORT PAYMENTS

Respectfully report as follows: That..... HOUSE BILL No. 443

be amended as follows:


1. Page 2, line 3.
Following: "including"
Strike: "but not limited to"
Following: "earnings"
Strike: ", "
Insert: "and"
Following: "wages"
Strike: ", "
Insert: "."
2. Page 2, lines 4 through 7.
Following: line 3
Strike: line 4 through line 7
3. Page 5, lines 7 through 10.
Following: "court." on line 7
Strike: remainder of line 7 through line 10
4. Page 11, line 15.
Following: line 14
Insert: "state"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXX~~


.....
Senator Joe Mazurek

Chairman.

1 STATEMENT OF INTENT
2 HOUSE BILL 443
3 House Judiciary Committee
4

5 A statement of intent is required for this bill because
6 it gives the department of revenue rulemaking authority.

7 The intent of this bill and federal Public Law 93-378,
8 the Child Support Enforcement Amendments of 1984, on which
9 it is based is to ensure that the support of children is the
10 highest priority in the allocation of a responsible parent's
11 income through the timely and automatic initiation of income
12 withholding procedures whenever a delinquency occurs equal
13 to at least 1 month's support payment. This bill requires
14 the department to monitor and track support payments as they
15 become due for the purpose of detecting delinquencies and
16 further to promptly respond to such delinquency with income
17 withholding procedures. To expedite the process of income
18 withholding, any hearings are to be held under the contested
19 case procedures of the Montana Administrative Procedure Act.
20 Further, income withholding procedures are to be made
21 available for interstate applications.

22 More specifically, it is the intent of the bill to
23 grant to the department of revenue the following:

24 (1) the authority to establish rules and procedures
25 related to the administrative hearing process, including but

1 not limited to procedures for requesting a hearing, for
2 discovery, and for teleconferencing;

3 (2) the authority to adopt guidelines for the exercise
4 of discretion in reducing the amount to be withheld in
5 satisfaction of arrearages;

6 (3) the authority to establish procedures for the
7 monitoring, tracking, and dispensing of support payments and
8 payments received from income withholdings; and

9 (4) the authority to establish procedures for the
10 implementation of interstate withholding.

HOUSE BILL NO. 443

INTRODUCED BY J. BROWN, BERGENE, CHRISTIAENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE, IN CHILD SUPPORT CASES BEING ENFORCED BY THE DEPARTMENT OF REVENUE, THE WITHHOLDING OF THE OBLIGOR'S INCOME WHENEVER AN ARREARAGE OCCURS THAT IS EQUAL TO OR IN EXCESS OF THE AMOUNT OF SUPPORT PAYABLE FOR 1 MONTH; TO REQUIRE THE DEPARTMENT TO FORWARD ANY CHILD SUPPORT PAYMENTS TO THE OBLIGEE WITHIN 10 DAYS OF RECEIPT OF THE PAYMENT FROM THE OBLIGOR; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Short title. [Sections 1 through 21] may be cited as the "Child Support Enforcement Act of 1985".

Section 2. Purpose. The purpose of [sections 1 through 21] is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

Section 3. Definitions. As used in [sections 1 through 21], the following definitions apply:

(1) "Department" means the department of revenue

provided for in 2-15-1301.

(2) "Income" means any form of periodic payment to a person, including but-not-limited-to earnings, AND wages, compensation--as--an-independent-contractor, interest-due-or-to-become-due, trust-income, annuities, pension--or--other retirement--program--payments, and-any-other-payments-which are-due-or-to-become-due-to--an--obligor--from--any--source. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(3) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(4) "Obligor" means a person who owes a duty to make payments under a support order.

(5) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

1 (6) "Support order" means an order of the district
 2 court of the state of Montana, an order of a court of
 3 appropriate jurisdiction of another state, an administrative
 4 order established pursuant to proceedings under part 2 of
 5 this chapter, or an order established by administrative
 6 hearing process of an agency of another state with functions
 7 similar to those of the department set forth in part 2 of
 8 this chapter, that provides a set and determinable amount
 9 for temporary or final periodic payment of funds for the
 10 support of a child. Support order further includes the
 11 following:

12 (a) an order for reimbursement of public assistance
 13 money paid by a public agency for the benefit of a minor
 14 child;

15 (b) an order for maintenance to be paid to a former
 16 spouse when the former spouse is the custodial parent of a
 17 child for whom child support is awarded under the same
 18 order; and

19 (c) an order requiring payment of interest due on
 20 unpaid judgments for child support.

