

SENATE BILL NO. 42

INTRODUCED BY ECK

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

JANUARY 2, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

FIRST READING.

JANUARY 19, 1989

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

STATEMENT OF INTENT ADOPTED.

JANUARY 20, 1989

PRINTING REPORT.

JANUARY 21, 1989

SECOND READING, DO PASS.

JANUARY 23, 1989

ENGROSSING REPORT.

JANUARY 24, 1989

THIRD READING, PASSED.
AYES, 47; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 24, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 20, 1989

FIRST READING.

MARCH 11, 1989

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 16, 1989

SECOND READING, CONCURRED IN.

MARCH 18, 1989

THIRD READING, CONCURRED IN.
AYES, 92; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 42

INTRODUCED BY ECK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMINISTRATIVE ENFORCEMENT OF CHILD SUPPORT TO CONFORM THE LAWS TO FEDERAL REGULATIONS; PROVIDING AN AUTOMATIC EXTENSION OF SERVICES UPON TERMINATION OF PUBLIC ASSISTANCE; GRANTING EQUAL STATUS TO NONPUBLIC ASSISTANCE CASES; DECREASING THE RESPONSE TIMES FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR TEMPORARY SUPPORT ORDERS; AND AMENDING SECTIONS 40-5-201 THROUGH 40-5-208, 40-5-213, 40-5-221 THROUGH 40-5-226, 40-5-241 THROUGH 40-5-244, 40-5-246, 40-5-251 THROUGH 40-5-255, AND 40-5-257, MCA."

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

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

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

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

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) child support enforcement services are being provided by the department under 40-5-203; or

(d) a referral for interstate services is received by the department, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action request by a Title IV-D agency of another state.

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

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

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

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

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

~~combined, including profit gained through sale or conversion of capital assets;~~

~~(7)(4)~~ "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(5) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part;
or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(6) "Obligor" means a person, including an alleged father, who owes a duty of support.

(7) "Parent" means the natural or adoptive parent of a child.

(8) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

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

~~(10)(9)~~ "Support debt" or "support obligation" means the amount created by:

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

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

(10) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state with a hearing function and process similar to those of the

department under this part.

(11) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

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

"40-5-202. Department of revenue -- powers and duties regarding collection of support debt. (1) Whenever--the department--of--social--and--rehabilitation--services--or--the department--of--family--services--receives--an--application--for public--assistance--on--behalf--of--a--child--and--it--appears--to--the satisfaction--of--that--department--that--the--child--has--been abandoned--by--his--parents--the--child--and--one--parent--have--been abandoned--by--the--other--parent--or--the--parent--or--other--person who--has--a--responsibility--for--the--care--support--or maintenance--of--such--child--has--failed--or--neglected--to--give proper--care--or--support--to--the--child--the--department--of social--and--rehabilitation--services--or--the--department--of family--services--shall--promptly--refer--the--matter--to--the department--of--revenue--for--action The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, or and other appropriate state and federal statutes of this state to insure ensure that the parent or other person responsible pays for the care, support, or maintenance of the dependent a child if

the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.

(2) in the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, if the department is providing child support enforcement services for a child under this part, the department shall become becomes trustee of any cause of action of the dependent child or the person having legal custody of the dependent child obligee to recover support due to that the child or obligee from any person the obligor. and The department may bring and maintain the action either in the department's its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child and

1 representing--support--payments-for-children-in-whose-behalf
2 public-assistance-has-been-previously-paid.

3 (4) For purposes of prosecuting any civil action
4 pursuant--to--this--part, the department is a real party in
5 interest upon-the-payment-of--public--assistance if it is
6 providing child support enforcement services under this
7 part. No obligee shall may act to prejudice the rights of
8 the department after-the-receipt-of-public-assistance while
9 such services are being provided.

10 (5) No If child support enforcement services are being
11 or have been provided under this part, no agreement between
12 any obligee and any obligor either relieving an obligor of
13 any duty of support or purporting to settle past, present,
14 or future support obligations either as settlement or
15 prepayment may act to reduce or terminate any rights of the
16 department to recover from that the obligor for support debt
17 provided unless the department has consented to the
18 agreement in writing.

19 (6) The department may petition a court or an
20 administrative agency for modification of any court order on
21 the same basis as a party to that action would-have-been is
22 entitled to do.

23 (7) The department shall-be is subrogated to the right
24 of the child or-children-or-person-having-the-care,-custody,
25 and-control-of-the-child-or-children or obligee to maintain

1 any civil action or execute any administrative remedy
2 existing available under the laws of the this or any other
3 state to-obtain-reimbursement-of-money-thus-spent to collect
4 a support debt. This right of subrogation is in addition to
5 and independent of the assignment under 53-2-613 and the
6 support debt created by 40-5-221.

7 (8) if-a-district-court-orders-an-amount-of-support-to
8 be--paid--by--a--responsible-parent,-the-department-shall-be
9 subrogated-to-the-debt-created-by-the-order--and--the--money
10 judgment---shall--be--determined--to--be--in--favor--of--the
11 department--This-subrogation-applies-both-to:

12 (a)--the-lesser-of-the-amount-paid-by-the-department-of
13 social-and-rehabilitation--services--or--the--department--of
14 family--services--in-public-assistance-to-or-for-the-benefit
15 of-a-dependent-child-or-children-of-the--responsible--parent
16 or--the--amount-of-support-contained-in-the-court-order;-and

17 (b)--to-any-amount-allocated--to--the--benefit--of--the
18 children--on--the--basis--of--providing--necessities--for--the
19 caretaker-of-the-children; If public assistance is being or
20 has been paid, the department is subrogated to the debt
21 created by a support order and any money judgment is
22 considered to be in favor of the department. This
23 subrogation is an addition to any assignment made under
24 53-2-613 and applies to the lesser of:

25 (a) the amount of public assistance paid; or

(b) the amount due under the support order.

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

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

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

"40-5-203. Support Child support enforcement services.

(1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards--necessary--to--limit--applications--for---support enforcement---services.---These--standards--shall--take--into account--the--earnings,--income,--and--other--resources--already available---to---support--the--person--for--whom--a--support obligation--exists the terms and conditions by which services are provided under this section.

(3) The department may not charge the applicant a fee as compensation for services rendered in establishment of or enforcement of support obligations. However, the department

may charge a fee to the person--from--whom--the--support--is being--collected obligor. This fee must be in addition to the support payment. The department shall by rule establish reasonable fees commensurate with the cost of enforcement support services to be paid by the person--from--whom--the support--is--being--collected obligor. When payments are scheduled to be paid on an installment basis, a portion of the collection fee owed to the department shall be added to each payment. If the person--from--whom--the--support--is--being collected obligor makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct a percentage of the total sum collected which represents the department's standard proportion. The department may, upon a showing of necessity, waive or defer any such fee.

(4) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department shall continue to provide services after public assistance is no longer being paid, without requiring an application. An obligee's acceptance of continued services constitutes the obligee's agreement to the terms and conditions set for applicants by the department under this section.

(5) The department may terminate services under this section only if it:

1 (a) receives a written request from the obligee for
2 termination of services;

3 (b) receives notice that the child is receiving public
4 assistance; or

5 (c) determines that an obligee has violated any term
6 or condition set by the department for an applicant under
7 this section."

8 **Section 4.** Section 40-5-204, MCA, is amended to read:

9 **"40-5-204. Cooperation by person--having--custody--of**
10 **child obligee. Any--person--having--the--care, custody, or**
11 **control--of--any--dependent--child--or--children--shall--cooperate**
12 **with--the--department--in--establishing--the--paternity--of--such**
13 **child--and--obtaining--support--payments. An obligee shall**
14 **cooperate with the department in:**

15 (1) identifying and locating the obligor;

16 (2) establishing the paternity of a child;

17 (3) obtaining support or any other payments due the
18 obligee and child; and

19 (4) obtaining reimbursement for previously paid public
20 assistance, if any."

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

22 **"40-5-205. Payment of support money collected to**
23 **support enforcement and collections unit -- notice. If**
24 **written--notice--by--the--department--is--given the department**
25 **gives written notice to the responsible person--or obligor,**

1 to the clerk of the court, if--appropriate, or to an
2 administrative agency that issued a support order, that the
3 children child for whom a support obligation order exists
4 are is receiving public--assistance services from the
5 department, then any support money paid-by-the-person-or
6 persons--responsible--for--support--as--a--result--of--any--action
7 shall---be---paid---through---the--support--enforcement--and
8 collections--unit--of--the--department--of--revenue must be paid
9 to the department."

10 **Section 6.** Section 40-5-206, MCA, is amended to read:

11 **"40-5-206. Central unit for information and**
12 **administration -- cooperation enjoined -- availability of**
13 **records. (1) The department shall establish a central unit**
14 **to serve as a registry for the receipt of information, for**
15 **answering interstate inquiries concerning deserting parents,**
16 **to coordinate and supervise departmental activities in**
17 **relation to deserting parents, and to assure effective**
18 **cooperation with law enforcement agencies.**

19 **(2) To--effectuate--the--purposes--of--this--section,--the**
20 **director--may--request--from--state,--county,--and--local--agencies**
21 **all--information--and--assistance--as--authorized--by--this--part.**
22 **All---state,---county,--and--city--agencies,--officers,--and**
23 **employees--shall--cooperate--in--the--location--of--parents--who**
24 **have--abandoned--or--deserted--or--are--failing--to--support**
25 **children--receiving--public--assistance--and--shall--on--request**

supply---the---department---with---all---information---available relative-to---the---location,---income,---and---property---of---the parents. If services are provided to a child under this part, the department may request and all state, county, and city agencies, officers, and employees must provide on request any information concerning the location, income, and assets of an obligor.

(3) Except as provided in 31-3-127, any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act."

Section 7. Section 40-5-207, MCA, is amended to read:

"40-5-207. Department authorized to enforce maintenance awards. When If a judgment or order creating a child support obligation also contains a judgment or order for the support of a spouse or former spouse ~~and the former spouse who~~ is the custodial parent of the child, the department may collect and enforce spousal support under this part."

Section 8. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support obligation enforcement. (1)

In ~~all~~ proceedings any proceeding initiated pursuant to this part, the department shall require ~~parents obligated to pay child support~~ the obligor to secure and maintain health insurance coverage for each dependent child, at a cost not to exceed 5% of net income, whenever such health insurance is available through ~~their~~ the obligor's employment. However, if a ~~court of competent jurisdiction has entered an support order establishing a current support obligation and has ordered the obligated parent to secure and maintain health insurance coverage for each dependent child, has been entered that also orders the obligor to secure and maintain health insurance coverage for the child,~~ the department shall enforce the obligation as ordered ~~by the court.~~

(2) If the department determines that an ~~obligated parent~~ obligor has failed to maintain health insurance coverage required by ~~the a support order of a court of competent jurisdiction or an administrative agency empowered to enter such order,~~ it may issue a notice commanding the ~~parent~~ obligor to appear at a hearing held by the department and show cause why a sum of not more than \$100 should not be assessed for each month health insurance coverage is not secured or maintained. If the department finds, after hearing or the obligor's failure to appear, that the obligor has not secured or maintained health insurance coverage ~~has not been secured or maintained~~ in accordance with the court

or--administrative support order, the department may assess against the ~~obligated-parent~~ obligor not more than \$100 for each month health insurance coverage has not been secured or maintained. Such amounts may be enforced by warrant for distraint provided for in 40-5-241.

(3) ~~Whenever-an-obligated-parent~~ If an obligor who has been served with notice under this section appears before the department and shows that health insurance coverage in accordance with the ~~court-or-administrative~~ support order:

(a) has been secured and maintained continuously since the date of the order, the department shall dismiss the pending action; or

(b) has not been secured or continuously maintained but such coverage is presently in effect, the department shall suspend the pending action for a period of 12 months.

(4) At the end of the suspension period, the department may schedule a hearing. If at this hearing the department finds that during the suspension period health insurance coverage:

(a) has been continuously maintained, the department shall dismiss the pending action and the ~~obligated-parent~~ obligor will not be assessed under this section; or

(b) has not been continuously maintained, the department may enter a final order requiring the ~~obligated~~ parent obligor to pay the sum assessed in accordance with

this section for each month coverage was not maintained.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 9. Section 40-5-213, MCA, is amended to read:

"40-5-213. Financial statements by parent---whose absence--is--basis--of--application--for--public--assistance obligor -- penalty. (1) Any--parent--in--the--state--whose absence--is--the-basis-upon-which-an-application-is-filed-for public--assistance--on--behalf--of--a--child--shall If the department is providing child support enforcement services under this part and has reasonable cause to believe that a support obligation is owed, an obligor, upon written request, shall complete a statement, under oath, stating the obligor's:

(a) of-his current monthly income;

(b) his total income over the past 36 months;

(c) the number of dependents for whom he the obligor is providing support;

(d) the amount he the obligor is contributing regularly toward the support of all--children--for--whom application--for--such--assistance-is-made, a child for whom the department is providing services;

(e) his current monthly living expenses; and

(f) all other information pertinent to determining-his

ability-to-support-his--children--The--statement--shall--be
 provided-upon-a-demand-made-by-the-department--if-assistance
 based-upon--the--application--is--granted--on-behalf-of-the
 child,-additional-statements-shall-be-filed-as--required--by
 the-department-until-the-child-is-no-longer-receiving-public
 assistance the obligor's financial condition.

(2) The department may require additional financial
 statements from the obligor during the period the department
 is providing services to the child.

{2}{3} Failure to comply with this section is a
 misdemeanor."

Section 10. Section 40-5-221, MCA, is amended to read:

"40-5-221. Debt to state by natural--or--adoptive
 parents obligor -- limitations. (1) Except as provided in
 subsection (2), any payment of public assistance money made
 to or for the benefit of any-dependent-child-or--children a
child creates a debt due and owing the state of Montana by
 the responsible-parent-or-parents obligor in an amount equal
 to the amount of public assistance money so paid. In the
 case of an obligor who is an adoptive parent or-parents, no
 a debt for public assistance paid may not accrue prior to
 the date of adoption.

(2) Where--there--has--been--a--district--court--order
 established,-the-debt--shall--be--limited--to--the--amount
 provided--for--by--the--order; If a support order has been

entered, the support debt created by this section may not
 exceed the amount of the order.

(3) Where If a child has been placed in foster care,
 and a written agreement for payment of support has--been
 entered--into--by--the--responsible-parent-or-parents exists
 between the obligor and any state agency, the support debt
 shall--be is limited to the amount provided for in the
 agreement. However, if a court support order for-support is
 or has been entered, the provisions of the order shall
 prevail over the agreement.

(4) The department shall adopt rules based on ability
 to pay, with respect to the level of support to be provided
 for in such agreements or modifications of such agreements
 based on changed circumstances.

(5) The department may establish and collect a debt
 created under this section in a proceeding that is in
 addition to and independent of the subrogation created by
 40-5-202(7) and the assignment under 53-2-613."

Section 11. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation--to--or
 assignment--of--judgment support order -- notice -- content
contents --action to collect. (1) The department may issue a
 notice of a support debt accrued or accruing based upon
subrogation--to--or--assignment-of-the-judgment-created-by-a
 district-court a support order. The notice may be served

upon the debtor obligor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within ~~30~~ 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any ~~district-court support order to which the department--is subrogated-or-has-an-assigned-interest;~~

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt; and

(e) a statement that the debtor obligor is entitled to a fair hearing.

(3) Action to collect the ~~subrogated--or--assigned~~ support debt by distraint and seizure and sale ~~shall-be is~~ lawful after ~~30~~ 20 days from the date of service upon the debtor obligor or ~~30~~ 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the debtor obligor may request a fair hearing as provided in 40-5-226."

Section 12. Section 40-5-223, MCA, is amended to read:

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

(2) The notice of liability shall include:

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

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

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

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the ~~responsible-parent~~ obligor make answer within ~~30~~ 20 days of the date of service to the department stating defenses to liability under

1 40-5-221;

2 (e) a statement that if no answer is made on or before
3 ~~30~~ 20 days from the date of the service the support debt
4 ~~shall~~ must be assessed and determined subject to computation
5 and is subject to collection action;

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

9 (3) If no answer is had by the department to the
10 notice of liability on or before ~~30~~ 20 days of the date of
11 service, the support debt ~~shall~~ must be assessed and
12 determined subject to the computation and the department may
13 issue a warrant for distraint authorizing a collection
14 action under this part.

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

24 **Section 13.** Section 40-5-224, MCA, is amended to read:
25 "40-5-224. Finding of support liability based upon

1 payment of public assistance -- warrant for distraint --
2 bond to release warrant -- action to collect. (1) If the
3 department reasonably believes that the parent obligor is
4 not a resident of this state or is about to move from this
5 state or has concealed himself, absconded, absented himself
6 or has removed or is about to remove, secrete, waste, or
7 otherwise dispose of property which could be made subject to
8 collection action to satisfy the support debt, the
9 department may issue a warrant for distraint pursuant to
10 40-5-241 during the pendency of the fair hearing or
11 thereafter, whether or not appealed. No further action may
12 be taken on the warrant until final determination after fair
13 hearing ~~and/or~~ or appeal. The department shall ~~in-such-cases~~
14 make and file in the record of the fair hearing an affidavit
15 stating the reasons upon which the belief is founded. The
16 ~~responsible-parent~~ obligor may furnish a bond, not to exceed
17 the amount of the support debt, during pendency of the
18 hearing or thereafter, and in such case warrants issued
19 ~~shall~~ must be released. If the decision resulting from the
20 hearing is in favor of the ~~responsible-parent~~ obligor, all
21 warrants issued ~~shall~~ must be released.

