

HOUSE BILL NO. 81

INTRODUCED BY J. BROWN

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

JANUARY 5, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 14, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 15, 1987	PRINTING REPORT.
JANUARY 16, 1987	SECOND READING, DO PASS.
JANUARY 17, 1987	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 91; NOES, 6. TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 21, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 5, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 9, 1987	SECOND READING, CONCURRED IN.
MARCH 11, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 14, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 17, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 HOUSE BILL NO. 81
 2 INTRODUCED BY J. BROWN
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT
 6 ADMINISTRATIVE SUPPORT ORDERS ESTABLISHED BY THE DEPARTMENT
 7 OF REVENUE UNDER THE CHILD SUPPORT ENFORCEMENT PROGRAM MAY
 8 NOT BE RETROACTIVELY MODIFIED; AMENDING SECTION 40-5-227,
 9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 40-5-227, MCA, is amended to read:
 13 "40-5-227. Filing and docketing of final orders --
 14 orders effective as district court decrees. (1) An abstract
 15 of any final administrative order under this chapter may be
 16 filed in the office of the clerk of the district court of
 17 any county of Montana. ~~If the administrative order has been~~
 18 ~~entered by nonappearance or default on the part of the~~
 19 ~~responsible parent, the court may reconsider the order on~~
 20 ~~its merits.~~ The order, if approved, must be docketed in the
 21 judgment docket of the district court. The properly filed
 22 and docketed order has all the force, effect, and attributes
 23 of a docketed order or decree of the district court,
 24 including but not limited to lien effect and enforceability
 25 by supplemental proceedings, writs of execution, and

1 contempt of court proceedings.

2 (2) A final administrative order that determines and
 3 sets periodic support payments in the absence of a district
 4 court order, when filed and docketed under this section, may
 5 be modified by a district court order only as to
 6 installments accruing after any motion for modification.
 7 The standard for any such modification is that set forth in
 8 40-4-208.

9 (3) The department may issue a warrant for distraint
 10 based upon a properly filed and docketed order pursuant to
 11 40-5-241."

12 NEW SECTION. Section 2. Effective date. This act is
 13 effective on passage and approval.

-End-



INTRODUCED BILL
HB-81

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB081, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act clarifying that administrative support orders established by the Department of Revenue under the child support enforcement program may not be retroactively modified; amending section 40-5-227, MCA; and providing an immediate effective date."

ASSUMPTIONS:

N/A

FISCAL IMPACT:

This proposal would bring the state into compliance with the Federal Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509). It would have no fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A

 DATE 1/10/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 1/12/87

JAN BROWN, PRIMARY SPONSOR

Fiscal Note for HB081, as introduced.

APPROVED BY COMMITTEE
ON JUDICIARY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT
6 ADMINISTRATIVE SUPPORT ORDERS ESTABLISHED BY THE DEPARTMENT
7 OF REVENUE UNDER THE CHILD SUPPORT ENFORCEMENT PROGRAM MAY
8 NOT BE RETROACTIVELY MODIFIED; AMENDING SECTION 40-5-227,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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18 ~~entered by nonappearance or default on the part of the~~
19 ~~responsible parent, the court may reconsider the order on~~
20 ~~its merits.~~ The order, if approved, must be docketed in the
21 judgment docket of the district court. The properly filed
22 and docketed order has all the force, effect, and attributes
23 of a docketed order or decree of the district court,
24 including but not limited to lien effect and enforceability
25 by supplemental proceedings, writs of execution, and

1 contempt of court proceedings.
2 (2) A final administrative order that determines and
3 sets periodic support payments in the absence of a district
4 court order, when filed and docketed under this section, may
5 be modified by a district court order only as to
6 installments accruing after any motion for modification.
7 The standard for any such modification is that set forth in
8 40-4-208.
9 (3) The department may issue a warrant for distraint
10 based upon a properly filed and docketed order pursuant to
11 40-5-241."
12 NEW SECTION. SECTION 2. EXTENSION OF AUTHORITY. ANY
13 EXISTING AUTHORITY OF THE DEPARTMENT OF REVENUE TO MAKE
14 RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT IS
15 EXTENDED TO THE PROVISIONS OF THIS ACT.
16 NEW SECTION. Section 3. Effective date. This act is
17 effective on passage and approval.