21 Section 4. Income withholding. (1) Whenever an
 22 obligation for support is being enforced by the department
 23 pursuant to Title IV-D of the Social Security Act and the
 24 obligation has been established by order of a court or
 25 administrative process, income due or to become due within

1 this state to the obligor is subject to withholding
 2 procedures under [sections 1 through 21].

3 (2) When the requirements of [sections 1 through 21]
 4 have been met, the department, without necessity for
 5 amendment of the support order or further order by a court
 6 or other entity, shall issue an order directing the
 7 obligor's employer or other payor to withhold and deliver to
 8 the department such amount of the obligor's income as will
 9 be sufficient to meet the support obligation imposed by the
 10 support order and to defray arrearages due when the
 11 withholding order takes place.

12 (3) The provisions for income withholding under
 13 [sections 1 through 21] take precedence over any other law
 14 or court order.

15 Section 5. Initiation of income withholding
 16 procedures. (1) In each case in which the department is
 17 enforcing a support order assigned to the state pursuant to
 18 53-2-613 or in which the department is collecting support on
 19 behalf of an obligee who has applied for services under
 20 40-5-203, the department shall monitor and track all support
 21 payments required by the support order. If at any time these
 22 records indicate that the obligor owes any combination of
 23 unpaid support equal to or in excess of 1 month's support
 24 payment, the department shall commence withholding from the
 25 obligor's income.

1 (2) To accomplish the purpose of subsection (1), the
 2 department by written notice to the obligor may direct an
 3 obligor who does not owe unpaid child support equal to or in
 4 excess of 1 month's support payment to pay all support
 5 through the department, notwithstanding any court order
 6 directing payments to be made to the obligee or clerk of
 7 court. ~~After receipt of the notice, the obligor may not be~~
 8 ~~credited for payments that are not made to the department as~~
 9 ~~directed and any inconsistent payments must be considered a~~
 10 ~~gift and in addition to the support order.~~

11 (3) WHENEVER AN OBLIGATION FOR SUPPORT IS PAID THROUGH
 12 THE SUPPORT ENFORCEMENT AND COLLECTIONS UNIT OF THE
 13 DEPARTMENT, THE DEPARTMENT MUST FORWARD PAYMENT TO THE
 14 OBLIGEE WITHIN 10 DAYS OF THE DEPARTMENT'S RECEIPT OF
 15 PAYMENT FROM THE OBLIGOR.

16 Section 6. Notice of intent to withhold income. (1)
 17 Prior to service of an order on the payor to commence income
 18 withholding, the department shall serve upon the obligor a
 19 notice of the intended withholding action. The notice must
 20 contain a statement:

21 (a) of the amount to be withheld, including a
 22 computation showing the period and total amount of the
 23 arrearages as of the date of the notice;

24 (b) that withholding applies to all current and
 25 subsequent payors;

1 (c) of the obligor's right to a hearing under [section
 2 7] to contest the implementation of income withholding on
 3 the ground that withholding, including the amounts to be
 4 withheld, is not proper because of mistake of fact; and

5 (d) of the period of time within which the obligor
 6 must request a hearing and that failure to request the
 7 hearing within the time limit will result in income
 8 withholding orders being served upon the payor.

9 (2) The notice must be served upon the obligor
 10 personally or by certified mail.

11 Section 7. Hearing. (1) The obligor may within 10 days
 12 of being served with notice of the intended income
 13 withholding under [section 6] file with the department a
 14 written request for an administrative hearing to be held
 15 pursuant to the contested case provisions of Title 2,
 16 chapter 4, part 6.

17 (2) If the obligor requests a hearing within the time
 18 allowed, income withholding may not take effect until the
 19 conclusion of the hearing or the date of the hearing if the
 20 obligor fails to appear at a scheduled hearing.

21 (3) Venue for the administrative hearing may be in the
 22 county where the obligor resides if the obligor resides in
 23 this state, the county in which the payor or the payor's
 24 agent is located, or the county in which the department or
 25 any of its regional offices is located.