22 (2) The department may commence action under the
23 provisions of this part to collect the support debt on the
24 date of issuance of the decision resulting from the
25 hearing."

Section 14. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice ~~and---finding~~ of financial responsibility of ~~responsible-parent~~ -- temporary and final support obligations -- administrative procedure. (1) (a) ~~In lieu--of--the--procedures-provided-in-40-5-223-and-40-5-224,~~ In the absence of a support order, the department may, ~~in--the--absence--of--a--district--court--order,~~ serve on the responsible-parent an obligor with a notice and--finding of financial responsibility alleging a child's need for support and the amount of the need and requiring a-responsible parent the obligor to appear and show cause at a hearing held by the department why the finding-of-liability-and-the amount-of-support-liability-should-not--be--finally--ordered obligor should not be finally ordered to pay the amount alleged in the notice. This notice-and-finding-shall--relate to--the--support--debt--accrued--or--accruing--under--this--part and/or Title 53, chapter 4, including periodic payments--to be--made--in--the--future--for--the--period--of--time--any--child--of the--responsible--parent--is--in--need--The hearing-shall-be-held pursuant-to-this-part-and-the-rules-of-the-department, which shall provide-for-a-fair-hearing.

(b) The notice must state:

(i) the names of the obligee and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;

(iv) that the obligor is entitled to a fair hearing under 40-5-226.

(2) The notice-and-finding-of-financial-responsibility shall-be-served--in--the--same--manner--prescribed--for--the service--of--a--summons-in-a-civil-action,--in--accordance--with the-provisions-of-the-Montana-Rules-of-Civil-Procedure--Any responsible--parent--who--objects--to--all--or--any--part--of--the notice-and-finding-shall-have-the-right-for-not-more-than-30 days-from-the-date--of--service--to--request--in--writing--a hearing, notice-of-which-shall-be-served-upon-the-department personally-or-by-registered-or-certified-mail--If-no-request is--made, the notice-and-finding-of-financial-responsibility becomes-final--If-a-request-is-made, the execution-of-notice and-finding-of--financial--responsibility--shall--be--stayed pending-the-decision-on-such-hearing-or-any-direct-appeal-to the--courts--from--the-decision. If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's

1 monthly support responsibility must be based on the greater
2 of:

3 (a) the amount of public assistance payable under
4 Title 53, chapter 4; or

5 (b) the alleged need.

6 (3) The notice and finding of financial responsibility
7 shall include:

8 (a) the amount the department has determined the
9 responsible parent owes, the support debt accrued or
10 accruing, and, as appropriate, the amount to be paid thereon
11 each month, all computable on the basis of the amount of the
12 monthly public assistance payment previously paid or need
13 alleged and the ability of the responsible parent to pay all
14 or any portion of the debt;

15 (b) a statement of the name of the recipient or
16 custodian and the name of any child for whom assistance is
17 being paid or need is alleged; or a statement of the amount
18 of periodic future support payments for which financial
19 responsibility is found;

20 (c) a statement that the responsible parent may object
21 to all or any part of the notice and finding and request a
22 hearing to show cause why he should not be determined to be
23 liable for any or all of the past and future debt determined
24 and the amount to be paid thereon;

25 (d) a statement that if the responsible parent fails

1 to request a hearing, the support debt and payments stated
2 in the notice and finding, including periodic support
3 payments in the future, shall be assessed, determined, and
4 ordered by the department and that this debt is subject to
5 collection action;

6 (e) a statement that the property of the debtor,
7 without further advance notice or hearing, will be subject
8 to distraint and seizure and sale to satisfy the debt. If
9 the obligor objects to the notice, the obligor shall file a
10 written answer with the department within 20 days from the
11 date of service or refusal of service. If the department
12 receives a timely answer, it shall conduct a fair hearing
13 under 40-5-226. If the department does not receive a timely
14 answer, it shall order the obligor to pay the amount stated
15 in the notice.

16 (4) (a) If a support action is pending in district
17 court and a temporary or permanent support obligation has
18 not been ordered, the department may issue to the obligor a
19 notice of temporary support obligation.

20 (b) The notice must contain:

21 (i) the names of the child and the person or agency
22 having the custodial care of the child;

23 (ii) an amount for temporary monthly support determined
24 as provided in subsection (2);

25 (iii) a statement that the obligor may request a

1 hearing at which the obligor may show that a different
 2 support amount is appropriate or that establishment of a
 3 support obligation is inappropriate under the circumstances.
 4 The hearing must be conducted in accordance with the
 5 procedures of 40-5-226.

6 (iv) a statement that a hearing must be requested in
 7 writing within 10 days of receipt of the notice or the order
 8 for a temporary support order will be entered in the amount
 9 stated in the notice; and

10 (v) a statement that the temporary support order will
 11 terminate upon the entry of a district court support order.
 12 If the district court order is retroactive, any amount paid
 13 for a particular period under the temporary support order
 14 must be credited against the amounts due under the district
 15 court order for the same period, but excess amounts may not
 16 be refunded. If the district court determines that a
 17 periodic support obligation is not proper, any amount paid
 18 under the temporary support order must be refunded to the
 19 obligor.

20 (5) (a) If a temporary support order is entered or if
 21 proceedings are commenced under this section for a married
 22 obligor, the department shall vacate any support order or
 23 dismiss any proceeding under this part if it finds that the
 24 parties to the marriage have:

25 (i) reconciled without the marriage having been

1 dissolved;

2 (ii) made joint application to the department to vacate
 3 the order or dismiss the proceeding; and

4 (iii) provided proof that the marriage has been
 5 resumed.

6 (b) The department may not vacate a support order or
 7 dismiss a proceeding under this subsection (5) if it
 8 determines that the rights of a third person or the child
 9 are affected. The department may issue a new notice under
 10 this section if the parties subsequently separate.

11 (6) Any notice of financial responsibility and the
 12 notice of temporary support obligation must be served in the
 13 same manner prescribed for the service of a summons in civil
 14 action in accordance with the Montana Rules of Civil
 15 Procedure."

16 **Section 15.** Section 40-5-226, MCA, is amended to read:

17 **"40-5-226. Administrative hearing -- nature -- place**
 18 **-- time -- determinations -- failure to appear -- entry of**
 19 **findings final decision and order.** (1) The administrative
 20 hearing is defined as a "contested case".

21 (2) ~~The~~ At the discretion of the hearing officer, the
 22 administrative hearing may be held:

23 (a) in the county of residence or other county
 24 convenient to the responsible-parent obligor or obligee; or

25 (b) in the county in which the department or any of

1 its offices are located.

2 (3) If a hearing is requested, it ~~shall~~ must be
3 scheduled within ~~30~~ 20 days.

4 (4) The hearing officer shall determine the liability
5 and responsibility, if any, of the ~~alleged-responsible~~
6 ~~parent obligor~~ under ~~40-5-221-and-shall-also--determine--the~~
7 ~~amount--of--periodic--payments--to--be-made-to-satisfy-past,~~
8 ~~present--or-future-liability-under-40-5-221--in-making-these~~
9 ~~determinations--the-hearing-officer--shall--include--in--his~~
10 ~~consideration--the--scale-of-suggested-minimum-contributions~~
11 ~~adopted-under-40-5-214~~ the notice and shall enter a final
12 decision and order in accordance with such determination.

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

24 (6) In a hearing to determine financial
25 responsibility, the monthly support responsibility must be

1 determined in accordance with the evidence presented and
2 with reference to the scale of suggested minimum
3 contributions under 40-5-214. The hearing officer is not
4 limited to the amounts stated in the notice.

5 ~~{6}~~(7) Within 20 days of the hearing, ~~the the~~ hearing
6 officer shall, ~~within--20--days--of--the--hearing,~~ enter
7 findings, ~~conclusions,~~ and ~~a--final--decision-determining~~
8 ~~liability-and-responsibility-and/or-future-periodic--support~~
9 ~~payments~~ a final decision and order. The determination of the
10 hearing officer entered ~~pursuant-to-this-section-shall-be~~
11 ~~entered-as-an-order--unless--such--findings--are--set--aside~~
12 ~~pursuant--to-40-5-253-and-shall-limit-the-support-debt-under~~
13 ~~40-5-221-to-the-amounts-stated-in-the-decision~~ constitutes a
14 final agency decision, subject to judicial review under
15 40-5-253 and the provisions of the Montana Administrative
16 Procedure Act.

17 ~~{7}~~(8) The ~~decision-establishing-liability-and--future~~
18 ~~periodic--support--payments--is--superseded--upon-entry-of-a~~
19 ~~district-court-order-for-support-to-the-extent-the--district~~
20 ~~court--order--is--inconsistent--with--the--hearing--order-or~~
21 ~~decision--In-the-absence--of--a--district--court--order--the~~
22 ~~responsible--parent-may-petition-the-department-for-issuance~~
23 ~~of-an-order-to-appear-and-show-cause-based-on-a--showing--of~~
24 ~~good--cause--and-material-change-of-circumstances-to-require~~
25 ~~the-other-party-to-appear-and-show-cause--why--the--decision~~

1 previously entered should not be prospectively modified. The
 2 order to appear and show cause together with a copy of the
 3 affidavit upon which the order is based shall be served by
 4 the petitioning party on the nonmoving party in the manner
 5 of a summons in a civil action. A hearing shall be set If a
 6 support order is established under this part, any party may
 7 file a verified petition with the department alleging facts
 8 constituting a material change of circumstances. Upon the
 9 filing of such petition, the department shall issue an order
 10 to the nonpetitioning party to appear and show cause why the
 11 decision previously entered should not be prospectively
 12 modified. The order to appear and show cause, together with
 13 a copy of the verified petition, must be served by the
 14 petitioner upon all other parties in the manner provided by
 15 this part. Upon receipt of proof of service, the department
 16 shall schedule a hearing not less than 15 or more than 30
 17 days from the date of service, unless extended for good
 18 cause shown. Prospective modification may be ordered but
 19 only upon a showing of good cause and material change of
 20 circumstances.

21 (8) The department, in its original determinations,
 22 and the hearing officer, in making determinations based on
 23 objections to original determinations or on petitions to
 24 modify, shall consider the standards promulgated for
 25 determination of support payments used by the district court

1 of the county of residence of the responsible parent.

2 (9) Debts A support debt determined pursuant to this
 3 section, accrued and not paid, are is subject to collection
 4 action under this part without further necessity of action
 5 by the hearing officer.

6 (10) A support debt or a support responsibility
 7 determined under this part by reason of the obligor's
 8 failure to request a hearing under this part or failure to
 9 appear at a scheduled hearing may be vacated, upon the
 10 motion of an obligor, by the hearing officer within the time
 11 provided and upon a showing of any of the grounds enumerated
 12 in the Montana Rules of Civil Procedure."

13 Section 16. Section 40-5-241, MCA, is amended to read:

14 "40-5-241. Warrant for distraint. (1) Thirty-one
 15 Twenty-one days after receipt or refusal of a notice of a
 16 support debt under provisions of 40-5-222 or 31 21 days
 17 after service of notice of a support debt or as otherwise
 18 appropriate under the provisions of 40-5-223 and 40-5-224,
 19 the department may issue a warrant for distraint based on
 20 the amount of the support debt.

21 (2) The warrant is subject to the provisions of this
 22 part and the provisions of 15-1-701, 15-1-704, 15-1-708, and
 23 15-1-709, with references to "tax" taken to mean "support
 24 debt" and references to "taxpayer" taken to mean "person
 25 owing the support debt", as well as the provisions of this

part "obligor".

Section 17. Section 40-5-242, MCA, is amended to read:

"40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages. Should any person, firm, corporation, association, political subdivision, or department of the state fail or refuse to deliver property pursuant to the order, or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person, or fail or refuse to surrender upon demand property distrained under 40-5-241 or fail or refuse to honor an assignment of wages presented by the department, the A person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the support debt which that is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(1) fails or refuses to deliver property pursuant to the order;

(2) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity

receives actual notice of filing of the support lien;

(3) fails or refuses to surrender upon demand property distrained under 40-5-241; or

(4) fails or refuses to honor an assignment of wages presented by the department."

Section 18. Section 40-5-243, MCA, is amended to read:

"40-5-243. Release of excess to debtor obligor. Whenever If any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus \$100, that person, firm, corporation, association, political subdivision, or department of the state or entity may, without liability under this part, release the excess to the debtor obligor without liability under this part."

Section 19. Section 40-5-244, MCA, is amended to read:

"40-5-244. Banks and savings and loan associations -- service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the debtor obligor in the particular branch upon which service is made."

Section 20. Section 40-5-246, MCA, is amended to read:

1 **"40-5-246. Release of distraint and return of seized**
 2 **property -- effect. ~~The~~ At any time, the** department may at
 3 **any-time** release a distraint on all or part of the property
 4 of the ~~debtor~~ obligor or order the return of seized property
 5 without liability, if assurance of payment is determined to
 6 be adequate by the department or if the action will
 7 facilitate the collection of the debt. The release or return
 8 does not operate to prevent future action to collect from
 9 the same or other property."

10 **Section 21.** Section 40-5-251, MCA, is amended to read:

11 **"40-5-251. Debt payment schedule. ~~The~~ At any time**
 12 **after notice to the obligor, the** department may ~~at-any-time~~
 13 ~~after-notice-to-the-debtor~~ set or reset a level and schedule
 14 of payments to be paid upon the debt consistent with the
 15 income, earning capacity, and resources of the ~~debtor~~
 16 obligor."

17 **Section 22.** Section 40-5-252, MCA, is amended to read:

18 **"40-5-252. Interest on debts due -- waiver. (1)**
 19 **interest ~~The department may collect interest~~ on any support**
 20 **debt due and owing to the-department it at the statutory**
 21 **interest rate payable on judgments recovered in the courts**
 22 **of this state ~~under--40-5-221--may-be--collected--by-the~~**
 23 **department.**

24 **(2)** No provision of this part may be construed to
 25 require the department to maintain interest balance due

1 ~~accounts,7-and-interest-may-be-waived-by-the-department, The~~
 2 ~~department may waive interest~~ if waiver would facilitate the
 3 collection of the debt."

4 **Section 23.** Section 40-5-253, MCA, is amended to read:

5 **"40-5-253. Administrative findings and order --**
 6 **administrative remedies -- judicial review. (1)** It is the
 7 intent of this part that administrative findings and orders
 8 be subject to judicial review, but ~~that~~ administrative
 9 remedies must be exhausted prior to judicial review. The
 10 administrative procedures described in this part are subject
 11 to review in the appropriate district court. Such review
 12 ~~shall~~ must be conducted pursuant to the Montana
 13 Administrative Procedure Act. Upon a showing by the
 14 department that administrative remedies have not been
 15 exhausted, the district court shall refuse review until such
 16 remedies are exhausted.

17 (2) Nothing in this part may be construed to abridge
 18 or in any way affect the ~~defendant's~~ obligor's right to
 19 counsel during any and all judicial or administrative
 20 proceedings pursuant to this part."

21 **Section 24.** Section 40-5-254, MCA, is amended to read:

22 **"40-5-254. Statutory limitations. Debts Support debts**
 23 **ensuing as a result of determinations made through the**
 24 **administrative procedures described in this part are subject**
 25 **to statutory limitations as set forth in Title 27, chapter**

2."

Section 25. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from ~~a-responsible-parent-or-former-spouse~~ an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. ~~in-the-event~~ If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant for distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period."

Section 26. Section 40-5-257, MCA, is amended to read:

"40-5-257. Assignment of earnings to be honored --

effect. (1) Any person, firm, corporation, association, political subdivision, or department of the state employing ~~a-person-owing-a-support-debt-or-obligation~~ an obligor shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to court ~~a support~~ order, presented by the department ~~as--a--plan--to~~ satisfy--or--retire--a--support--debt--or--obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department.

(2) Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department ~~shall--be~~ is released from liability for improper receipt of money under an assignment of earnings upon return of any money so received."

Section 27. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 28. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid

LC 0354/01

1 part remain in effect. If a part of [this act] is invalid
2 in one or more of its applications, the part remains in
3 effect in all valid applications that are severable from the
4 invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB042, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to the administrative enforcement of child support to conform the laws to federal regulations; providing an automatic extension of services upon termination of public assistance; granting equal status to non-public assistance cases; decreasing the response times for administrative procedures; and providing for temporary support orders.

ASSUMPTIONS:

1. In FY90 the nonpublic assistance child support enforcement caseload will increase by 2,900 cases above current levels and in FY91 the increase will be 4,900 cases above current levels.
2. The public assistance caseload for which health insurance will be purchased will be 233 in FY90 and 242 in FY91 based on the following assumptions:
 - a. Total AFDC caseload will be 9,868 in FY90 and 10,263 in FY91.
 - b. Of the total cases, 42% will be women with children whose paternity has been established.
 - c. Thirty percent of the AFDC cases where paternity is established will receive child support.
 - d. Employer group health insurance could be provided in 25% of the cases where paternity has been established but of the number that could provide insurance only 75% will provide such coverage. The remainder of the absent fathers (78 in FY90 and 81 in FY91) will be assessed the \$100 monthly fee.
 - e. There are two children per AFDC case.
3. Private health insurance will cover only 60% of the health care costs covered by Medicaid. The state will still fund dental and drug health coverage for AFDC cases where health insurance is provided by the absent father.
4. The average Medicaid cost per AFDC child is \$750 per year.
5. The Department of Revenue will impose and collect the \$100 fee for nonpayment of health insurance costs.
6. The Department of Revenue will need 6.0 FTE in FY90 (2.0 FTE at grade 9 and 4.0 FTE at grade 12).
7. The Department of Revenue will need an additional 4.0 FTE in FY91 (2.0 FTE at grade 9 and 2.0 FTE at grade 12) for a total of 10.0 new FTE in FY91.
8. The federal government will pay 68% of the administrative costs until October, 1989, and 66% after that time.
9. Federal government incentive payments will be 7% of collections or \$63,530 in FY90 and \$107,345 for FY91.
10. Noncompliance with this requirement could result in sanctions from 1% to 5% of the federal share of AFDC program funds. If a 1% sanction is applied, it would represent a reduction of \$270,663 in federal AFDC funding while a 5% sanction would represent a reduction of \$1,353,314 in funding. It is assumed that the proposal will allow the state to avoid federal sanctions in the areas referenced by this proposal.