-End-

1 HOUSE BILL NO. 81

2 INTRODUCED BY J. BROWN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT
6 ADMINISTRATIVE SUPPORT ORDERS ESTABLISHED BY THE DEPARTMENT
7 OF REVENUE UNDER THE CHILD SUPPORT ENFORCEMENT PROGRAM MAY
8 NOT BE RETROACTIVELY MODIFIED; AMENDING SECTION 40-5-227,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 40-5-227, MCA, is amended to read:

13 "40-5-227. Filing and docketing of final orders --
14 orders effective as district court decrees. (1) An abstract
15 of any final administrative order under this chapter may be
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17 any county of Montana. ~~If the administrative order has been~~
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19 ~~responsible parent, the court may reconsider the order on~~
20 ~~its merits.~~ The order, if approved, must be docketed in the
21 judgment docket of the district court. The properly filed
22 and docketed order has all the force, effect, and attributes
23 of a docketed order or decree of the district court,
24 including but not limited to lien effect and enforceability
25 by supplemental proceedings, writs of execution, and

1 contempt of court proceedings.

2 (2) A final administrative order that determines and
3 sets periodic support payments in the absence of a district
4 court order, when filed and docketed under this section, may
5 be modified by a district court order only as to
6 installments accruing after any motion for modification.
7 The standard for any such modification is that set forth in
8 40-4-208.

9 (3) The department may issue a warrant for distraint
10 based upon a properly filed and docketed order pursuant to
11 40-5-241."

12 NEW SECTION. SECTION 2. EXTENSION OF AUTHORITY. ANY
13 EXISTING AUTHORITY OF THE DEPARTMENT OF REVENUE TO MAKE
14 RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT IS
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16 NEW SECTION. Section 3. Effective date. This act is
17 effective on passage and approval.

-End-

1 HOUSE BILL NO. 81
 2 INTRODUCED BY J. BROWN
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~CLARIFYING--THAT~~
 6 ~~ADMINISTRATIVE--SUPPORT-ORDERS-ESTABLISHED-BY-THE-DEPARTMENT~~
 7 ~~OF-REVENUE-UNDER-THE-CHILD-SUPPORT-ENFORCEMENT--PROGRAM--MAY~~
 8 ~~NOT--BE--RETROACTIVELY--MODIFIED~~ CONFORMING MONTANA LAW WITH
 9 THE OMNIBUS BUDGET RECONCILIATION ACT OF 1984 BY PROVIDING
 10 THAT CHILD SUPPORT ORDERS, WHETHER ESTABLISHED BY
 11 ADMINISTRATIVE OR JUDICIAL PROCESS, MAY ONLY BE
 12 PROSPECTIVELY MODIFIED; PROVIDING THAT A MODIFICATION OF
 13 SUPPORT MAY BE EFFECTIVE ONLY FOR INSTALLMENTS ACCRUING
 14 SUBSEQUENT TO ACTUAL NOTICE OF THE MOTION FOR MODIFICATION;
 15 AMENDING SECTION SECTIONS 40-4-208 AND 40-5-227, MCA; AND
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 19 SECTION 1. SECTION 40-4-208, MCA, IS AMENDED TO READ:
 20 "40-4-208. Modification and termination of provisions
 21 for maintenance, support, and property disposition. (1)
 22 Except as otherwise provided in 40-4-201(6), a decree may be
 23 modified by a court as to maintenance or support only as to
 24 installments accruing subsequent to actual notice to the
 25 parties of the motion for modification.