1 (4) The administrative hearing must be held by
2 teleconferencing methods unless the obligor or the
3 department expressly requests an in-person hearing before
4 the hearing examiner.

5 (5) For purposes of the hearing process, arrearages of
6 support must be computed on the basis of the amount owed and
7 unpaid on the date the obligor was served with the notice of
8 intent to withhold income, and the fact that the obligor may
9 have later paid the arrearage does not remove from the
10 hearing examiner the authority to direct the department to
11 order income withholding.

12 (6) The obligor within 45 days of service of the
13 notice of intent to withhold income must be informed of the
14 hearing decision on whether income withholding will take
15 place.

16 Section 8. Order to withhold income. (1) If the
17 obligor fails to request a hearing within 10 days or fails
18 to appear at a scheduled hearing or if the hearing examiner
19 determines that the obligor owes a combination of unpaid
20 support equal to or in excess of 1 month's support payment,
21 the department shall immediately serve an order to withhold
22 and deliver income upon any payor or combination of payors.
23 The order must:

24 (a) direct the payor and successor payors to withhold
25 from the obligor's income each month the amount specified in

1 the order if sufficient funds are available;

2 (b) direct the payor to deliver the amount withheld to
3 the department in the same month in which the funds were
4 withheld;

5 (c) state that the order is binding on the payor until
6 further notice by the department; and

7 (d) state the rights and duties of the payor under
8 this part.

9 (2) An order to withhold and deliver the obligor's
10 income made under this section is binding upon the payor
11 immediately upon service of the order upon the payor.
12 Service of the order to withhold may be made either
13 personally or by certified mail.

14 (3) Whenever there is more than one payor, the
15 department may, in its discretion, apportion the total
16 amount to be withheld each month among payors.

17 Section 9. Determination of amount of income to be
18 withheld. (1) Except as provided in subsection (2), the
19 amount of funds to be withheld each month from the obligor's
20 income must be:

21 (a) the amount of money necessary to pay current
22 installments of support as they become due and payable; plus

23 (b) the amount of money which, when deducted in equal
24 amounts each month, will pay all outstanding support
25 arrearages and interest, if any, within 2 years; plus

1 (c) a fee not to exceed \$5 each month, which may be
2 withheld by the payor as compensation for the administrative
3 costs of each withholding.

4 (2) The maximum amounts withheld from the obligor's
5 wages or salaries may not exceed the maximum amount
6 permitted under section 303(b) of the federal Consumer
7 Credit Protection Act, 15 U.S.C. 1673(b).

8 (3) At any time, if the obligor can show that
9 substantial hardship will result if the maximum permissible
10 withholding is implemented or continued, the department for
11 cause shown may in its discretion determine a lesser amount
12 to be withheld each month in satisfaction of support
13 arrearages.

14 Section 10. Duties of payor. (1) A payor who has been
15 served with an order to withhold and deliver income shall
16 deduct the amount designated in the order beginning not
17 later than the first pay period that occurs after 14 days
18 from the service of the order. The payor shall promptly
19 deliver the amount withheld to the department as directed by
20 the order or in accordance with any subsequent modification
21 of the order received from the department.

22 (2) If the obligor's pay periods are at intervals of
23 less than 1 month, the payor may withhold an equal amount at
24 each pay period cumulatively sufficient to pay the monthly
25 withholding as directed by the withholding order.

1 (3) Whenever the payor is obligated to withhold income
2 for more than one obligor, the payor may combine all amounts
3 withheld into a single payment for that month with the
4 portion thereof which is attributable to each obligor
5 separately designated.

6 (4) Whenever there is more than one order for
7 withholding against a single obligor, the payor must comply
8 with the orders in the sequence in which they were served
9 upon the payor and must honor all withholding orders to the
10 extent that the total amount withheld from the obligor's
11 wages or salary does not exceed the limits set in [section
12 9].

13 (5) The payor must promptly notify the department of
14 the termination of the obligor's employment or other source
15 of income and provide the obligor's last-known address and
16 the name and address of the obligor's new employer or other
17 source of income, if known to the payor.