RAY SHACKLEFORD, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB042, Introduced

SB 42

Fiscal Note Request, SB042 as introduced

Form BD-15

Page 2

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY90</u>			<u>FY91</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
SRS						
Benefits	\$ 209,700	\$ 0	(\$209,700)	\$217,800	\$ 0	(\$217,800)
Revenue						
Personal Services	0	124,129	124,129	0	203,940	203,940
Operating Expense	0	60,664	60,664	0	83,020	83,020
Capital Outlay	0	12,793	12,793	0	0	0
TOTAL	\$ 209,700	\$ 197,586	(\$ 12,114)	\$217,800	\$ 286,960	\$ 69,160
Funding:						
General Fund	\$ 60,457	\$ 66,024	\$ 5,567	\$ 62,530	\$ 97,566	\$ 35,036
Federal Funds	149,243	131,562	(17,681)	155,270	189,394	34,124
TOTAL	\$ 209,700	\$ 197,586	(\$ 12,114)	\$217,800	\$ 286,960	\$ 69,160

Revenue Impact:

General Fund:						
Federal Incentive Payment	\$ 0	\$ 63,530	\$ 63,530	\$ 0	\$ 107,345	\$107,345
Health Insurance Sanctions	0	46,800	46,800	0	95,400	95,400
TOTAL	\$ 0	\$ 110,330	\$ 110,330	\$ 0	\$ 202,745	\$202,745
<u>Net General Fund Impact:</u>			\$ 104,763			\$133,585

SB 42

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB042 (revised fiscal note), as introduced.

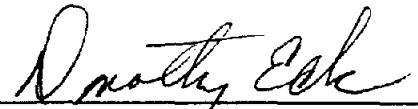
DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to the administrative enforcement of child support to conform the laws to federal regulations; providing an automatic extension of services upon termination of public assistance; granting equal status to non-public assistance cases; decreasing the response times for administrative procedures; and providing for temporary support orders.

ASSUMPTIONS:

1. The first year the non-public assistance caseload will increase by 2900 cases above current levels.
2. The second year the non-public assistance caseload will increase by 4900 cases above current levels.
3. At 500 cases per FTE, there will be 6 additional FTE the first year; 2 at grade 9 and 4 at grade 12.
4. Four more FTE will be required the second year; 2 at grade 9 and 2 at grade 12; for a total of 10 new positions.
5. These positions will be hired at step 2; there will be no wage increase in the biennium; fringe benefits will be 21.94% the first year and 22.23% the second year.
6. There will be a one-time data processing cost of \$11,200 to change the system. This will be done in the first quarter of FY90.
7. The federal government covers 68% of total administrative costs until October, 1989; after that time the federal government will cover 66% of costs. (The additional administrative expense shown below reflects the state portion only.)
8. Department collections will be \$907,577 the first year and \$1,533,498 the second year.
9. Federal government incentive payments (these are based on cost-effectiveness ratios) will be 7% of collections, or \$63,530 for the first year and \$107,345 for the second year.
10. Under current law the department does not provide medical support obligation enforcement, and would not under the proposed law.
11. Noncompliance with this requirement could result in IV-A federal funding graduated sanctions ranging from 1% to 5%. If a 1% sanction is applied, it would represent a reduction of \$270,663 in federal AFDC funding. If a 5% sanction is applied, it would represent a reduction of \$1,353,314 in funding. It is assumed the proposal will allow the state to avoid federal sanctions in the areas referenced by this proposal.

 1/17/89
RAY SHACKLEFORD, DIRECTOR DATE
Office of Budget and Program Planning

 1-17-89
DOROTHY ECK, PRIMARY SPONSOR DATE
Fiscal Note for SB042, as introduced
Revised Note

SB 42
Revised

Fiscal Note Request, SB042 (revised fiscal note), as introduced

Form BD-15

Page 2

FISCAL IMPACT:

<u>Revenue Impact:</u>	<u>FY '90</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Fed. Govt. Incentive Payment	\$ 0	\$ 63,530	\$ 63,530

<u>FY '91</u>		
<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
\$ 0	\$ 107,345	\$ 107,345

<u>Expenditure Impact:</u>	<u>FY '90</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	\$ 0	\$ 41,478	\$ 41,478
Operating Expense	0	20,271	20,271
Capital Outlay	0	4,275	4,275
TOTAL	\$ 0	\$ 66,024	\$ 66,024

<u>FY '91</u>		
<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
\$ 0	\$ 69,340	\$ 69,340
0	28,227	28,227
0	0	0
\$ 0	\$ 97,566	\$ 97,566

SB 42,

APPROVED BY COMMITTEE
ON TAXATION

1 STATEMENT OF INTENT

2 SENATE BILL 42

3 Senate Taxation Committee

4
5 A statement of intent is required for Senate Bill No.
6 42 because it amends several sections within Title 40,
7 chapter 5, part 2, on child support enforcement services.
8 These amendments are proposed to bring state law into
9 compliance with federal law. The department of revenue is
10 granted an extension of authority to adopt rules in
11 accordance with this bill that conform with federal laws and
12 regulations.

13 The legislature intends that the department adopt rules
14 that:

15 (1) reduce aid to families with dependent children
16 (AFDC) expenditures by ensuring that the parent or other
17 person responsible pays for the care, support, or
18 maintenance of a child under the provisions of 40-5-202(1);

19 (2) ensure child enforcement services will continue to
20 be provided to families that cease to receive public
21 assistance under AFDC, without requiring an application or
22 payment of a fee;

23 (3) establish the terms and conditions of providing
24 continued services for families no longer receiving public
25 assistance; and

1 (4) establish procedures for the discontinuance of
2 child support services when the custodial parent:
3 (a) ceases or fails to cooperate with the department
4 as provided under 40-5-204; or
5 (b) takes an action to prejudice the rights of the
6 department under 40-5-202(4) and (5).

SENATE BILL NO. 42

INTRODUCED BY ECK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMINISTRATIVE ENFORCEMENT OF CHILD SUPPORT TO CONFORM THE LAWS TO FEDERAL REGULATIONS; PROVIDING AN AUTOMATIC EXTENSION OF SERVICES UPON TERMINATION OF PUBLIC ASSISTANCE; GRANTING EQUAL STATUS TO NONPUBLIC ASSISTANCE CASES; DECREASING THE RESPONSE TIMES FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR TEMPORARY SUPPORT ORDERS; AND AMENDING SECTIONS 40-5-201 THROUGH 40-5-208, 40-5-213, 40-5-221 THROUGH 40-5-226, 40-5-241 THROUGH 40-5-244, 40-5-246, 40-5-251 THROUGH 40-5-255, AND 40-5-257, MCA."

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

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

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

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

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) child support enforcement services are being provided by the department under 40-5-203; or

(d) a referral for interstate services is received by the department, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action request by a Title IV-D agency of another state.

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

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

~~{4}--"Disposable--earnings"--means--that--part--of--the earnings--of--any--individual--remaining--after--the--deduction from--those--earnings--of--any--amount--required--by--law--to--be withheld--~~

~~{5}--"District-court-order"--means--any--judgment--or--order of--the--district--court--of--the--state--of--Montana--or--an--order--of a--court--of--appropriate--jurisdiction--of--another--state ordering--payment--of--a--set--or--determinable--amount--of--support money--~~

~~{6}--"Earnings"--means--compensation--paid--or--payable--for personal--services,--whether--denominated--as--wages,--salary, commission,--bonus,--or--otherwise,--and--specifically--includes periodic--payments--under--pension--or--retirement--programs--or insurance--policies--of--any--type,--"Earnings"--specifically includes--all--gain--derived--from--capital,--labor,--or--both~~

1 ~~combined, including profit gained through sale or conversion~~
2 ~~of capital assets.~~

3 ~~{7}{4}~~ "Need" means the necessary costs of food,
4 clothing, shelter, and medical care for the support of a
5 dependent child or children.

6 (5) "Obligee" means:

7 (a) a person to whom a duty of support is owed and who
8 is receiving support enforcement services under this part;
9 or

10 (b) a public agency of this or another state having
11 the right to receive current or accrued support payments.

12 (6) "Obligor" means a person, including an alleged
13 father, who owes a duty of support.

14 (7) "Parent" means the natural or adoptive parent of a
15 child.

16 (8) "Public assistance" means any type of monetary or
17 other assistance for a child, including medical and foster
18 care benefits, furnished to a person by a state or county
19 agency, regardless of the original source of the assistance.
20 The term includes payments to meet the needs of a relative
21 with whom the child is living, if assistance has been
22 furnished with respect to the child by a state or county
23 agency of this state or any other state.

24 ~~{9}--"Responsible parent"--means the natural or adoptive~~
25 ~~parent of a dependent child.~~

1 ~~{10}{9}~~ "Support debt" or "support obligation" means
2 the amount created by:

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

8 (b) the sum created by a decree or order of any court
9 of appropriate jurisdiction ordering a sum to be paid as
10 spousal maintenance under chapter 4, part 27 of this title
11 when a support order for spousal maintenance if the judgment
12 or order requiring payment of maintenance also contains a
13 judgment or order requiring payment of child support for a
14 child of whom the person awarded maintenance is the
15 custodial parent.

16 (10) "Support order" means an order providing a
17 determinable amount for temporary or final periodic payment
18 of funds for the support of a child, that is issued by:

19 (a) a district court of this state;

20 (b) a court of appropriate jurisdiction of another
21 state;

22 (c) an administrative agency pursuant to proceedings
23 under this part; or

24 (d) an administrative agency of another state with a
25 hearing function and process similar to those of the

1 department under this part.

2 (11) "IV-D" means the provisions of Title IV-D of the
 3 Social Security Act and the regulations promulgated
 4 thereunder."

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

6 "40-5-202. Department of revenue -- powers and duties
 7 regarding collection of support debt. (1) Whenever--the
 8 department--of--social--and--rehabilitation--services--or--the
 9 department--of--family--services--receives--an--application--for
 10 public--assistance--on--behalf--of--a--child--and--it--appears--to--the
 11 satisfaction--of--that--department--that--the--child--has--been
 12 abandoned--by--his--parents--the--child--and--one--parent--have--been
 13 abandoned--by--the--other--parent--or--the--parent--or--other--person
 14 who--has--a--responsibility--for--the--care--support--or
 15 maintenance--of--such--child--has--failed--or--neglected--to--give
 16 proper--care--or--support--to--the--child--the--department--of
 17 social--and--rehabilitation--services--or--the--department--of
 18 family--services--shall--promptly--refer--the--matter--to--the
 19 department--of--revenue--for--action The department may take
 20 action under the provisions of this part, the abandonment or
 21 nonsupport statutes, the Uniform Parentage Act established
 22 in Title 40, chapter 6, part 1, or and other appropriate
 23 state and federal statutes of this state to insure ensure
 24 that the parent or other person responsible pays for the
 25 care, support, or maintenance of the dependent a child if

1 the department:

2 (a) receives a referral from the department of social
 3 and rehabilitation services or the department of family
 4 services on behalf of the child;

5 (b) is providing child support enforcement services
 6 under 40-5-203; or

7 (c) receives an interstate referral, whether under the
 8 Revised Uniform Reciprocal Enforcement of Support Act or an
 9 interstate action by a Title IV-D agency of another state.

10 (2) in the event that public assistance is furnished
 11 by a state or county agency or in instances where the
 12 department has contracted to collect support, If the
 13 department is providing child support enforcement services
 14 for a child under this part, the department shall become
 15 becomes trustee of any cause of action of the dependent
 16 child or the person having legal custody of the dependent
 17 child obligee to recover support due to that the child or
 18 obligee from any person the obligor. and The department may
 19 bring and maintain the action either in the department's its
 20 own name or in the name of the obligee.

21 (3) The department has the power of attorney to act in
 22 the name of any recipient of public assistance in endorsing
 23 and cashing obligee to endorse and cash any and all drafts,
 24 checks, money orders, or other negotiable instruments
 25 received by the department on behalf of a child and

representing--support--payments-for-children-in-whose-behalf
public-assistance-has-been-previously-paid.

(4) For purposes of prosecuting any civil action pursuant--to--this--part, the department is a real party in interest upon-the-payment-of--public--assistance if it is providing child support enforcement services under this part. No obligee shall may act to prejudice the rights of the department after-the-receipt-of-public-assistance while such services are being provided.

(5) No If child support enforcement services are being or have been provided under this part, no agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any court order on the same basis as a party to that action would-have-been is entitled to do.

(7) The department shall-be is subrogated to the right of the child or-children-or-person-having-the-care,-custody, and-control-of-the-child-or-children or obligee to maintain

any civil action or execute any administrative remedy existing available under the laws of the this or any other state to-obtain-reimbursement-of-money-thus-spent to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If-a-district-court-orders-an-amount-of-support-to be--paid--by--a--responsible-parent, the department-shall-be subrogated-to-the-debt-created-by-the-order--and--the--money judgment---shall--be--determined--to--be--in--favor--of--the department--This subrogation applies both to:

(a)--the-lesser-of-the-amount-paid-by-the-department-of social-and-rehabilitation--services--or--the--department--of family--services--in-public-assistance-to-or-for-the-benefit of-a-dependent-child-or-children-of-the--responsible--parent or--the--amount-of-support-contained-in-the-court-order;--and

(b)--to-any-amount-allocated-to--the--benefit--of--the children--on--the--basis--of--providing--necessities-for-the caretaker-of-the-children: If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

1 (b) the amount due under the support order.

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

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

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

10 **"40-5-203. Support Child support enforcement services.**

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

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

23 (3) The department may not charge the applicant a fee
24 as compensation for services rendered in establishment of or
25 enforcement of support obligations. However, the department

1 may charge a fee to the person--from--whom--the--support--is
2 being--collected obligor. This fee must be in addition to the
3 support payment. The department shall by rule establish
4 reasonable fees commensurate with the cost of enforcement
5 support services to be paid by the person--from--whom--the
6 support--is--being--collected obligor. When payments are
7 scheduled to be paid on an installment basis, a portion of
8 the collection fee owed to the department shall be added to
9 each payment. If the person--from--whom--the--support--is--being
10 collected obligor makes a payment in an amount that is less
11 than the support payment plus the collection fee for that
12 payment, the department may deduct a percentage of the total
13 sum collected which represents the department's standard
14 proportion. The department may, upon a showing of
15 necessity, waive or defer any such fee.

16 (4) If child support enforcement services are provided
17 under this part to or for a child as a result of the payment
18 of public assistance, the department shall MAY continue to
19 provide services after public assistance is no longer being
20 paid, without requiring an application. An obligee's
21 acceptance of continued services constitutes the obligee's
22 agreement to the terms and conditions set for applicants by
23 the department under this section.

24 (5) The department may terminate services under this
25 section only if it:

1 (a) receives a written request from the obligee for
2 termination of services;

3 (b) receives notice that the child is receiving public
4 assistance; or

5 (c) determines that an obligee has violated any term
6 or condition set by the department for an applicant under
7 this section."

8 **Section 4.** Section 40-5-204, MCA, is amended to read:

9 "40-5-204. Cooperation by person--having--custody--of
10 child obligee. Any--person--having--the--care, custody, or
11 control--of--any--dependent--child--or--children--shall--cooperate
12 with--the--department--in--establishing--the--paternity--of--such
13 child--and--obtaining--support--payments An obligee shall
14 cooperate with the department in:

15 (1) identifying and locating the obligor;

16 (2) establishing the paternity of a child;

17 (3) obtaining support or any other payments due the
18 obligee and child; and

19 (4) obtaining reimbursement for previously paid public
20 assistance, if any."

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

22 "40-5-205. Payment of support money collected to
23 support enforcement and collections unit -- notice. If
24 written--notice--by--the--department--is--given the department
25 gives written notice to the responsible person--or obligor,

1 to the clerk of the court, ~~if--appropriate~~ or to an
2 administrative agency that issued a support order, that the
3 children child for whom a support obligation order exists
4 are is receiving public--assistance services from the
5 department, then any support money paid-by-the-person-or
6 persons-responsible-for-support-as-a-result-of-any-action
7 shall---be---paid---through---the---support---enforcement---and
8 collections-unit-of-the-department-of-revenue must be paid
9 to the department."

10 **Section 6.** Section 40-5-206, MCA, is amended to read:

11 "40-5-206. Central unit for information and
12 administration -- cooperation enjoined -- availability of
13 records. (1) The department shall establish a central unit
14 to serve as a registry for the receipt of information, for
15 answering interstate inquiries concerning deserting parents,
16 to coordinate and supervise departmental activities in
17 relation to deserting parents, and to assure effective
18 cooperation with law enforcement agencies.

