

1 Senate BILL NO. 383
 2 INTRODUCED BY Willigan

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO CHILD SUPPORT; ESTABLISHING GUIDELINES AND
 6 A FORMULA FOR DETERMINING CHILD SUPPORT PAYMENTS;
 7 ESTABLISHING THE PRIORITY OF CHILD SUPPORT AS A PARENTAL
 8 OBLIGATION; AMENDING SECTIONS 40-4-204, 40-4-208, 40-5-205,
 9 40-5-212, 40-5-223, 40-5-226, AND 40-6-211, MCA; REPEALING
 10 SECTION 40-5-214, MCA; AND PROVIDING A DELAYED EFFECTIVE
 11 DATE."
 12

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

14 Section 1. Section 40-4-204, MCA, is amended to read:
 15 "40-4-204. Child support. (1) In a proceeding for
 16 dissolution of marriage, legal separation, maintenance, or
 17 child support, the court may order either or both parents
 18 owing a duty of support to a child to pay an amount
 19 reasonable or necessary for his support, without regard to
 20 marital misconduct, after considering all relevant factors
 21 including:

- 22 ~~(1)~~(a) the financial resources and basic living needs
- 23 of the child;
- 24 ~~(2)~~(b) the financial resources and basic living needs
- 25 of the ~~custodial parent~~ both parents;

1 ~~(3)~~(c) the standard of living the child would have
 2 enjoyed had the marriage not been dissolved;

3 ~~(4)~~(d) the age, physical, and emotional condition of
 4 the child and his educational needs;

5 ~~(5)---the---financial---resources---and---needs---of---the~~
 6 ~~noncustodial-parent;--and~~

7 (e) the time required for the custodial parent to
 8 acquire appropriate educational training and employment;

9 (f) the ability of the custodial parent to engage in
 10 gainful employment without interfering with the best
 11 interests of dependent children in the custody of the
 12 parent;

13 (g) the cost of day care, if the custodial parent
 14 engages in gainful employment or pursues appropriate
 15 education or training, or the value of custodial services
 16 performed by the custodial parent, if he or she remains in
 17 the home;

18 (h) previous support orders and maintenance orders, if
 19 the obligor is paying them; and

20 (i) any other facts the court considers relevant.

21 ~~(6)~~(2) for-the The purposes-of-determining--a minimum
 22 amount for support;--the-amount received by a children child
 23 must be \$125 a month under-the-APDC-program,-as--defined--in
 24 53-2-702.

25 (3) (a) After considering the factors contained in



1 subsection (1), the court shall set child support by
 2 determining the financial needs of the child and
 3 proportioning the amount between both parents according to
 4 their disposable earning capacity. For purposes of
 5 determining child support:

- 6 (i) "C" equals the total monthly needs of the child;
- 7 (ii) "P" equals the annual disposable earning capacity
 8 of the custodial parent; and
- 9 (iii) "N" equals the annual disposable earning capacity
 10 of the noncustodial parent.

11 (b) The amount of "C", "P", and "N" must be supported
 12 by substantial credible evidence. "P" and "N" must
 13 realistically reflect what the parents are capable of
 14 earning, using their disposable income as a guideline. Debts
 15 owed to private creditors for nonessential living expenses
 16 may not be considered in establishing support obligation.

17 (c) The court shall set the amount of child support
 18 based on the following algebraic formula:

19
$$C = C_p + C_n \text{ when } C_p = (C \times P)/(N + P) \text{ and } C_n = (C \times$$

 20
$$N)/(N + P)$$

21 (4) The child support determination based on the
 22 formula in subsection (3) binds the parties in each case
 23 unless the court makes specific findings of fact as to the
 24 reason for deviation from the formula.

25 (5) The court shall include in each child support

1 order a provision requiring one of the parties to maintain
 2 health insurance, naming the child as a beneficiary, taking
 3 into consideration insurance or plans available to the
 4 parties on a group basis through his or her employer or
 5 union."

6 NEW SECTION. Section 2. Redetermination of support.
 7 In addition to modification authorized under 40-4-208, the
 8 parties to a dissolution decree containing a child support
 9 obligation shall redetermine the child support amount every
 10 4 years after the original order, using the formula provided
 11 in 40-4-204(3) and the court's specific findings of fact.
 12 Failure by either party to comply with the 4-year
 13 redetermination shall entitle either party to move the court
 14 for a redetermination so that the support payments may be
 15 made to comply with the formula of 40-4-204(3) and any
 16 further specific court findings of fact.

17 Section 3. Section 40-4-208, MCA, is amended to read:

18 "40-4-208. Modification and termination of provisions
 19 for maintenance, support, and property disposition. (1)
 20 Except as otherwise provided in 40-4-201(6) and [section 2],
 21 a decree may be modified by a court as to maintenance or
 22 support only as to installments accruing subsequent to the
 23 motion for modification.

24 (2) (a) Whenever the decree proposed for modification
 25 does not contain provisions relating to maintenance or

1 support, modification under subsection (1) may only be made
2 within 2 years of the date of the decree.

3 (b) Whenever the decree proposed for modification
4 contains provisions relating to maintenance or support,
5 modification under subsection (1) may only be made:

6 (i) upon a showing of changed circumstances so
7 substantial and continuing as to make the terms
8 unconscionable; or

9 (ii) upon written consent of the parties; or

10 (iii) as authorized by [section 2].