18 Section 11. Civil liability for failure to comply with
19 income withholding order. (1) A payor who fails to withhold
20 and deliver support money from the obligor's income when
21 ordered to do so under [section 8] is liable to the
22 department for any amount up to the accumulated amount the
23 payor should have withheld and delivered.

24 (2) No payor who complies with an order to withhold
25 under [sections 1 through 21] is liable for wrongful

1 withholding to the obligor or to any other person claiming
2 rights derived from the obligor.

3 Section 12. Obligor rights protected. No employer may
4 discharge, discipline, or refuse to hire an obligor because
5 of the institution of income withholding on the obligor's
6 income or the initiation of proceedings under [sections 1
7 through 21]. Any person who violates this section may be
8 fined not more than \$500 and not less than \$150 and may be
9 required to make full restitution to the aggrieved obligor,
10 including reinstatement and backpay.

11 Section 13. Priority of income withholding. An order
12 to withhold and deliver income under [sections 1 through 21]
13 takes priority over any:

14 (1) wage or income deduction order under any other
15 STATE law;

16 (2) voluntary or involuntary assignment of wages or
17 income;

18 (3) other voluntary deductions from the obligor's
19 income;

20 (4) levies, writs of execution, or garnishments of the
21 obligor's income; and

22 (5) any other claims by creditors.

23 Section 14. Modification or termination of withholding
24 orders. (1) The department may at any time modify the order
25 to withhold income to:

1 (a) reflect payment in full of the arrearages by
2 income withholding or otherwise;

3 (b) recognize an increase or decrease in the support
4 order; or

5 (c) indicate any other reason the amount to be
6 withheld is to be reduced or changed.

7 (2) An income withholding order terminates only when
8 the department is no longer authorized under the law to
9 collect support or, when appropriate, services rendered
10 under 40-5-203 have come to an end or when the obligation to
11 pay support is terminated and all arrearages are paid in
12 full, whichever occurs first.

13 Section 15. Payment records. (1) The department, in
14 collecting, disbursing, or receiving payments pursuant to
15 orders to withhold income, shall maintain complete,
16 accurate, and clear records of all payments and
17 disbursements.

18 (2) Certified payment records maintained by the
19 department must, without further proof or foundation, be
20 admitted into evidence in any legal proceedings under
21 [sections 1 through 21]. Such records constitute prima facie
22 evidence of the amount of support paid and arrearages that
23 have accrued since the department began to monitor support
24 payment in a case.

25 Section 16. Registration of interstate income

1 withholding orders. (1) Whenever an obligor, whether or not
 2 he resides in this state, derives income within this state
 3 and an order for income withholding of the obligor's income
 4 has been issued by a public agency of another state as a
 5 means to enforce support orders under Title IV-D of the
 6 Social Security Act, that agency may register the income
 7 withholding order with the department. Upon registration of
 8 the foreign withholding order, it must be treated in the
 9 same manner and have the same effect as an income
 10 withholding order issued by the department.

11 (2) The application for registration of a foreign
 12 order for income withholding must include:

13 (a) a certified copy of the support order, with all
 14 modifications thereof;

15 (b) a certified copy of the income withholding order;

16 (c) a sworn statement of the facts entitling the
 17 agency to issue an income withholding order, including a
 18 statement of the amount of arrearages and a statement that
 19 all procedural due process requirements of the foreign
 20 jurisdiction for issuance of such income withholding order
 21 have been carried out in full;

22 (d) the name, address, and social security number of
 23 the obligor;

24 (e) the name and address of the obligor's employer or
 25 of any other payor of income to the obligor if the order for

1 income withholding of the foreign jurisdiction extends to
 2 such other income; and

3 (f) the name and address of the agency or person to
 4 whom support payments collected by the department under
 5 income withholding procedures should be transmitted.

6 (3) When the foreign income withholding order is
 7 registered, the department shall serve the order upon the
 8 payor, with directions to the payor to comply with the order
 9 and to deliver the withheld amounts to the department.

10 Section 17. Application for interstate withholding.

11 (1) Whenever an obligor resides in this state and derives
 12 income within this state and a support order issued in
 13 another jurisdiction is being enforced by a public agency of
 14 that jurisdiction pursuant to Title IV-D of the Social
 15 Security Act, that agency may apply to the department for
 16 income withholding services.