19 (2) ~~To effectuate the purposes of this section, the~~
20 ~~director may request from state, county, and local agencies~~
21 ~~all information and assistance as authorized by this part.~~
22 ~~All--state,--county,--and--city--agencies,--officers,--and~~
23 ~~employees shall cooperate in the location of parents who~~
24 ~~have--abandoned--or--deserted--or--are--failing--to--support~~
25 ~~children receiving public assistance and shall on request~~

1 ~~supply the department with all information available~~
 2 ~~relative to the location, income, and property of the~~
 3 ~~parents. If services are provided to a child under this~~
 4 ~~part, the department may request and all state, county, and~~
 5 ~~city agencies, officers, and employees must provide on~~
 6 ~~request any information concerning the location, income, and~~
 7 ~~assets of an obligor.~~

8 (3) Except as provided in 31-3-127, any records
 9 established pursuant to the provisions of this section are
 10 available only to the department, county attorneys, and
 11 courts having jurisdiction in support and abandonment
 12 proceedings or actions or agencies in other states engaged
 13 in the enforcement of support of minor children as
 14 authorized by the rules of the department and by the
 15 provisions of the federal Social Security Act."

16 **Section 7.** Section 40-5-207, MCA, is amended to read:

17 "40-5-207. Department authorized to enforce
 18 maintenance awards. When If a judgment or order creating a
 19 child support obligation also contains a judgment or order
 20 for the support of a spouse or former spouse and the former
 21 spouse who is the custodial parent of the child, the
 22 department may collect and enforce spousal support under
 23 this part."

24 **Section 8.** Section 40-5-208, MCA, is amended to read:

25 "40-5-208. Medical support obligation enforcement. (1)

1 In ~~all proceedings~~ any proceeding initiated pursuant to this
 2 part, the department shall require ~~parents obligated to pay~~
 3 ~~child support~~ the obligor to secure and maintain health
 4 insurance coverage for each dependent child, at a cost not
 5 to exceed 5% of net income, whenever such health insurance
 6 is available through their the obligor's employment.
 7 However, if a ~~court of competent jurisdiction has entered an~~
 8 ~~support order establishing a current support obligation and~~
 9 ~~has ordered the obligated parent to secure and maintain~~
 10 ~~health insurance coverage for each dependent child, has been~~
 11 ~~entered that also orders the obligor to secure and maintain~~
 12 ~~health insurance coverage for the child, the department~~
 13 shall enforce the obligation as ordered ~~by the court.~~

14 (2) If the department determines that an obligated
 15 parent obligor has failed to maintain health insurance
 16 coverage required by ~~the a support order of a court of~~
 17 ~~competent jurisdiction or an administrative agency empowered~~
 18 ~~to enter such order,~~ it may issue a notice commanding the
 19 parent obligor to appear at a hearing held by the department
 20 and show cause why a sum of not more than \$100 should not
 21 be assessed for each month health insurance coverage is not
 22 secured or maintained. If the department finds, after
 23 hearing or the obligor's failure to appear, that the obligor
 24 has not secured or maintained health insurance coverage ~~has~~
 25 ~~not been secured or maintained~~ in accordance with the court

1 ~~or--administrative~~ support order, the department may assess
 2 against the ~~obligated-parent~~ obligor not more than \$100 for
 3 each month health insurance coverage has not been secured or
 4 maintained. Such amounts may be enforced by warrant for
 5 distraint provided for in 40-5-241.

6 (3) ~~Whenever-an-obligated-parent~~ If an obligor who has
 7 been served with notice under this section appears before
 8 the department and shows that health insurance coverage in
 9 accordance with the ~~court-or-administrative~~ support order:

10 (a) has been secured and maintained continuously since
 11 the date of the order, the department shall dismiss the
 12 pending action; or

13 (b) has not been secured or continuously maintained
 14 but such coverage is presently in effect, the department
 15 shall suspend the pending action for a period of 12 months.

16 (4) At the end of the suspension period, the
 17 department may schedule a hearing. If at this hearing the
 18 department finds that during the suspension period health
 19 insurance coverage:

20 (a) has been continuously maintained, the department
 21 shall dismiss the pending action and the ~~obligated-parent~~
 22 obligor will not be assessed under this section; or

23 (b) has not been continuously maintained, the
 24 department may enter a final order requiring the ~~obligated~~
 25 parent obligor to pay the sum assessed in accordance with

1 this section for each month coverage was not maintained.

2 (5) Any amounts collected pursuant to this section
 3 must be returned to the general fund to help offset
 4 expenditures for medicaid."

5 **Section 9.** Section 40-5-213, MCA, is amended to read:

6 "40-5-213. Financial statements by parent--whose
 7 absence--is--basis--of--application--for--public--assistance
 8 obligor -- penalty. (1) Any--parent--in--the--state--whose
 9 absence--is--the--basis--upon--which--an--application--is--filed--for
 10 public--assistance--on--behalf--of--a--child--shall If the
 11 department is providing child support enforcement services
 12 under this part and has reasonable cause to believe that a
 13 support obligation is owed, an obligor, upon written
 14 request, shall complete a statement, under oath, stating the
 15 obligor's:

16 (a) of-his current monthly income;

17 (b) his total income over the past 36 months;

18 (c) the number of dependents for whom he the obligor
 19 is providing support;

20 (d) the amount he the obligor is contributing
 21 regularly toward the support of all--children--for--whom
 22 application--for--such--assistance--is--made; a child for whom
 23 the department is providing services;

24 (e) his current monthly living expenses; and

25 (f) all other information pertinent to determining-his

ability to support his children. The statement shall be provided upon a demand made by the department. If assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance the obligor's financial condition.

(2) The department may require additional financial statements from the obligor during the period the department is providing services to the child.

(3) Failure to comply with this section is a misdemeanor."

Section 10. Section 40-5-221, MCA, is amended to read:

"40-5-221. Debt to state by natural or adoptive parents obligor -- limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of any dependent child or children a child creates a debt due and owing the state of Montana by the responsible parent or parents obligor in an amount equal to the amount of public assistance money so paid. In the case of an obligor who is an adoptive parent or parents, no a debt for public assistance paid may not accrue prior to the date of adoption.

(2) Where there has been a district court order established, the debt shall be limited to the amount provided for by the order. If a support order has been

entered, the support debt created by this section may not exceed the amount of the order.

(3) Where If a child has been placed in foster care and a written agreement for payment of support has been entered into by the responsible parent or parents exists between the obligor and any state agency, the support debt shall be is limited to the amount provided for in the agreement. However, if a court support order for support is or has been entered, the provisions of the order shall prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

(5) The department may establish and collect a debt created under this section in a proceeding that is in addition to and independent of the subrogation created by 40-5-202(7) and the assignment under 53-2-613."

Section 11. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation to or assignment of judgment support order -- notice -- content contents -- action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court a support order. The notice may be served

1 upon the debtor obligor in the manner prescribed for the
 2 service of a summons in a civil action in accordance with
 3 the provisions of the Montana Rules of Civil Procedure,
 4 demanding payment within ~~30~~ 20 days of the date of receipt.

5 (2) The notice of debt shall include:

6 (a) a statement of the support debt accrued or
 7 accruing, computable on the amount required to be paid under
 8 any ~~district-court support order to which the department--is~~
 9 ~~subrogated-or-has-an-assigned-interest;~~

10 (b) a statement that the property of the debtor is
 11 subject to collection action;

12 (c) a statement that the property is subject to
 13 distraint and seizure and sale;

14 (d) a statement that the net proceeds will be applied
 15 to the satisfaction of the support debt; and

16 (e) a statement that the debtor obligor is entitled to
 17 a fair hearing.

18 (3) Action to collect the ~~subrogated--or--assigned~~
 19 support debt by distraint and seizure and sale ~~shall-be is~~
 20 lawful after ~~30~~ 20 days from the date of service upon the
 21 debtor obligor or ~~30~~ 20 days from the receipt or refusal by
 22 the debtor of the notice of debt.

23 (4) Within 20 days of the date of service of notice of
 24 support debt, the debtor obligor may request a fair hearing
 25 as provided in 40-5-226."

1 **Section 12.** Section 40-5-223, MCA, is amended to read:

2 **"40-5-223. Notice of support liability based upon**
 3 **payment of public assistance -- notice -- contents --**
 4 **collection warrant -- fair hearing.** (1) In the absence of a
 5 district court order the department may issue a notice of a
 6 support liability accrued or accruing based upon payment of
 7 public assistance to or for the benefit of ~~any--dependent~~
 8 ~~child--or--children~~ a child. The notice of liability ~~shall~~
 9 must be served upon the ~~responsible-parent~~ obligor in the
 10 manner prescribed for the service of summons in a civil
 11 action, in accordance with the provisions of the Montana
 12 Rules of Civil Procedure.

13 (2) The notice of liability shall include:

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

17 (b) a statement of the amount of the monthly public
 18 assistance payment;

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

22 (d) a demand for immediate payment of the support debt
 23 or, in the alternative, a demand that the ~~responsible-parent~~
 24 obligor make answer within ~~30~~ 20 days of the date of service
 25 to the department stating defenses to liability under

1 40-5-221;

2 (e) a statement that if no answer is made on or before
3 30 20 days from the date of the service the support debt
4 ~~shall~~ must be assessed and determined subject to computation
5 and is subject to collection action;

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

9 (3) If no answer is had by the department to the
10 notice of liability on or before 30 20 days of the date of
11 service, the support debt ~~shall~~ must be assessed and
12 determined subject to the computation and the department may
13 issue a warrant for distraint authorizing a collection
14 action under this part.

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

24 **Section 13.** Section 40-5-224, MCA, is amended to read:

25 "40-5-224. Finding of support liability based upon

1 payment of public assistance -- warrant for distraint --
2 bond to release warrant -- action to collect. (1) If the
3 department reasonably believes that the parent obligor is
4 not a resident of this state or is about to move from this
5 state or has concealed himself, absconded, absented himself
6 or has removed or is about to remove, secrete, waste, or
7 otherwise dispose of property which could be made subject to
8 collection action to satisfy the support debt, the
9 department may issue a warrant for distraint pursuant to
10 40-5-241 during the pendency of the fair hearing or
11 thereafter, whether or not appealed. No further action may
12 be taken on the warrant until final determination after fair
13 hearing ~~and/or or~~ appeal. The department shall ~~in-such-cases~~
14 make and file in the record of the fair hearing an affidavit
15 stating the reasons upon which the belief is founded. The
16 ~~responsible-parent~~ obligor may furnish a bond, not to exceed
17 the amount of the support debt, during pendency of the
18 hearing or thereafter, and in such case warrants issued
19 ~~shall~~ must be released. If the decision resulting from the
20 hearing is in favor of the ~~responsible-parent~~ obligor, all
21 warrants issued ~~shall~~ must be released.

22 (2) The department may commence action under the
23 provisions of this part to collect the support debt on the
24 date of issuance of the decision resulting from the
25 hearing."

Section 14. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice ~~and~~ finding of financial responsibility ~~of responsible parent~~ -- temporary and final support obligations -- administrative procedure. (1) (a) ~~in lieu of the procedures provided in 40-5-223 and 40-5-224,~~ the In the absence of a support order, the department may, ~~in the absence of a district court order,~~ serve on the responsible parent an obligor with a notice and finding of financial responsibility alleging a child's need for support and the amount of the need and requiring a responsible parent the obligor to appear and show cause at a hearing held by the department why the ~~finding of liability and the amount of support liability should not be finally ordered~~ obligor should not be finally ordered to pay the amount alleged in the notice. This notice and finding shall relate to ~~the support debt accrued or accruing under this part and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to this part and the rules of the department, which shall provide for a fair hearing.~~

(b) The notice must state:

(i) the names of the obligee and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;

(iv) that the obligor is entitled to a fair hearing under 40-5-226.

(2) ~~The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 30 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision. If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's~~

1 monthly support responsibility must be based on the greater
2 of:

3 (a) the amount of public assistance payable under
4 Title 53, chapter 4; or

5 (b) the alleged need.

6 (3) The notice and finding of financial responsibility
7 shall include:

8 (a) the amount the department has determined the
9 responsible parent owes; the support debt accrued or
10 accruing; and as appropriate, the amount to be paid thereon
11 each month, all computable on the basis of the amount of the
12 monthly public assistance payment previously paid or need
13 alleged and the ability of the responsible parent to pay all
14 or any portion of the debt;

15 (b) a statement of the name of the recipient or
16 custodian and the name of any child for whom assistance is
17 being paid or need is alleged; or a statement of the amount
18 of periodic future support payments for which financial
19 responsibility is found;

20 (c) a statement that the responsible parent may object
21 to all or any part of the notice and finding and request a
22 hearing to show cause why he should not be determined to be
23 liable for any or all of the past and future debt determined
24 and the amount to be paid thereon;

25 (d) a statement that if the responsible parent fails

1 to request a hearing, the support debt and payments stated
2 in the notice and finding, including periodic support
3 payments in the future, shall be assessed, determined, and
4 ordered by the department and that this debt is subject to
5 collection action;

6 (e) a statement that the property of the debtor,
7 without further advance notice or hearing, will be subject
8 to distraint and seizure and sale to satisfy the debt. If
9 the obligor objects to the notice, the obligor shall file a
10 written answer with the department within 20 days from the
11 date of service or refusal of service. If the department
12 receives a timely answer, it shall conduct a fair hearing
13 under 40-5-226. If the department does not receive a timely
14 answer, it shall order the obligor to pay the amount stated
15 in the notice.

16 (4) (a) If a support action is pending in district
17 court and a temporary or permanent support obligation has
18 not been ordered, the department may issue to the obligor a
19 notice of temporary support obligation.

20 (b) The notice must contain:

21 (i) the names of the child and the person or agency
22 having the custodial care of the child;

23 (ii) an amount for temporary monthly support determined
24 as provided in subsection (2);

25 (iii) a statement that the obligor may request a

1 hearing at which the obligor may show that a different
 2 support amount is appropriate or that establishment of a
 3 support obligation is inappropriate under the circumstances.
 4 The hearing must be conducted in accordance with the
 5 procedures of 40-5-226.

6 (iv) a statement that a hearing must be requested in
 7 writing within 10 days of receipt of the notice or the order
 8 for a temporary support order will be entered in the amount
 9 stated in the notice; and

10 (v) a statement that the temporary support order will
 11 terminate upon the entry of a district court support order.
 12 If the district court order is retroactive, any amount paid
 13 for a particular period under the temporary support order
 14 must be credited against the amounts due under the district
 15 court order for the same period, but excess amounts may not
 16 be refunded. If the district court determines that a
 17 periodic support obligation is not proper, any amount paid
 18 under the temporary support order must be refunded to the
 19 obligor.

20 (5) (a) If a temporary support order is entered or if
 21 proceedings are commenced under this section for a married
 22 obligor, the department shall vacate any support order or
 23 dismiss any proceeding under this part if it finds that the
 24 parties to the marriage have:

25 (i) reconciled without the marriage having been

1 dissolved;

2 (ii) made joint application to the department to vacate
 3 the order or dismiss the proceeding; and

4 (iii) provided proof that the marriage has been
 5 resumed.

6 (b) The department may not vacate a support order or
 7 dismiss a proceeding under this subsection (5) if it
 8 determines that the rights of a third person or the child
 9 are affected. The department may issue a new notice under
 10 this section if the parties subsequently separate.

11 (6) Any notice of financial responsibility and the
 12 notice of temporary support obligation must be served in the
 13 same manner prescribed for the service of a summons in civil
 14 action in accordance with the Montana Rules of Civil
 15 Procedure."

16 **Section 15.** Section 40-5-226, MCA, is amended to read:

17 "40-5-226. Administrative hearing -- nature -- place
 18 -- time -- determinations -- failure to appear -- entry of
 19 findings final decision and order. (1) The administrative
 20 hearing is defined as a "contested case".

21 (2) The At the discretion of the hearing officer, the
 22 administrative hearing may be held:

23 (a) in the county of residence or other county
 24 convenient to the responsible-parent obligor or obligee; or

25 (b) in the county in which the department or any of

1 its offices are located.

2 (3) If a hearing is requested, it ~~shall~~ must be
3 scheduled within ~~30~~ 20 days.

4 (4) The hearing officer shall determine the liability
5 and responsibility, if any, of the ~~alleged-responsible~~
6 parent obligor under ~~40-5-221-and-shall-also-determine-the~~
7 ~~amount-of-periodic-payments-to-be-made-to-satisfy-past,~~
8 ~~present-or-future-liability-under-40-5-221-in-making-these~~
9 ~~determinations-the-hearing-officer-shall-include-in-his~~
10 ~~consideration-the-scale-of-suggested-minimum-contributions~~
11 ~~adopted-under-40-5-214~~ the notice and shall enter a final
12 decision and order in accordance with such determination.

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

24 (6) In a hearing to determine financial
25 responsibility, the monthly support responsibility must be

1 determined in accordance with the evidence presented and
2 with reference to the scale of suggested minimum
3 contributions under 40-5-214. The hearing officer is not
4 limited to the amounts stated in the notice.

5 ~~(6)}~~(7) Within 20 days of the hearing, ~~The the~~ hearing
6 officer shall, ~~--within--20--days--of--the--hearing,~~ enter
7 findings, ~~--conclusions,--and--a--final--decision-determining~~
8 ~~liability-and-responsibility-and/or-future-periodic--support~~
9 ~~payments~~ a final decision and order. The determination of the
10 hearing officer entered ~~--pursuant-to-this-section-shall-be~~
11 ~~entered-as-an-order--unless--such--findings--are--set--aside~~
12 ~~pursuant--to-40-5-253-and-shall-limit-the-support-debt-under~~
13 ~~40-5-221-to-the-amounts-stated-in-the-decision~~ constitutes a
14 final agency decision, subject to judicial review under
15 40-5-253 and the provisions of the Montana Administrative
16 Procedure Act.