11 (3) The provisions as to property disposition may not
12 be revoked or modified by a court, except:

13 (a) upon written consent of the parties; or

14 (b) if the court finds the existence of conditions
15 that justify the reopening of a judgment under the laws of
16 this state.

17 (4) Unless otherwise agreed in writing or expressly
18 provided in the decree, the obligation to pay future
19 maintenance is terminated upon the death of either party or
20 the remarriage of the party receiving maintenance.

21 (5) Unless otherwise agreed in writing or expressly
22 provided in the decree, provisions for the support of a
23 child are terminated by emancipation of the child but not by
24 the death of a parent obligated to support the child. When
25 a parent obligated to pay support dies, the amount of

1 support may be modified, revoked, or commuted to a lump-sum
2 payment, to the extent just and appropriate in the
3 circumstances."

4 Section 4. Section 40-5-205, MCA, is amended to read:

5 "40-5-205. Payment of support money collected to
6 support enforcement and collections unit -- notice. If
7 written notice by the department is given to the responsible
8 person or to the clerk of the court, if appropriate, that
9 the children for whom a support obligation exists are
10 receiving public assistance, then any support money paid by
11 the person or persons responsible for support as a result of
12 any action shall be paid through the support enforcement and
13 collections unit of the department of revenue. Amounts of
14 support received by the unit in excess of the public
15 assistance received shall be paid to the person receiving
16 assistance."

17 Section 5. Section 40-5-212, MCA, is amended to read:

18 "40-5-212. Petition for support order by married
19 parent with minor children receiving public assistance --
20 powers of court. (1) After hearing the petition for an order
21 of support, the court shall make an order granting or
22 denying it and fixing the terms and amount of the support as
23 determined under 40-4-204(3).

24 (2) The court has the same power to compel the
25 attendance of witnesses and the production of testimony as

1 in actions and suits, make such decree or orders as are
2 equitable in view of the circumstances of both parties, and
3 punish violations as other contempts are punished."

4 Section 6. Section 40-5-223, MCA, is amended to read:

5 "40-5-223. Notice of support liability based upon
6 payment of public assistance -- notice -- contents --
7 collection warrant -- fair hearing. (1) In the absence of a
8 district court order the department may issue a notice of a
9 support liability accrued or accruing based upon payment of
10 public assistance to or for the benefit of any dependent
11 child or children. The notice of liability shall be served
12 upon the responsible parent in the manner prescribed for the
13 service of summons in a civil action, in accordance with the
14 provisions of the Montana Rules of Civil Procedure.

15 (2) The notice of liability shall include:

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

19 (b) a statement of the amount of the monthly public
20 assistance payment;

21 (c) a statement of the name of the recipient and the
22 name of the child or children for whom assistance is being
23 paid;

24 (d) a demand for immediate payment of the support debt
25 or, in the alternative, a demand that the responsible parent

1 make answer within 30 days of the date of service to the
2 department stating defenses to liability under 40-5-221;

3 (e) a statement that if no answer is made on or before
4 30 days from the date of the service the support debt shall
5 be assessed and determined subject to computation pursuant
6 to 40-4-204(3), and is subject to collection action;

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

9 (3) If no answer is had by the department to the
10 notice of liability on or before 30 days of the date of
11 service, the support debt shall be assessed and determined
12 subject to the computation and the department may issue a
13 warrant for distraint authorizing a collection action under
14 this part.

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

23 Section 7. Section 40-5-226, MCA, is amended to read:

24 "40-5-226. Administrative hearing -- nature -- place
25 -- time -- determinations -- failure to appear -- entry of

1 findings. (1) The administrative hearing is defined as a
2 "contested case".

3 (2) The administrative hearing may be held in the
4 county of residence or other county convenient to the
5 responsible parent.

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

8 (4) The hearing officer shall determine the liability
9 and responsibility, if any, of the alleged responsible
10 parent under 40-5-221 and shall also determine the amount of
11 periodic payments to be made to satisfy past, present, or
12 future liability under 40-5-221. In making these
13 determinations, the hearing officer shall include in his
14 consideration the ~~scale-of-suggested-minimum-contributions~~
15 ~~adopted-under-40-5-214~~ formula prescribed in 40-4-204(3).

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

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

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

1 cause and material change of circumstances.

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

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

12 Section 8. Section 40-6-211, MCA, is amended to read:

13 "40-6-211. Obligations of parents for the support and
14 education of their children. (1) The parent-or parents
15 entitled-to--the--custody of a child have a joint and
16 individual duty to provide out of their labor and property
17 all reasonable must-give-him support and education suitable
18 to--his--circumstances to which a child is entitled without
19 regard to the presence or residence of the child in this
20 state.

21 (2) In determining the ability to pay child support
22 and the amount of such payments, the obligation to pay child
23 support is primary and other financial obligations are
24 secondary."

25 NEW SECTION. Section 9. Repealer. Section 40-5-214,

1 MCA, is repealed.

2 NEW SECTION. Section 10. Codification instruction.
3 Section 2 is intended to be codified as an integral part of
4 Title 40, chapter 4, part 2, and the provisions of Title 40,
5 chapter 4, part 2, apply to section 2.

6 NEW SECTION. Section 11. Extension of authority. Any
7 existing authority of the department of revenue to make
8 rules on the subject of the provisions of this act is
9 extended to the provisions of this act.

10 NEW SECTION. Section 12. Effective date. This act is
11 effective January 1, 1986.

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