1 (2) (a) Whenever the decree proposed for modification
 2 does not contain provisions relating to maintenance or
 3 support, modification under subsection (1) may only be made
 4 within 2 years of the date of the decree.
 5 (b) Whenever the decree proposed for modification
 6 contains provisions relating to maintenance or support,
 7 modification under subsection (1) may only be made:
 8 (i) upon a showing of changed circumstances so
 9 substantial and continuing as to make the terms
 10 unconscionable; or
 11 (ii) upon written consent of the parties.
 12 (3) The provisions as to property disposition may not
 13 be revoked or modified by a court, except:
 14 (a) upon written consent of the parties; or
 15 (b) if the court finds the existence of conditions
 16 that justify the reopening of a judgment under the laws of
 17 this state.
 18 (4) Unless otherwise agreed in writing or expressly
 19 provided in the decree, the obligation to pay future
 20 maintenance is terminated upon the death of either party or
 21 the remarriage of the party receiving maintenance.
 22 (5) Unless otherwise agreed in writing or expressly
 23 provided in the decree, provisions for the support of a
 24 child are terminated by emancipation of the child but not by
 25 the death of a parent obligated to support the child. When



1 a parent obligated to pay support dies, the amount of
 2 support may be modified, revoked, or commuted to a lump-sum
 3 payment, to the extent just and appropriate in the
 4 circumstances."

5 Section 2. Section 40-5-227, MCA, is amended to read:

6 "40-5-227. Filing and docketing of final orders --
 7 orders effective as district court decrees. (1) An abstract
 8 of any final administrative order under this chapter may be
 9 filed in the office of the clerk of the district court of
 10 any county of Montana. ~~if the administrative order has been~~
 11 ~~entered by nonappearance or default on the part of the~~
 12 ~~responsible parent, the court may reconsider the order on~~
 13 ~~its merits.~~ The order, if approved, must be docketed in the
 14 judgment docket of the district court. The properly filed
 15 and docketed order has all the force, effect, and attributes
 16 of a docketed order or decree of the district court,
 17 including but not limited to lien effect and enforceability
 18 by supplemental proceedings, writs of execution, and
 19 contempt of court proceedings.

20 (2) A final administrative order that determines and
 21 sets periodic support payments in the absence of a district
 22 court order, when filed and docketed under this section, may
 23 be modified by a district court order only as to
 24 installments accruing after ACTUAL NOTICE TO THE PARTIES OF
 25 any motion for modification. The standard for any such

1 modification is that set forth in 40-4-208.

2 (3) The department may issue a warrant for distraint
 3 based upon a properly filed and docketed order pursuant to
 4 40-5-241."

5 NEW SECTION. SECTION 3. EXTENSION OF AUTHORITY. ANY
 6 EXISTING AUTHORITY OF THE DEPARTMENT OF REVENUE TO MAKE
 7 RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT IS
 8 EXTENDED TO THE PROVISIONS OF THIS ACT.

9 NEW SECTION. Section 4. Effective date. This act is
 10 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

March 4 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY
having had under consideration HOUSE BILL No. 81
third reading copy (blue color)

Clarify that Admin. support order of DOR may not be retroactively modified.
Brown (Crippen)

Respectfully report as follows: That HOUSE BILL No. 81

- 1. Title, lines 5 through 8. Following: "AN ACT" on line 5
Strike: the remainder of line 5 through "MODIFIED" on line 8
Insert: "CONFORMING MONTANA LAW WITH THE OMNIBUS BUDGET RECONCILIATION ACT OF 1984 BY PROVIDING THAT CHILD SUPPORT ORDERS, WHETHER ESTABLISHED BY ADMINISTRATIVE OR JUDICIAL PROCESS, MAY ONLY BE PROSPECTIVELY MODIFIED; PROVIDING THAT A MODIFICATION OF SUPPORT MAY BE EFFECTIVE ONLY FOR INSTALLMENTS ACCRUING SUBSEQUENT TO ACTUAL NOTICE OF THE MOTION FOR MODIFICATION"
2. Title, line 8. Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 40-4-208 AND"
3. Page 1, line 12. Following: line 11
Insert: "Section 1. Section 40-4-208, MCA, is amended to read: "40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to

SENATE JUDICIARY
HB 81
Page 2

March 4 19 87

installments accruing subsequent to actual notice to the parties of the motion for modification.
(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.
(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:
(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or
(ii) upon written consent of the parties.
(3) The provisions as to property disposition may not be revoked or modified by a court, except:
(a) upon written consent of the parties; or
(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.
(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.
(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."
Renumber: subsequent sections
4. Page 2, line 6.
Following: "after"
Insert: "actual notice to the parties of"

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AND AS AMENDED BE CONCURRED IN

XXXXXX
DO NOT PASS
XXXXXX

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Chairman

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