17 ~~(7)}~~(8) The ~~decision-establishing-liability-and--future~~
18 ~~periodic--support--payments--is--superseded--upon-entry-of-a~~
19 ~~district-court-order-for-support-to-the-extent-the--district~~
20 ~~court-order--is--inconsistent--with--the--hearing--order-or~~
21 ~~decision--In-the-absence--of--a--district--court--order--the~~
22 ~~responsible--parent-may-petition-the-department-for-issuance~~
23 ~~of-an-order-to-appear-and-show-cause-based-on-a--showing--of~~
24 ~~good--cause--and-material-change-of-circumstances-to-require~~
25 ~~the-other-party-to-appear-and-show-cause--why--the--decision~~

1 previously-entered-should-not-be-prospectively-modified-The
 2 order--to--appear-and-show-cause-together-with-a-copy-of-the
 3 affidavit-upon-which-the-order-is-based-shall-be--served--by
 4 the--petitioning--party-on-the-nonmoving-party-in-the-manner
 5 of-a-summons-in-a-civil-action--A-hearing-shall-be-set If a
 6 support order is established under this part, any party may
 7 file a verified petition with the department alleging facts
 8 constituting a material change of circumstances. Upon the
 9 filing of such petition, the department shall issue an order
 10 to the nonpetitioning party to appear and show cause why the
 11 decision previously entered should not be prospectively
 12 modified. The order to appear and show cause, together with
 13 a copy of the verified petition, must be served by the
 14 petitioner upon all other parties in the manner provided by
 15 this part. Upon receipt of proof of service, the department
 16 shall schedule a hearing not less than 15 or more than 30
 17 days from the date of service, unless extended for good
 18 cause shown. Prospective modification may be ordered but
 19 only upon a showing of good cause and material change of
 20 circumstances.

21 (8)--The--department--in--its-original-determinations,
 22 and-the-hearing-officer--in-making-determinations--based-on
 23 objections--to--original--determinations--or-on-petitions-to
 24 modify--shall--consider--the--standards--promulgated--for
 25 determination-of-support-payments-used-by-the-district-court

1 of-the-county-of-residence-of-the-responsible-parent;

2 (9) Debts A support debt determined pursuant to this
 3 section, accrued and not paid, are is subject to collection
 4 action under--this-part without further necessity of action
 5 by the hearing officer.

6 (10) A support debt or a support responsibility
 7 determined under this part by reason of the obligor's
 8 failure to request a hearing under this part or failure to
 9 appear at a scheduled hearing may be vacated, upon the
 10 motion of an obligor, by the hearing officer within the time
 11 provided and upon a showing of any of the grounds enumerated
 12 in the Montana Rules of Civil Procedure."

13 Section 16. Section 40-5-241, MCA, is amended to read:

14 "40-5-241. Warrant for distraint. (1) Thirty-one
 15 Twenty-one days after receipt or refusal of a notice of a
 16 support debt under provisions of 40-5-222 or 31 21 days
 17 after service of notice of a support debt or as otherwise
 18 appropriate under the provisions of 40-5-223 and 40-5-224,
 19 the department may issue a warrant for distraint based on
 20 the amount of the support debt.

21 (2) The warrant is subject to the provisions of this
 22 part and the provisions of 15-1-701, 15-1-704, 15-1-708, and
 23 15-1-709, with references to "tax" taken to mean "support
 24 debt" and references to "taxpayer" taken to mean "person
 25 owing--the--support-debt", as well as the provisions of this

1 part "obligor".

2 **Section 17.** Section 40-5-242, MCA, is amended to read:

3 "40-5-242. Civil liability upon failure to comply with
4 warrant or to honor assignment of wages. Should any person,
5 firm, corporation, association, political subdivision, or
6 department of the state fail or refuse to deliver property
7 pursuant to the order, or after actual notice of filing of a
8 support lien, pay over, release, sell, transfer, or convey
9 real or personal property subject to a support lien to or
10 for the benefit of the debtor or any other person, or fail
11 or refuse to surrender upon demand property distrained under
12 40-5-241 or fail or refuse to honor an assignment of wages
13 presented by the department, the A person, firm,
14 corporation, association, political subdivision, or
15 department of the state is liable to the department in an
16 amount equal to 100% of the value of the support debt which
17 that is the basis of the distraint or assignment of wages or
18 the value of the distrained property, whichever is less,
19 together with costs, interest, and reasonable attorney fees,
20 if the person or entity:

21 (1) fails or refuses to deliver property pursuant to
22 the order;

23 (2) pays over, releases, sells, transfers, or conveys
24 real or personal property subject to a support lien, to or
25 for the benefit of the obligor, after the person or entity

1 receives actual notice of filing of the support lien;

2 (3) fails or refuses to surrender upon demand property
3 distrained under 40-5-241; or

4 (4) fails or refuses to honor an assignment of wages
5 presented by the department."

6 **Section 18.** Section 40-5-243, MCA, is amended to read:

7 "40-5-243. Release of excess to debtor obligor.
8 Whenever If any person, firm, corporation, association,
9 political subdivision, or department of the state has in its
10 possession earnings, deposits, accounts, or balances in
11 excess of the amount of the debt claimed by the department
12 plus \$100, that person, firm, corporation, association,
13 political subdivision, or department of the state or entity
14 may, without liability under this part, release the excess
15 to the debtor obligor without liability under this part."

16 **Section 19.** Section 40-5-244, MCA, is amended to read:

17 "40-5-244. Banks and savings and loan associations --
18 service effective only as to branch office served. In the
19 case of a bank, bank association, mutual savings bank, or
20 savings and loan association maintaining branch offices,
21 service of any notice or document authorized by this part is
22 only effective as to the accounts, credits, or other
23 personal property of the debtor obligor in the particular
24 branch upon which service is made."

25 **Section 20.** Section 40-5-246, MCA, is amended to read:

"40-5-246. Release of distraint and return of seized property -- effect. The At any time, the department may at any-time release a distraint on all or part of the property of the debtor obligor or order the return of seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the same or other property."

Section 21. Section 40-5-251, MCA, is amended to read:

"40-5-251. Debt payment schedule. The At any time after notice to the obligor, the department may at-any-time ~~after-notice-to-the-debtor~~ set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor obligor."

Section 22. Section 40-5-252, MCA, is amended to read:

"40-5-252. Interest on debts due -- waiver. (1) Interest The department may collect interest on any support debt due and owing to ~~the department~~ it at the statutory interest rate payable on judgments recovered in the courts of this state ~~under--40-5-221--may--be--collected--by-the~~ department.

(2) No provision of this part may be construed to require the department to maintain interest balance due

~~accounts, and interest may be waived by the department.~~ The department may waive interest if waiver would facilitate the collection of the debt."

Section 23. Section 40-5-253, MCA, is amended to read:

"40-5-253. Administrative findings and order -- administrative remedies -- judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review, but that administrative remedies must be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review ~~shall~~ must be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the defendant's obligor's right to counsel during any and all judicial or administrative proceedings pursuant to this part."

Section 24. Section 40-5-254, MCA, is amended to read:

"40-5-254. Statutory limitations. Debts Support debts ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter

1 2."

2 **Section 25.** Section 40-5-255, MCA, is amended to read:

3 "40-5-255. Charging off child support debts as
4 uncollectible. (1) Any support debt due the department from
5 ~~a-responsible-parent-or-former-spouse~~ an obligor, which debt
6 the department determines uncollectible, may be transferred
7 from accounts receivable to a suspense account and cease to
8 be accounted as an asset. ~~In-the-event~~ If a warrant for
9 distraint has been filed and the support debt has
10 subsequently been charged off as uncollectible, the
11 department shall issue a release of lien.

12 (2) At any time after 6 years from the date a support
13 debt was incurred, the department may charge off as
14 uncollectible any support debt upon which the department
15 finds there is no available, practical, or lawful means by
16 which the support debt may be collected. No proceedings or
17 action under the provisions of this part may be begun after
18 expiration of the 6-year period to institute collection of a
19 support debt. Nothing herein may be construed to render
20 invalid or nonactionable a warrant for distraint filed with
21 the clerk of court prior to the expiration of the 6-year
22 period or an assignment of earnings executed prior to the
23 expiration of the 6-year period."

24 **Section 26.** Section 40-5-257, MCA, is amended to read:

25 "40-5-257. Assignment of earnings to be honored --

1 effect. (1) Any person, firm, corporation, association,
2 political subdivision, or department of the state employing
3 ~~a-person-owing-a-support-debt-or-obligation~~ an obligor shall
4 honor, according to its terms, a duly executed assignment of
5 earnings, whether executed voluntarily or pursuant to ~~court~~
6 a support order, presented by the department ~~as--a--plan--to~~
7 ~~satisfy--or--retire--a--support--debt--or--obligation~~. This
8 requirement to honor the assignment of earnings and the
9 assignment of earnings itself are applicable whether the
10 earnings are to be paid presently or in the future and
11 continue in force until released in writing by the
12 department.

13 (2) Payment of money pursuant to an assignment of
14 earnings presented by the department serves as full
15 acquittance under any contract of employment. The state
16 shall defend and hold harmless any action taken pursuant to
17 the assignment of earnings. The department ~~shall--be~~ is
18 released from liability for improper receipt of money under
19 an assignment of earnings upon return of any money so
20 received."

21 **NEW SECTION. Section 27.** Extension of authority. Any
22 existing authority to make rules on the subject of the
23 provisions of [this act] is extended to the provisions of
24 [this act].

25 **NEW SECTION. Section 28.** Severability. If a part of

SB 0042/02

1 [this act] is invalid, all valid parts that are severable
2 from the invalid part remain in effect. If a part of [this
3 act] is invalid in one or more of its applications, the part
4 remains in effect in all valid applications that are
5 severable from the invalid applications.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 42

3 Senate Taxation Committee

4
5 A statement of intent is required for Senate Bill No.
6 42 because it amends several sections within Title 40,
7 chapter 5, part 2, on child support enforcement services.
8 These amendments are proposed to bring state law into
9 compliance with federal law. The department of revenue is
10 granted an extension of authority to adopt rules in
11 accordance with this bill that conform with federal laws and
12 regulations.

13 The legislature intends that the department adopt rules
14 that:

15 (1) reduce aid to families with dependent children
16 (AFDC) expenditures by ensuring that the parent or other
17 person responsible pays for the care, support, or
18 maintenance of a child under the provisions of 40-5-202(1);

19 (2) ensure child enforcement services will continue to
20 be provided to families that cease to receive public
21 assistance under AFDC, without requiring an application or
22 payment of a fee;

23 (3) establish the terms and conditions of providing
24 continued services for families no longer receiving public
25 assistance; and

1 (4) establish procedures for the discontinuance of
2 child support services when the custodial parent:

3 (a) ceases or fails to cooperate with the department
4 as provided under 40-5-204; or

5 (b) takes an action to prejudice the rights of the
6 department under 40-5-202(4) and (5).

SENATE BILL NO. 42

INTRODUCED BY ECK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMINISTRATIVE ENFORCEMENT OF CHILD SUPPORT TO CONFORM THE LAWS TO FEDERAL REGULATIONS; PROVIDING AN AUTOMATIC EXTENSION OF SERVICES UPON TERMINATION OF PUBLIC ASSISTANCE; GRANTING EQUAL STATUS TO NONPUBLIC ASSISTANCE CASES; DECREASING THE RESPONSE TIMES FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR TEMPORARY SUPPORT ORDERS; AND AMENDING SECTIONS 40-5-201 THROUGH 40-5-208, 40-5-213, 40-5-221 THROUGH 40-5-226, 40-5-241 THROUGH 40-5-244, 40-5-246, 40-5-251 THROUGH 40-5-255, AND 40-5-257, MCA."

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

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

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

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

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) child support enforcement services are being provided by the department under 40-5-203; or

(d) a referral for interstate services is received by the department, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action request by a Title IV-D agency of another state.

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

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

~~(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.~~

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

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

1 ~~combined, including profit gained through sale or conversion~~
2 ~~of capital assets;~~

3 ~~{7}{4}~~ "Need" means the necessary costs of food,
4 clothing, shelter, and medical care for the support of a
5 dependent child or children.

6 ~~(5)~~ "Obligee" means:

7 ~~(a) a person to whom a duty of support is owed and who~~
8 ~~is receiving support enforcement services under this part;~~
9 ~~or~~

10 ~~(b) a public agency of this or another state having~~
11 ~~the right to receive current or accrued support payments.~~

12 ~~(6)~~ "Obligor" means a person, including an alleged
13 father, who owes a duty of support.

14 ~~(7)~~ "Parent" means the natural or adoptive parent of a
15 child.

16 ~~(8)~~ "Public assistance" means any type of monetary or
17 other assistance for a child, including medical and foster
18 care benefits, ~~furnished to a person by a state or county~~
19 ~~agency, regardless of the original source of the assistance.~~
20 ~~The term includes payments to meet the needs of a relative~~
21 ~~with whom the child is living, if assistance has been~~
22 ~~furnished with respect to the child by a state or county~~
23 ~~agency of this state or any other state.~~

24 ~~{9}--"Responsible parent" means the natural or adoptive~~
25 ~~parent of a dependent child;~~

1 ~~{10}{9}~~ "Support debt" or "support obligation" means
2 ~~the amount created by:~~

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

8 ~~(b) the sum created by a decree or order of any court~~
9 ~~of appropriate jurisdiction ordering a sum to be paid as~~
10 ~~spousal maintenance under chapter 47, part 27 of this title~~
11 ~~when a support order for spousal maintenance if the judgment~~
12 ~~or order requiring payment of maintenance also contains a~~
13 ~~judgment or order requiring payment of child support for a~~
14 ~~child of whom the person awarded maintenance is the~~
15 ~~custodial parent.~~

16 ~~(10)~~ "Support order" means an order providing a
17 ~~determinable amount for temporary or final periodic payment~~
18 ~~of funds for the support of a child, that is issued by:~~

19 ~~(a) a district court of this state;~~

20 ~~(b) a court of appropriate jurisdiction of another~~
21 ~~state;~~

22 ~~(c) an administrative agency pursuant to proceedings~~
23 ~~under this part; or~~

24 ~~(d) an administrative agency of another state with a~~
25 ~~hearing function and process similar to those of the~~

department under this part.

(11) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

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

"40-5-202. Department of revenue -- powers and duties regarding collection of support debt. (1) Whenever--the department--of--social--and--rehabilitation--services--or--the department--of--family--services--receives--an--application--for public--assistance--on--behalf--of--a--child--and--it--appears--to--the satisfaction--of--that--department--that--the--child--has--been abandoned--by--his--parents;--the--child--and--one--parent--have--been abandoned--by--the--other--parent;--or--the--parent--or--other--person who--has--a--responsibility--for--the--care;--support;--or maintenance--of--such--child--has--failed--or--neglected--to--give proper--care--or--support--to--the--child;--the--department--of social--and--rehabilitation--services--or--the--department--of family--services--shall--promptly--refer--the--matter--to--the department--of--revenue--for--action The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, or and other appropriate state and federal statutes of this state to insure ensure that the parent or other person responsible pays for the care, support, or maintenance of the dependent a child if

the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, if the department is providing child support enforcement services for a child under this part, the department shall become becomes trustee of any cause of action of the dependent child or the person having legal custody of the dependent child obligee to recover support due to that the child or obligee from any person the obligor. and The department may bring and maintain the action either in the department's its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child and

1 ~~representing support payments for children in whose behalf~~
2 ~~public assistance has been previously paid.~~

3 (4) For purposes of prosecuting any civil action
4 ~~pursuant to this part~~, the department is a real party in
5 ~~interest upon the payment of public assistance if it is~~
6 ~~providing child support enforcement services under this~~
7 ~~part~~. No obligee shall may act to prejudice the rights of
8 the department ~~after the receipt of public assistance while~~
9 ~~such services are being provided.~~

10 (5) No If child support enforcement services are being
11 or have been provided under this part, no agreement between
12 any obligee and any obligor either relieving an obligor of
13 any duty of support or purporting to settle past, present,
14 or future support obligations either as settlement or
15 prepayment may act to reduce or terminate any rights of the
16 department to recover from that the obligor for support debt
17 provided unless the department has consented to the
18 agreement in writing.

19 (6) The department may petition a court or an
20 administrative agency for modification of any court order on
21 the same basis as a party to that action ~~would have been is~~
22 entitled to do.

23 (7) The department ~~shall be is~~ subrogated to the right
24 of the child ~~or children or person having the care, custody,~~
25 ~~and control of the child or children~~ or obligee to maintain

1 any civil action or execute any administrative remedy
2 existing available under the laws of the this or any other
3 state to obtain reimbursement of money thus spent to collect
4 a support debt. This right of subrogation is in addition to
5 and independent of the assignment under 53-2-613 and the
6 support debt created by 40-5-221.