17 (2) The application for interstate income withholding
 18 must include:

19 (a) a certified copy of the support order, with all
 20 modification thereof;

21 (b) an affidavit by the obligee containing a statement
 22 that the obligor is delinquent in the payment of support in
 23 an amount equal to at least 1 month's support payment and a
 24 computation of the period and total amount of the arrearage
 25 as of the date of the application;

1 (c) a certified copy of the payment record if such
2 records are maintained by the agency or any other agency
3 within that jurisdiction;

4 (d) the name, address, and social security number of
5 the obligor;

6 (e) the name and address of all known payors within
7 this state; and

8 (f) the name and address of the agency or person to
9 whom support payments collected by the department under
10 income withholding procedures should be sent.

11 (3) Upon receipt of the application, the department
12 shall commence procedures to establish orders for income
13 withholding, including notice and opportunity for hearing
14 under [sections 1 through 21]. The department shall further
15 advise the obligor that the income withholding was requested
16 on the basis of an application from another jurisdiction.

17 (4) In any hearing based on an application under this
18 section, the certified copy of the support order and
19 affidavit, without further proof or foundation, constitutes
20 prima facie evidence that the support order is valid and
21 that the obligee or public agency is entitled to an order of
22 income withholding and that the amount of current support
23 payments and arrearages are as stated.

24 (5) In accordance with [section 7], a final decision
25 on whether or not income withholding is appropriate must be

1 rendered within 45 days of service of notice on the obligor.
2 If, however, because of the interstate aspects of the case,
3 the hearing examiner is unable to resolve a dispute over the
4 amount of arrearages within such time and the hearing
5 examiner has found that the obligor is delinquent in an
6 amount equal to at least 1 month's support payment, the
7 hearing examiner shall authorize immediate service of the
8 order for withholding as to current support and may continue
9 the hearing on the disputed amounts beyond the 45-day limit.

10 Section 18. Additional duties of department in
11 interstate income withholding. (1) Unless the public agency
12 of the foreign jurisdiction makes application to the
13 department for additional services, the department is not
14 required to locate the obligor or to locate payors of income
15 to the obligor. If the application for interstate service
16 provided for in [sections 16 and 17] fails to provide this
17 information or the information is determined to be
18 incorrect, the department may return the application without
19 further proceeding under [sections 1 through 21].

20 (2) If the department determines that the obligor is
21 no longer employed in this state or no longer derives income
22 within this state, the department shall promptly notify the
23 agency which requested income withholding of the changes and
24 shall forward to that agency all information it has with
25 respect to the obligor's new address and the name and

1 address of the obligor's new employer or other source of
2 income.

3 (3) The department shall promptly transmit payments
4 received on an income withholding order to the agency or
5 person designated in the interstate application.

6 Section 19. Initiation of income withholding in other
7 jurisdictions. Whenever the department is authorized or
8 required under the laws of this state to enforce and collect
9 on a support order and the obligor is employed or has a
10 source of income in another state, the department shall
11 request the agency responsible for income withholding in
12 that state to implement income withholding procedures. The
13 department shall compile and transmit to the withholding
14 agency of the other state all documentation required by the
15 law of that state necessary for the purpose of obtaining an
16 income withholding order in that state. The department shall
17 also transmit to the withholding agency a certified copy of
18 any subsequent modification of the support order.

19 Section 20. Remedies additional to those now existing.
20 The remedy provided in [sections 1 through 21] is in
21 addition to and not in substitution for any other remedy
22 that may otherwise be available to the department, and the
23 department may simultaneously pursue other remedies to
24 enforce a support obligation or to collect support
25 arrearages.

1 Section 21. Rulemaking authority. The department shall
2 adopt rules and forms to participate in and carry out the
3 provisions of [sections 1 through 21].

4 Section 22. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 23. Codification instruction. Sections 1
11 through 21 are intended to be codified as an integral part
12 of Title 40, chapter 5, and the provisions of Title 40,
13 chapter 5, apply to sections 1 through 21.

14 Section 24. Effective date. Section 21 and this
15 section are effective on passage and approval, except that
16 rules adopted under section 21 may not be made effective
17 prior to October 1, 1985.

-End-