7 (8) ~~if a district court orders an amount of support to~~
8 ~~be paid by a responsible parent, the department shall be~~
9 ~~subrogated to the debt created by the order and the money~~
10 ~~judgment shall be determined to be in favor of the~~
11 ~~department. This subrogation applies both to:~~

12 (a) ~~the lesser of the amount paid by the department of~~
13 ~~social and rehabilitation services or the department of~~
14 ~~family services in public assistance to or for the benefit~~
15 ~~of a dependent child or children of the responsible parent~~
16 ~~or the amount of support contained in the court order; and~~

17 (b) ~~to any amount allocated to the benefit of the~~
18 ~~children on the basis of providing necessities for the~~
19 ~~caretaker of the children. If public assistance is being or~~
20 ~~has been paid, the department is subrogated to the debt~~
21 ~~created by a support order and any money judgment is~~
22 ~~considered to be in favor of the department. This~~
23 ~~subrogation is an addition to any assignment made under~~
24 53-2-613 and applies to the lesser of:

25 (a) the amount of public assistance paid; or

1 (b) the amount due under the support order.

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

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

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

10 **"40-5-203. Support Child support enforcement services.**

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

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

23 (3) The department may not charge the applicant a fee
24 as compensation for services rendered in establishment of or
25 enforcement of support obligations. However, the department

1 may charge a fee to the person--from--whom--the--support--is
2 being-collected obligor. This fee must be in addition to the
3 support payment. The department shall by rule establish
4 reasonable fees commensurate with the cost of enforcement
5 support services to be paid by the person-from-whom-the
6 support-is--being--collected obligor. When payments are
7 scheduled to be paid on an installment basis, a portion of
8 the collection fee owed to the department shall be added to
9 each payment. If the person-from-whom-the-support-is-being
10 collected obligor makes a payment in an amount that is less
11 than the support payment plus the collection fee for that
12 payment, the department may deduct a percentage of the total
13 sum collected which represents the department's standard
14 proportion. The department may, upon a showing of
15 necessity, waive or defer any such fee.

16 (4) If child support enforcement services are provided
17 under this part to or for a child as a result of the payment
18 of public assistance, the department shall MAY continue to
19 provide services after public assistance is no longer being
20 paid, without requiring an application. An obligee's
21 acceptance of continued services constitutes the obligee's
22 agreement to the terms and conditions set for applicants by
23 the department under this section.

24 (5) The department may terminate services under this
25 section only if it:

1 (a) receives a written request from the obligee for
2 termination of services;

3 (b) receives notice that the child is receiving public
4 assistance; or

5 (c) determines that an obligee has violated any term
6 or condition set by the department for an applicant under
7 this section."

8 **Section 4.** Section 40-5-204, MCA, is amended to read:

9 **"40-5-204.** Cooperation by person--having--custody--of
10 child obligee. Any--person--having--the--care, custody, or
11 control--of--any--dependent--child--or--children--shall--cooperate
12 with--the--department--in--establishing--the--paternity--of--such
13 child--and--obtaining--support--payments. An obligee shall
14 cooperate with the department in:

15 (1) identifying and locating the obligor;

16 (2) establishing the paternity of a child;

17 (3) obtaining support or any other payments due the
18 obligee and child; and

19 (4) obtaining reimbursement for previously paid public
20 assistance, if any."

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

22 **"40-5-205.** Payment of support money collected to
23 support enforcement and collections unit -- notice. If
24 written--notice--by--the--department--is--given the department
25 gives written notice to the responsible person--or obligor,

1 to the clerk of the court, if--appropriate, or to an
2 administrative agency that issued a support order, that the
3 children child for whom a support obligation order exists
4 are is receiving public--assistance services from the
5 department, then any support money paid-by-the-person-or
6 persons-responsible-for-support-as-a-result--of--any--action
7 shall--be--paid--through--the--support--enforcement--and
8 collections-unit-of-the-department-of-revenue must be paid
9 to the department."

10 **Section 6.** Section 40-5-206, MCA, is amended to read:

11 **"40-5-206.** Central unit for information and
12 administration -- cooperation enjoined -- availability of
13 records. (1) The department shall establish a central unit
14 to serve as a registry for the receipt of information, for
15 answering interstate inquiries concerning deserting parents,
16 to coordinate and supervise departmental activities in
17 relation to deserting parents, and to assure effective
18 cooperation with law enforcement agencies.

19 (2) To-effectuate-the-purposes-of--this--section,--the
20 director--may-request-from-state, county, and local agencies
21 all-information-and-assistance-as-authorized-by--this--part:
22 All--state,--county,--and--city--agencies,--officers,--and
23 employees-shall-cooperate-in-the--location--of--parents--who
24 have--abandoned--or--deserted--or--are--failing--to--support
25 children-receiving-public-assistance-and-shall-on-request

supply the department with all information available relative to the location, income, and property of the parents. If services are provided to a child under this part, the department may request and all state, county, and city agencies, officers, and employees must provide on request any information concerning the location, income, and assets of an obligor.

(3) Except as provided in 31-3-127, any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act."

Section 7. Section 40-5-207, MCA, is amended to read:

"40-5-207. Department authorized to enforce maintenance awards. When If a judgment or order creating a child support obligation also contains a judgment or order for the support of a spouse or former spouse and the former spouse who is the custodial parent of the child, the department may collect and enforce spousal support under this part."

Section 8. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support obligation enforcement. (1)

In ~~all proceedings~~ any proceeding initiated pursuant to this part, the department shall require ~~parents obligated to pay child support~~ the obligor to secure and maintain health insurance coverage for each dependent child, at a cost not to exceed 5% of net income, whenever such health insurance is available through ~~their~~ the obligor's employment. However, if a ~~court of competent jurisdiction has entered an support order establishing a current support obligation and has ordered the obligated parent to secure and maintain health insurance coverage for each dependent child, has been entered that also orders the obligor to secure and maintain health insurance coverage for the child,~~ the department shall enforce the obligation as ordered ~~by the court.~~

(2) If the department determines that an obligated parent obligor has failed to maintain health insurance coverage required by the a support order ~~of a court of competent jurisdiction or an administrative agency empowered to enter such order,~~ it may issue a notice commanding the parent obligor to appear at a hearing held by the department and show cause why a sum of not more than \$100 should not be assessed for each month health insurance coverage is not secured or maintained. If the department finds, after hearing or the obligor's failure to appear, that the obligor has not secured or maintained health insurance coverage ~~has not been secured or maintained~~ in accordance with the court

1 ~~or--administrative~~ support order, the department may assess
2 against the ~~obligated-parent~~ obligor not more than \$100 for
3 each month health insurance coverage has not been secured or
4 maintained. Such amounts may be enforced by warrant for
5 distraint provided for in 40-5-241.

6 (3) ~~Whenever-an-obligated-parent~~ If an obligor who has
7 been served with notice under this section appears before
8 the department and shows that health insurance coverage in
9 accordance with the ~~court-or-administrative~~ support order:

10 (a) has been secured and maintained continuously since
11 the date of the order, the department shall dismiss the
12 pending action; or

13 (b) has not been secured or continuously maintained
14 but such coverage is presently in effect, the department
15 shall suspend the pending action for a period of 12 months.

16 (4) At the end of the suspension period, the
17 department may schedule a hearing. If at this hearing the
18 department finds that during the suspension period health
19 insurance coverage:

20 (a) has been continuously maintained, the department
21 shall dismiss the pending action and the ~~obligated-parent~~
22 obligor will not be assessed under this section; or

23 (b) has not been continuously maintained, the
24 department may enter a final order requiring the ~~obligated~~
25 parent obligor to pay the sum assessed in accordance with

1 this section for each month coverage was not maintained.

2 (5) Any amounts collected pursuant to this section
3 must be returned to the general fund to help offset
4 expenditures for medicaid."

5 **Section 9.** Section 40-5-213, MCA, is amended to read:

6 "40-5-213. Financial statements by parent---whose
7 absence--is--basis--of--application--for--public--assistance
8 obligor -- penalty. (1) Any--parent--in--the--state--whose
9 absence--is--the--basis--upon--which--an--application--is--filed--for
10 public--assistance--on--behalf--of--a--child--shall If the
11 department is providing child support enforcement services
12 under this part and has reasonable cause to believe that a
13 support obligation is owed, an obligor, upon written
14 request, shall complete a statement, under oath, stating the
15 obligor's:

16 (a) of-his current monthly income;_;

17 (b) his total income over the past 36 months;_;

18 (c) the number of dependents for whom he the obligor
19 is providing support;_;

20 (d) the amount he the obligor is contributing
21 regularly toward the support of all--children--for--whom
22 application--for--such--assistance--is--made, a child for whom
23 the department is providing services;

24 (e) his current monthly living expenses;_; and

25 (f) all other information pertinent to determining-his

~~ability to support his children. The statement shall be provided upon a demand made by the department, if assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance the obligor's financial condition.~~

(2) The department may require additional financial statements from the obligor during the period the department is providing services to the child.

~~{2}{3}~~ Failure to comply with this section is a misdemeanor."

Section 10. Section 40-5-221, MCA, is amended to read:

"40-5-221. Debt to state by ~~natural or adoptive~~ parents obligor -- limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of ~~any dependent child or children~~ a child creates a debt due and owing the state of Montana by the ~~responsible parent or parents~~ obligor in an amount equal to the amount of public assistance money so paid. In the case of an obligor who is an adoptive parent or parents, no a debt for public assistance paid may not accrue prior to the date of adoption.

(2) ~~Where there has been a district court order established, the debt shall be limited to the amount provided for by the order.~~ If a support order has been

entered, the support debt created by this section may not exceed the amount of the order.

(3) ~~Where~~ If a child has been placed in foster care, and a written agreement for payment of support ~~has been entered into by the responsible parent or parents~~ exists between the obligor and any state agency, the support debt ~~shall be~~ is limited to the amount provided for in the agreement. However, if a court support order ~~for support~~ is or has been entered, the provisions of the order ~~shall~~ prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

(5) The department may establish and collect a debt created under this section in a proceeding that is in addition to and independent of the subrogation created by 40-5-202(7) and the assignment under 53-2-613.

Section 11. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation ~~to or assignment of judgment~~ support order -- notice -- content contents -- action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation ~~to or assignment of the judgment created by a district court~~ a support order. The notice may be served

1 upon the debtor obligor in the manner prescribed for the
 2 service of a summons in a civil action in accordance with
 3 the provisions of the Montana Rules of Civil Procedure,
 4 demanding payment within ~~30~~ 20 days of the date of receipt.

5 (2) The notice of debt shall include:

6 (a) a statement of the support debt accrued or
 7 accruing, computable on the amount required to be paid under
 8 ~~any district-court support order to which the department--is~~
 9 ~~subrogated-or-has-an-assigned-interest;~~

10 (b) a statement that the property of the debtor is
 11 subject to collection action;

12 (c) a statement that the property is subject to
 13 distraint and seizure and sale;

14 (d) a statement that the net proceeds will be applied
 15 to the satisfaction of the support debt; and

16 (e) a statement that the debtor obligor is entitled to
 17 a fair hearing.

18 (3) Action to collect the ~~subrogated--or--assigned~~
 19 support debt by distraint and seizure and sale ~~shall-be is~~
 20 lawful after ~~30~~ 20 days from the date of service upon the
 21 debtor obligor or ~~30~~ 20 days from the receipt or refusal by
 22 the debtor of the notice of debt.

23 (4) Within 20 days of the date of service of notice of
 24 support debt, the debtor obligor may request a fair hearing
 25 as provided in 40-5-226."

1 **Section 12.** Section 40-5-223, MCA, is amended to read:

2 **"40-5-223. Notice of support liability based upon**
 3 **payment of public assistance -- notice -- contents --**
 4 **collection warrant -- fair hearing.** (1) In the absence of a
 5 district court order the department may issue a notice of a
 6 support liability accrued or accruing based upon payment of
 7 public assistance to or for the benefit of ~~any--dependent~~
 8 ~~child--or--children~~ a child. The notice of liability ~~shall~~
 9 must be served upon the ~~responsible-parent~~ obligor in the
 10 manner prescribed for the service of summons in a civil
 11 action, in accordance with the provisions of the Montana
 12 Rules of Civil Procedure.

13 (2) The notice of liability shall include:

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

17 (b) a statement of the amount of the monthly public
 18 assistance payment;

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

22 (d) a demand for immediate payment of the support debt
 23 or, in the alternative, a demand that the ~~responsible-parent~~
 24 obligor make answer within ~~30~~ 20 days of the date of service
 25 to the department stating defenses to liability under

1 40-5-221;

2 (e) a statement that if no answer is made on or before
3 ~~30~~ 20 days from the date of the service the support debt
4 ~~shall~~ must be assessed and determined subject to computation
5 and is subject to collection action;

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

9 (3) If no answer is had by the department to the
10 notice of liability on or before ~~30~~ 20 days of the date of
11 service, the support debt ~~shall~~ must be assessed and
12 determined subject to the computation and the department may
13 issue a warrant for distraint authorizing a collection
14 action under this part.

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

24 **Section 13.** Section 40-5-224, MCA, is amended to read:

25 "40-5-224. Finding of support liability based upon

1 payment of public assistance -- warrant for distraint --
2 bond to release warrant -- action to collect. (1) If the
3 department reasonably believes that the parent obligor is
4 not a resident of this state or is about to move from this
5 state or has concealed himself, absconded, absented himself
6 or has removed or is about to remove, secrete, waste, or
7 otherwise dispose of property which could be made subject to
8 collection action to satisfy the support debt, the
9 department may issue a warrant for distraint pursuant to
10 40-5-241 during the pendency of the fair hearing or
11 thereafter, whether or not appealed. No further action may
12 be taken on the warrant until final determination after fair
13 hearing ~~and/or or~~ appeal. The department ~~shall in-such-cases~~
14 make and file in the record of the fair hearing an affidavit
15 stating the reasons upon which the belief is founded. The
16 ~~responsible-parent~~ obligor may furnish a bond, not to exceed
17 the amount of the support debt, during pendency of the
18 hearing or thereafter, and in such case warrants issued
19 ~~shall~~ must be released. If the decision resulting from the
20 hearing is in favor of the ~~responsible-parent~~ obligor, all
21 warrants issued ~~shall~~ must be released.

22 (2) The department may commence action under the
23 provisions of this part to collect the support debt on the
24 date of issuance of the decision resulting from the
25 hearing."

Section 14. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice and finding of financial responsibility of responsible parent -- temporary and final support obligations -- administrative procedure. (1) (a) in lieu of the procedures provided in 40-5-223 and 40-5-224, the In the absence of a support order, the department may, in the absence of a district court order, serve on the responsible parent an obligor with a notice and finding of financial responsibility alleging a child's need for support and the amount of the need and requiring a responsible parent the obligor to appear and show cause at a hearing held by the department why the finding of liability and the amount of support liability should not be finally ordered obligor should not be finally ordered to pay the amount alleged in the notice. This notice and finding shall relate to the support debt accrued or accruing under this part and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to this part and the rules of the department, which shall provide for a fair hearing.

(b) The notice must state:

(i) the names of the obligee and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;

(iv) that the obligor is entitled to a fair hearing under 40-5-226.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 30 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision. If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's

1 monthly support responsibility must be based on the greater
2 of:

3 (a) the amount of public assistance payable under
4 Title 53, chapter 4; or

5 (b) the alleged need.

6 (3) The notice and finding of financial responsibility
7 shall include:

8 (a) the amount the department has determined the
9 responsible parent owes, the support debt accrued or
10 accruing, and, as appropriate, the amount to be paid thereon
11 each month, all computable on the basis of the amount of the
12 monthly public assistance payment previously paid or need
13 alleged and the ability of the responsible parent to pay all
14 or any portion of the debt;

15 (b) a statement of the name of the recipient or
16 custodian and the name of any child for whom assistance is
17 being paid or need is alleged; or a statement of the amount
18 of periodic future support payments for which financial
19 responsibility is found;

20 (c) a statement that the responsible parent may object
21 to all or any part of the notice and finding and request a
22 hearing to show cause why he should not be determined to be
23 liable for any or all of the past and future debt determined
24 and the amount to be paid thereon;

25 (d) a statement that if the responsible parent fails

1 to request a hearing, the support debt and payments stated
2 in the notice and finding, including periodic support
3 payments in the future, shall be assessed, determined, and
4 ordered by the department and that this debt is subject to
5 collection action;

6 (e) a statement that the property of the debtor,
7 without further advance notice or hearing, will be subject
8 to distraint and seizure and sale to satisfy the debt. If
9 the obligor objects to the notice, the obligor shall file a
10 written answer with the department within 20 days from the
11 date of service or refusal of service. If the department
12 receives a timely answer, it shall conduct a fair hearing
13 under 40-5-226. If the department does not receive a timely
14 answer, it shall order the obligor to pay the amount stated
15 in the notice.

16 (4) (a) If a support action is pending in district
17 court and a temporary or permanent support obligation has
18 not been ordered, the department may issue to the obligor a
19 notice of temporary support obligation.

20 (b) The notice must contain:

21 (i) the names of the child and the person or agency
22 having the custodial care of the child;

23 (ii) an amount for temporary monthly support determined
24 as provided in subsection (2);

25 (iii) a statement that the obligor may request a

1 hearing at which the obligor may show that a different
 2 support amount is appropriate or that establishment of a
 3 support obligation is inappropriate under the circumstances.
 4 The hearing must be conducted in accordance with the
 5 procedures of 40-5-226.

6 (iv) a statement that a hearing must be requested in
 7 writing within 10 days of receipt of the notice or the order
 8 for a temporary support order will be entered in the amount
 9 stated in the notice; and

10 (v) a statement that the temporary support order will
 11 terminate upon the entry of a district court support order.
 12 If the district court order is retroactive, any amount paid
 13 for a particular period under the temporary support order
 14 must be credited against the amounts due under the district
 15 court order for the same period, but excess amounts may not
 16 be refunded. If the district court determines that a
 17 periodic support obligation is not proper, any amount paid
 18 under the temporary support order must be refunded to the
 19 obligor.

20 (5) (a) If a temporary support order is entered or if
 21 proceedings are commenced under this section for a married
 22 obligor, the department shall vacate any support order or
 23 dismiss any proceeding under this part if it finds that the
 24 parties to the marriage have:

25 (i) reconciled without the marriage having been

1 dissolved;

2 (ii) made joint application to the department to vacate
 3 the order or dismiss the proceeding; and

4 (iii) provided proof that the marriage has been
 5 resumed.

6 (b) The department may not vacate a support order or
 7 dismiss a proceeding under this subsection (5) if it
 8 determines that the rights of a third person or the child
 9 are affected. The department may issue a new notice under
 10 this section if the parties subsequently separate.

11 (6) Any notice of financial responsibility and the
 12 notice of temporary support obligation must be served in the
 13 same manner prescribed for the service of a summons in civil
 14 action in accordance with the Montana Rules of Civil
 15 Procedure."

16 **Section 15.** Section 40-5-226, MCA, is amended to read:
 17 "40-5-226. Administrative hearing -- nature -- place
 18 -- time -- determinations -- failure to appear -- entry of
 19 findings final decision and order. (1) The administrative
 20 hearing is defined as a "contested case".

21 (2) The At the discretion of the hearing officer, the
 22 administrative hearing may be held:

23 (a) in the county of residence or other county
 24 convenient to the responsible parent obligor or obligee; or

25 (b) in the county in which the department or any of

1 its offices are located.

2 (3) If a hearing is requested, it shall must be
3 scheduled within 30 20 days.

4 (4) The hearing officer shall determine the liability
5 and responsibility, if any, of the alleged-responsible
6 parent obligor under 40-5-221 and shall also determine the
7 amount-of-periodic-payments-to-be-made-to-satisfy-past,
8 present, or future liability under 40-5-221, in making these
9 determinations, the hearing officer shall include in his
10 consideration the scale of suggested minimum contributions
11 adopted under 40-5-214 the notice and shall enter a final
12 decision and order in accordance with such determination.

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

24 (6) In a hearing to determine financial
25 responsibility, the monthly support responsibility must be

1 determined in accordance with the evidence presented and
2 with reference to the scale of suggested minimum
3 contributions under 40-5-214. The hearing officer is not
4 limited to the amounts stated in the notice.

5 {6}{7} Within 20 days of the hearing, The the hearing
6 officer shall, within 20 days of the hearing, enter
7 findings, conclusions, and a final decision determining
8 liability and responsibility and/or future periodic support
9 payments a final decision and order. The determination of the
10 hearing officer entered pursuant to this section shall be
11 entered as an order unless such findings are set aside
12 pursuant to 40-5-253 and shall limit the support debt under
13 40-5-221 to the amounts stated in the decision constitutes a
14 final agency decision, subject to judicial review under
15 40-5-253 and the provisions of the Montana Administrative
16 Procedure Act.

17 {7}{8} The decision establishing liability and future
18 periodic support payments is superseded upon entry of a
19 district court order for support to the extent the district
20 court order is inconsistent with the hearing order or
21 decision. In the absence of a district court order the
22 responsible parent may petition the department for issuance
23 of an order to appear and show cause based on a showing of
24 good cause and material change of circumstances to require
25 the other party to appear and show cause why the decision

1 previously-entered-should-not-be-prospectively-modified--The
 2 order--to--appear-and-show-cause-together-with-a-copy-of-the
 3 affidavit-upon-which-the-order-is-based-shall-be--served--by
 4 the--petitioning--party-on-the-nonmoving-party-in-the-manner
 5 of-a-summons-in-a-civil-action--A-hearing-shall-be-set If a
 6 support order is established under this part, any party may
 7 file a verified petition with the department alleging facts
 8 constituting a material change of circumstances. Upon the
 9 filing of such petition, the department shall issue an order
 10 to the nonpetitioning party to appear and show cause why the
 11 decision previously entered should not be prospectively
 12 modified. The order to appear and show cause, together with
 13 a copy of the verified petition, must be served by the
 14 petitioner upon all other parties in the manner provided by
 15 this part. Upon receipt of proof of service, the department
 16 shall schedule a hearing not less than 15 or more than 30
 17 days from the date of service, unless extended for good
 18 cause shown. Prospective modification may be ordered but
 19 only upon a showing of good cause and material change of
 20 circumstances.

21 (8)--The--department--in--its-original-determinations,
 22 and-the-hearing-officer--in-making-determinations--based--on
 23 objections--to--original--determinations--or-on-petitions-to
 24 modify--shall--consider--the--standards---promulgated---for
 25 determination-of-support-payments-used-by-the-district-court

1 of-the-county-of-residence-of-the-responsible-parent.

2 (9) Bebts A support debt determined pursuant to this
 3 section, accrued and not paid, are is subject to collection
 4 action under--this part without further necessity of action
 5 by the hearing officer.

6 (10) A support debt or a support responsibility
 7 determined under this part by reason of the obligor's
 8 failure to request a hearing under this part or failure to
 9 appear at a scheduled hearing may be vacated, upon the
 10 motion of an obligor, by the hearing officer within the time
 11 provided and upon a showing of any of the grounds enumerated
 12 in the Montana Rules of Civil Procedure."

13 **Section 16.** Section 40-5-241, MCA, is amended to read:

14 "40-5-241. Warrant for distraint. (1) Thirty-one
 15 Twenty-one days after receipt or refusal of a notice of a
 16 support debt under provisions of 40-5-222 or 31 21 days
 17 after service of notice of a support debt or as otherwise
 18 appropriate under the provisions of 40-5-223 and 40-5-224,
 19 the department may issue a warrant for distraint based on
 20 the amount of the support debt.

21 (2) The warrant is subject to the provisions of this
 22 part and the provisions of 15-1-701, 15-1-704, 15-1-708, and
 23 15-1-709, with references to "tax" taken to mean "support
 24 debt" and references to "taxpayer" taken to mean "person
 25 owing--the--support-debt"--as-well-as-the-provisions-of-this

1 part "obligor".

2 **Section 17.** Section 40-5-242, MCA, is amended to read:

3 "40-5-242. Civil liability upon failure to comply with
4 warrant or to honor assignment of wages. Should any person,
5 firm, corporation, association, political subdivision, or
6 department of the state fail or refuse to deliver property
7 pursuant to the order, or after actual notice of filing of a
8 support lien, pay over, release, sell, transfer, or convey
9 real or personal property subject to a support lien to or
10 for the benefit of the debtor or any other person, or fail
11 or refuse to surrender upon demand property distrained under
12 40-5-241 or fail or refuse to honor an assignment of wages
13 presented by the department, the A person, firm,
14 corporation, association, political subdivision, or
15 department of the state is liable to the department in an
16 amount equal to 100% of the value of the support debt which
17 that is the basis of the distraint or assignment of wages or
18 the value of the distrained property, whichever is less,
19 together with costs, interest, and reasonable attorney fees,
20 if the person or entity:

21 (1) fails or refuses to deliver property pursuant to
22 the order;

23 (2) pays over, releases, sells, transfers, or conveys
24 real or personal property subject to a support lien, to or
25 for the benefit of the obligor, after the person or entity

1 receives actual notice of filing of the support lien;

2 (3) fails or refuses to surrender upon demand property
3 distrained under 40-5-241; or

4 (4) fails or refuses to honor an assignment of wages
5 presented by the department."

6 **Section 18.** Section 40-5-243, MCA, is amended to read:

7 "40-5-243. Release of excess to debtor obligor.
8 Whenever if any person, firm, corporation, association,
9 political subdivision, or department of the state has in its
10 possession earnings, deposits, accounts, or balances in
11 excess of the amount of the debt claimed by the department
12 plus \$100, that person, firm, corporation, association,
13 political subdivision, or department of the state or entity
14 may, without liability under this part, release the excess
15 to the debtor obligor without liability under this part."

16 **Section 19.** Section 40-5-244, MCA, is amended to read:

17 "40-5-244. Banks and savings and loan associations --
18 service effective only as to branch office served. In the
19 case of a bank, bank association, mutual savings bank, or
20 savings and loan association maintaining branch offices,
21 service of any notice or document authorized by this part is
22 only effective as to the accounts, credits, or other
23 personal property of the debtor obligor in the particular
24 branch upon which service is made."

25 **Section 20.** Section 40-5-246, MCA, is amended to read:

1 **"40-5-246. Release of distraint and return of seized**
 2 **property -- effect. The** At any time, the department may at
 3 **any-time** release a distraint on all or part of the property
 4 of the debtor obligor or order the return of seized property
 5 without liability, if assurance of payment is determined to
 6 be adequate by the department or if the action will
 7 facilitate the collection of the debt. The release or return
 8 does not operate to prevent future action to collect from
 9 the same or other property."

10 **Section 21.** Section 40-5-251, MCA, is amended to read:

11 **"40-5-251. Debt payment schedule. The** At any time
 12 after notice to the obligor, the department may at-any-time
 13 after-notice-to-the-debtor set or reset a level and schedule
 14 of payments to be paid upon the debt consistent with the
 15 income, earning capacity, and resources of the debtor
 16 obligor."

17 **Section 22.** Section 40-5-252, MCA, is amended to read:

18 **"40-5-252. Interest on debts due -- waiver. (1)**
 19 **interest** The department may collect interest on any support
 20 debt due and owing to the department it at the statutory
 21 interest rate payable on judgments recovered in the courts
 22 of this state under ~~40-5-221~~ may be collected by the
 23 department.

24 (2) No provision of this part may be construed to
 25 require the department to maintain interest balance due

1 accounts, and interest may be waived by the department, The
 2 department may waive interest if waiver would facilitate the
 3 collection of the debt."

4 **Section 23.** Section 40-5-253, MCA, is amended to read:

5 **"40-5-253. Administrative findings and order --**
 6 administrative remedies -- judicial review. (1) It is the
 7 intent of this part that administrative findings and orders
 8 be subject to judicial review, but ~~that~~ administrative
 9 remedies must be exhausted prior to judicial review. The
 10 administrative procedures described in this part are subject
 11 to review in the appropriate district court. Such review
 12 shall must be conducted pursuant to the Montana
 13 Administrative Procedure Act. Upon a showing by the
 14 department that administrative remedies have not been
 15 exhausted, the district court shall refuse review until such
 16 remedies are exhausted.

17 (2) Nothing in this part may be construed to abridge
 18 or in any way affect the ~~defendant's~~ obligor's right to
 19 counsel during any and all judicial or administrative
 20 proceedings pursuant to this part."

21 **Section 24.** Section 40-5-254, MCA, is amended to read:

22 **"40-5-254. Statutory limitations. Debts Support debts**
 23 **ensuing as a result of determinations made through the**
 24 **administrative procedures described in this part are subject**
 25 **to statutory limitations as set forth in Title 27, chapter**

1 2."

2 **Section 25.** Section 40-5-255, MCA, is amended to read:

3 ***40-5-255. Charging off child support debts as**
 4 **uncollectible. (1)** Any support debt due the department from
 5 **a-responsible-parent-or-former-spouse an obligor,** which debt
 6 the department determines uncollectible, may be transferred
 7 from accounts receivable to a suspense account and cease to
 8 be accounted as an asset. ~~in-the-event~~ **If** a warrant for
 9 distraint has been filed and the support debt has
 10 subsequently been charged off as uncollectible, the
 11 department shall issue a release of lien.

12 **(2)** At any time after 6 years from the date a support
 13 debt was incurred, the department may charge off as
 14 uncollectible any support debt upon which the department
 15 finds there is no available, practical, or lawful means by
 16 which the support debt may be collected. No proceedings or
 17 action under the provisions of this part may be begun after
 18 expiration of the 6-year period to institute collection of a
 19 support debt. Nothing herein may be construed to render
 20 invalid or nonactionable a warrant for distraint filed with
 21 the clerk of court prior to the expiration of the 6-year
 22 period or an assignment of earnings executed prior to the
 23 expiration of the 6-year period."

24 **Section 26.** Section 40-5-257, MCA, is amended to read:

25 ***40-5-257. Assignment of earnings to be honored --**

1 effect. **(1)** Any person, firm, corporation, association,
 2 political subdivision, or department of the state employing
 3 ~~a-person-owing-a-support-debt-or-obligation~~ an obligor shall
 4 honor, according to its terms, a duly executed assignment of
 5 earnings, whether executed voluntarily or pursuant to court
 6 a support order, presented by the department ~~as--a-plan--to~~
 7 ~~satisfy--or--retire--a--support--debt--or--obligation.~~ This
 8 requirement to honor the assignment of earnings and the
 9 assignment of earnings itself are applicable whether the
 10 earnings are to be paid presently or in the future and
 11 continue in force until released in writing by the
 12 department.

13 **(2)** Payment of money pursuant to an assignment of
 14 earnings presented by the department serves as full
 15 acquittance under any contract of employment. The state
 16 shall defend and hold harmless any action taken pursuant to
 17 the assignment of earnings. The department ~~shall--be~~ is
 18 released from liability for improper receipt of money under
 19 an assignment of earnings upon return of any money so
 20 received."

21 **NEW SECTION. Section 27. Extension of authority.** Any
 22 existing authority to make rules on the subject of the
 23 provisions of [this act] is extended to the provisions of
 24 [this act].

25 **NEW SECTION. Section 28. Severability.** If a part of

SB 0042/02

1 [this act] is invalid, all valid parts that are severable
2 from the invalid part remain in effect. If a part of [this
3 act] is invalid in one or more of its applications, the part
4 remains in effect in all valid applications that are
5 severable from the invalid applications.

-End-

STANDING COMMITTEE REPORT

March 10, 1989
Page 2 of 2

March 10, 1989
Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 42 (third reading copy -- blue), with statement of
intent attached, be concurred in as amended.

Signed: Kelly Addy
Kelly Addy, Vice-Chairman

[REP. DARKO WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 12.
Following: "SECTIONS"
Insert: "40-4-208,"

2. Page 1, line 16.
Insert: Statement of Intent attached to the bill.

3. Page 1, line 19 of Statement of Intent.
Following: "child"
Insert: "support"

4. Page 2, line 2 of Statement of Intent.
Following: "support"
Insert: "enforcement"

5. Page 38, line 21.
Following: line 20

Insert: "Section 27. 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 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; or
(iii) upon application by the department of
revenue, whenever the department of revenue is

providing services under Title IV-B of the federal
Social Security Act. The support obligation must be
modified, as appropriate, in accordance with the
guidelines promulgated under [section 3 of Senate Bill
No. 129]. A modification under this subsection may not
be made within 12 months after the establishment of the
order or the most recent modification.

(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

6. Page 38, line 25.
Following: line 24

Insert: "NEW SECTION. SECTION 29. Coordination instruction. If
[section 3 of Senate Bill No. 129] is not passed and
approved, [section 27 of this act] is void."

Renumber: subsequent section

561537SC.HBV

HOUSE
561537SC.HBV
SB 1/2

1 SENATE BILL NO. 42

2 INTRODUCED BY ECK

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO THE ADMINISTRATIVE ENFORCEMENT OF CHILD
7 SUPPORT TO CONFORM THE LAWS TO FEDERAL REGULATIONS;
8 PROVIDING AN AUTOMATIC EXTENSION OF SERVICES UPON
9 TERMINATION OF PUBLIC ASSISTANCE; GRANTING EQUAL STATUS TO
10 NONPUBLIC ASSISTANCE CASES; DECREASING THE RESPONSE TIMES
11 FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR TEMPORARY
12 SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-208, 40-5-201
13 THROUGH 40-5-208, 40-5-213, 40-5-221 THROUGH 40-5-226,
14 40-5-241 THROUGH 40-5-244, 40-5-246, 40-5-251 THROUGH
15 40-5-255, AND 40-5-257, MCA."

17 STATEMENT OF INTENT

18 A statement of intent is required for Senate Bill No.
19 42 because it amends several sections within Title 40,
20 chapter 5, part 2, on child support enforcement services.
21 These amendments are proposed to bring state law into
22 compliance with federal law. The department of revenue is
23 granted an extension of authority to adopt rules in
24 accordance with this bill that conform with federal laws and
25 regulations.

1 The legislature intends that the department adopt rules
2 that:

3 (1) reduce aid to families with dependent children
4 (AFDC) expenditures by ensuring that the parent or other
5 person responsible pays for the care, support, or
6 maintenance of a child under the provisions of 40-5-202(1);

7 (2) ensure child SUPPORT enforcement services will
8 continue to be provided to families that cease to receive
9 public assistance under AFDC, without requiring an
10 application or payment of a fee;

11 (3) establish the terms and conditions of providing
12 continued services for families no longer receiving public
13 assistance; and

14 (4) establish procedures for the discontinuance of
15 child support ENFORCEMENT services when the custodial
16 parent:

17 (a) ceases or fails to cooperate with the department
18 as provided under 40-5-204; or

19 (b) takes an action to prejudice the rights of the
20 department under 40-5-202(4) and (5).

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

24 "40-5-201. Definitions. As used in this part, the
25 following definitions apply:

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

- 5 (a) support rights are assigned under 53-2-613;
6 (b) a public assistance payment has been made;
7 (c) child support enforcement services are being
8 provided by the department under 40-5-203; or
9 (d) a referral for interstate services is received by
10 the department, whether under the Revised Uniform Reciprocal
11 Enforcement of Support Act or an interstate action request
12 by a Title IV-D agency of another state.

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

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

16 (4) "Disposable--earnings"--means--that--part--of--the
17 earnings--of--any--individual--remaining--after--the--deduction
18 from--those--earnings--of--any--amount--required--by--law--to--be
19 withheld;

20 (5) "District-court-order"--means--any--judgment--or--order
21 of--the--district--court--of--the--state--of--Montana--or--an--order--of
22 a--court--of--appropriate--jurisdiction--of--another--state
23 ordering--payment--of--a--set--or--determinable--amount--of--support
24 money;

25 (6) "Earnings"--means--compensation--paid--or--payable--for

1 personal--services;--whether--denominated--as--wages;--salary;
2 commission;--bonus;--or--otherwise;--and--specifically--includes
3 periodic--payments--under--pension--or--retirement--programs--or
4 insurance--policies--of--any--type;--"Earnings"--specifically
5 includes--all--gain--derived--from--capital;--labor;--or--both
6 combined;--including--profit--gained--through--sale--or--conversion
7 of--capital--assets;

8 (7) (4) "Need" means the necessary costs of food,
9 clothing, shelter, and medical care for the support of a
10 dependent child or children.

11 (5) "Obligee" means:

12 (a) a person to whom a duty of support is owed and who
13 is receiving support enforcement services under this part;
14 or

15 (b) a public agency of this or another state having
16 the right to receive current or accrued support payments.

17 (6) "Obligor" means a person, including an alleged
18 father, who owes a duty of support.

19 (7) "Parent" means the natural or adoptive parent of a
20 child.

21 (8) "Public assistance" means any type of monetary or
22 other assistance for a child, including medical and foster
23 care benefits;--furnished--to--a--person--by--a--state--or--county
24 agency;--regardless--of--the--original--source--of--the--assistance.
25 The term includes payments to meet the needs of a relative

1 with whom the child is living, if assistance has been
 2 furnished with respect to the child by a state or county
 3 agency of this state or any other state.

4 ~~{9}--"Responsible parent"--means the natural or adoptive~~
 5 ~~parent of a dependent child.~~

6 ~~{10}(9)~~ "Support debt" or "support obligation" means
 7 the amount created by:

8 (a) ~~the sum created by~~ the failure to provide support
 9 to a dependent child under the laws of this or any other
 10 state or ~~the decree of any court of appropriate jurisdiction~~
 11 ~~ordering a sum to be paid as child support~~ a support order;
 12 or

13 (b) ~~the sum created by a decree or order of any court~~
 14 ~~of appropriate jurisdiction ordering a sum to be paid as~~
 15 ~~spousal maintenance under chapter 4, part 2, of this title~~
 16 when a support order for spousal maintenance if the judgment
 17 or order requiring payment of maintenance also contains a
 18 judgment or order requiring payment of child support for a
 19 child of whom the person awarded maintenance is the
 20 custodial parent.

21 {10} "Support order" means an order providing a
 22 determinable amount for temporary or final periodic payment
 23 of funds for the support of a child, that is issued by:

24 (a) a district court of this state;

25 (b) a court of appropriate jurisdiction of another

1 state;

2 (c) an administrative agency pursuant to proceedings
 3 under this part; or

4 (d) an administrative agency of another state with a
 5 hearing function and process similar to those of the
 6 department under this part.

7 {11} "IV-D" means the provisions of Title IV-D of the
 8 Social Security Act and the regulations promulgated
 9 thereunder."

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

11 "40-5-202. Department of revenue -- powers and duties
 12 regarding collection of support debt. (1) ~~Whenever the~~
 13 ~~department of social and rehabilitation services or the~~
 14 ~~department of family services receives an application for~~
 15 ~~public assistance on behalf of a child and it appears to the~~
 16 ~~satisfaction of that department that the child has been~~
 17 ~~abandoned by his parents, the child and one parent have been~~
 18 ~~abandoned by the other parent, or the parent or other person~~
 19 ~~who has a responsibility for the care, support, or~~
 20 ~~maintenance of such child has failed or neglected to give~~
 21 ~~proper care or support to the child, the department of~~
 22 ~~social and rehabilitation services or the department of~~
 23 ~~family services shall promptly refer the matter to the~~
 24 ~~department of revenue for action~~ The department may take
 25 action under the provisions of this part, the abandonment or

1 nonsupport statutes, the Uniform Parentage Act established
 2 in Title 40, chapter 6, part 1, or and other appropriate
 3 state and federal statutes of-this-state to insure ensure
 4 that the parent or other person responsible pays for the
 5 care, support, or maintenance of the-dependent a child if
 6 the department:

7 (a) receives a referral from the department of social
 8 and rehabilitation services or the department of family
 9 services on behalf of the child;

10 (b) is providing child support enforcement services
 11 under 40-5-203; or

12 (c) receives an interstate referral, whether under the
 13 Revised Uniform Reciprocal Enforcement of Support Act or an
 14 interstate action by a Title IV-D agency of another state.

15 (2) In--the--event--that--public--assistance--is--furnished
 16 by--a--state--or--county--agency--or--in--instances--where--the
 17 department---has---contracted---to---collect---support, If the
 18 department is providing child support enforcement services
 19 for a child under this part, the department shall-become
 20 becomes trustee of any cause of action of the dependent
 21 child or the person-having-legal-custody-of-the-dependent
 22 child obligee to recover support due to that the child or
 23 obligee from any-person the obligor. and The department may
 24 bring and maintain the action either in the-department's its
 25 own name or in the name of the obligee.

1 (3) The department has the power of attorney to act in
 2 the name of any recipient-of-public-assistance-in--endorsing
 3 and--cashing obligee to endorse and cash any and all drafts,
 4 checks, money orders, or other negotiable instruments
 5 received by the department on behalf of a child and
 6 representing-support-payments-for-children-in--whose--behalf
 7 public-assistance-has-been-previously-paid.

8 (4) For purposes of prosecuting any civil action
 9 pursuant-to-this-part, the department is a real party in
 10 interest upon--the--payment--of--public-assistance if it is
 11 providing child support enforcement services under this
 12 part. No obligee shall may act to prejudice the rights of
 13 the department after-the-receipt-of-public-assistance while
 14 such services are being provided.

15 (5) No If child support enforcement services are being
 16 or have been provided under this part, no agreement between
 17 any obligee and any obligor either relieving an obligor of
 18 any duty of support or purporting to settle past, present,
 19 or future support obligations either as settlement or
 20 prepayment may act to reduce or terminate any rights of the
 21 department to recover from that the obligor for support debt
 22 provided unless the department has consented to the
 23 agreement in writing.

24 (6) The department may petition a court or an
 25 administrative agency for modification of any court order on

1 the same basis as a party to that action ~~would-have-been~~ is
2 entitled to do.

3 (7) The department ~~shall-be~~ is subrogated to the right
4 of the child or ~~children-or-person-having-the-care,-custody,~~
5 ~~and--control-of-the-child-or-children~~ or obligee to maintain
6 any civil action or execute any administrative remedy
7 existing available under the laws of the this or any other
8 state to-obtain-reimbursement-of-money-thus-spent to collect
9 a support debt. This right of subrogation is in addition to
10 and independent of the assignment under 53-2-613 and the
11 support debt created by 40-5-221.

12 (8) ~~If-a-district-court-orders-an-amount-of-support-to~~
13 ~~be-paid-by-a-responsible-parent,-the--department--shall-be~~
14 ~~subrogated--to--the--debt-created-by-the-order-and-the-money~~
15 ~~judgment--shall-be--determined--to--be--in--favor--of--the~~
16 ~~department.-This-subrogation-applies-both-to-~~

17 ~~{a}--the-lesser-of-the-amount-paid-by-the-department-of~~
18 ~~social--and--rehabilitation--services--or--the-department-of~~
19 ~~family-services-in-public-assistance-to-or-for--the--benefit~~
20 ~~of--a--dependent-child-or-children-of-the-responsible-parent~~
21 ~~or-the-amount-of-support-contained-in-the-court--order,-and~~

22 ~~{b}--to--any--amount--allocated--to--the-benefit-of-the~~
23 ~~children-on-the--basis--of--providing--necessities--for--the~~
24 ~~caretaker--of-the-children. If public assistance is being or~~
25 has been paid, the department is subrogated to the debt

1 created by a support order and any money judgment is
2 considered to be in favor of the department. This
3 subrogation is an addition to any assignment made under
4 53-2-613 and applies to the lesser of:

5 (a) the amount of public assistance paid; or

6 (b) the amount due under the support order.

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

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

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

15 "40-5-203. Support Child support enforcement services.

16 (1) The department may accept applications for child support
17 enforcement services on behalf of persons who are not
18 recipients of public assistance and may take appropriate
19 action to establish or enforce support obligations against
20 persons owing a duty to pay support.

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

1 obligation-exists the terms and conditions by which services
2 are provided under this section.

3 (3) The department may not charge the applicant a fee
4 as compensation for services rendered in establishment of or
5 enforcement of support obligations. However, the department
6 may charge a fee to the person-from-whom-the-support-is
7 being-collected obligor. This fee must be in addition to the
8 support payment. The department shall by rule establish
9 reasonable fees commensurate with the cost of enforcement
10 support services to be paid by the person--from--whom--the
11 support--is--being--collected obligor. When payments are
12 scheduled to be paid on an installment basis, a portion of
13 the collection fee owed to the department shall be added to
14 each payment. If the person-from-whom-the-support-is--being
15 collected obligor makes a payment in an amount that is less
16 than the support payment plus the collection fee for that
17 payment, the department may deduct a percentage of the total
18 sum collected which represents the department's standard
19 proportion. The department may, upon a showing of
20 necessity, waive or defer any such fee.

21 (4) If child support enforcement services are provided
22 under this part to or for a child as a result of the payment
23 of public assistance, the department shall MAY continue to
24 provide services after public assistance is no longer being
25 paid, without requiring an application. An obligee's

1 acceptance of continued services constitutes the obligee's
2 agreement to the terms and conditions set for applicants by
3 the department under this section.

4 (5) The department may terminate services under this
5 section only if it:

6 (a) receives a written request from the obligee for
7 termination of services;

8 (b) receives notice that the child is receiving public
9 assistance; or

10 (c) determines that an obligee has violated any term
11 or condition set by the department for an applicant under
12 this section."

13 **Section 4.** Section 40-5-204, MCA, is amended to read:

14 "40-5-204. Cooperation by person--having--custody-of
15 child obligee. Any--person--having--the--care--custody--or
16 control--of--any-dependent-child-or-children-shall-cooperate
17 with-the-department-in-establishing-the--paternity--of--such
18 child--and--obtaining--support--payments An obligee shall
19 cooperate with the department in:

20 (1) identifying and locating the obligor;

21 (2) establishing the paternity of a child;

22 (3) obtaining support or any other payments due the
23 obligee and child; and

24 (4) obtaining reimbursement for previously paid public
25 assistance, if any."

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

"40-5-205. Payment of support money collected to support enforcement and collections unit -- notice. If written notice by the department is given the department gives written notice to the responsible person or obligor, to the clerk of the court, if appropriate, or to an administrative agency that issued a support order, that the children child for whom a support obligation order exists are is receiving public assistance services from the department, then any support money paid by the person or persons responsible for support as a result of any action shall be paid through the support enforcement and collections unit of the department of revenue must be paid to the department."

Section 6. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies

all information and assistance as authorized by this part. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents. If services are provided to a child under this part, the department may request and all state, county, and city agencies, officers, and employees must provide on request any information concerning the location, income, and assets of an obligor.

(3) Except as provided in 31-3-127, any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act."

Section 7. Section 40-5-207, MCA, is amended to read:

"40-5-207. Department authorized to enforce maintenance awards. When If a judgment or order creating a child support obligation also contains a judgment or order for the support of a spouse or former spouse and the former

1 spouse who is the custodial parent of the child, the
2 department may collect and enforce spousal support under
3 this part."

4 **Section 8.** Section 40-5-208, MCA, is amended to read:

5 **"40-5-208. Medical support obligation enforcement. (1)**

6 In all-proceedings any proceeding initiated pursuant to this
7 part, the department shall require parents-obligated-to--pay
8 child--support the obligor to secure and maintain health
9 insurance coverage for each dependent child, at a cost not
10 to exceed 5% of net income, whenever such health insurance
11 is available through their the obligor's employment.
12 However, if a court-of-competent-jurisdiction-has-entered-an
13 support order establishing-a-current-support-obligation-and
14 has-ordered-the-obligated--parent--to--secure--and--maintain
15 health-insurance-coverage-for-each-dependent-child, has been
16 entered that also orders the obligor to secure and maintain
17 health insurance coverage for the child, the department
18 shall enforce the obligation as ordered by-the-court.

19 (2) If the department determines that an obligated
20 parent obligor has failed to maintain health insurance
21 coverage required by the a support order of-a-court-of
22 competent-jurisdiction-or-an-administrative-agency-empowered
23 to-enter-such-order, it may issue a notice commanding the
24 parent obligor to appear at a hearing held by the department
25 and show cause why a sum of not more than \$100 should not

1 be assessed for each month health insurance coverage is not
2 secured or maintained. If the department finds, after
3 hearing or the obligor's failure to appear, that the obligor
4 has not secured or maintained health insurance coverage has
5 not--been-secured-or-maintained in accordance with the court
6 or-administrative support order, the department may assess
7 against the obligated-parent obligor not more than \$100 for
8 each month health insurance coverage has not been secured or
9 maintained. Such amounts may be enforced by warrant for
10 distraint provided for in 40-5-241.

11 (3) Whenever-an-obligated-parent If an obligor who has
12 been served with notice under this section appears before
13 the department and shows that health insurance coverage in
14 accordance with the court-or-administrative support order:

15 (a) has been secured and maintained continuously since
16 the date of the order, the department shall dismiss the
17 pending action; or

18 (b) has not been secured or continuously maintained
19 but such coverage is presently in effect, the department
20 shall suspend the pending action for a period of 12 months.

21 (4) At the end of the suspension period, the
22 department may schedule a hearing. If at this hearing the
23 department finds that during the suspension period health
24 insurance coverage:

25 (a) has been continuously maintained, the department

shall dismiss the pending action and the obligated--parent obligor will not be assessed under this section; or

(b) has not been continuously maintained, the department may enter a final order requiring the obligated parent obligor to pay the sum assessed in accordance with this section for each month coverage was not maintained.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 9. Section 40-5-213, MCA, is amended to read:

"40-5-213. Financial statements by parent--whose absence--is--basis--of--application--for--public--assistance obligor -- penalty. (1) Any--parent--in--the--state--whose absence--is--the--basis--upon--which--an--application--is--filed--for public--assistance--on--behalf--of--a--child--shall If the department is providing child support enforcement services under this part and has reasonable cause to believe that a support obligation is owed, an obligor, upon written request, shall complete a statement, under oath, stating the obligor's:

(a) of--his current monthly income;

(b) his total income over the past 36 months;

(c) the number of dependents for whom he the obligor is providing support;

(d) the amount he the obligor is contributing

regularly toward the support of all--children--for--whom application--for--such--assistance--is--made, a child for whom the department is providing services;

(e) his current monthly living expenses; and

(f) all other information pertinent to determining his ability--to--support--his--children--The statement shall be provided upon a demand made by the department--if assistance based upon the application--is--granted--on--behalf--of--the child--additional--statements--shall--be--filed--as--required--by the department until the child is no longer receiving public assistance the obligor's financial condition.

(2) The department may require additional financial statements from the obligor during the period the department is providing services to the child.

(3) Failure to comply with this section is a misdemeanor."

Section 10. Section 40-5-221, MCA, is amended to read:

"40-5-221. Debt to state by natural--or--adoptive parents obligor -- limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of any--dependent--child--or--children a child creates a debt due and owing the state of Montana by the responsible--parent--or--parents obligor in an amount equal to the amount of public assistance money so paid. In the case of an obligor who is an adoptive parent or--parents, no

1 a debt for public assistance paid may not accrue prior to
 2 the date of adoption.

3 (2) ~~Where--there--has--been--a--district--court--order~~
 4 ~~established,--the--debt--shall--be--limited--to--the--amount~~
 5 ~~provided-for-by-the-order.~~ If a support order has been
 6 entered, the support debt created by this section may not
 7 exceed the amount of the order.

8 (3) Where If a child has been placed in foster care,
 9 and a written agreement for payment of support has-been
 10 entered-into-by-the-responsible--parent--or--parents exists
 11 between the obligor and any state agency, the support debt
 12 shall-be is limited to the amount provided for in the
 13 agreement. However, if a court support order for-support is
 14 or has been entered, the provisions of the order shall
 15 prevail over the agreement.

16 (4) The department shall adopt rules based on ability
 17 to pay, with respect to the level of support to be provided
 18 for in such agreements or modifications of such agreements
 19 based on changed circumstances.

20 (5) The department may establish and collect a debt
 21 created under this section in a proceeding that is in
 22 addition to and independent of the subrogation created by
 23 40-5-202(7) and the assignment under 53-2-613."

24 **Section 11.** Section 40-5-222, MCA, is amended to read:
 25 "40-5-222. Support debt based upon subrogation-to-or

1 assignment-of-judgment support order -- notice -- content
 2 contents --action to collect. (1) The department may issue a
 3 notice of a support debt accrued or accruing based upon
 4 subrogation-to-or-assignment-of-the-judgment--created--by--a
 5 district--court a support order. The notice may be served
 6 upon the debtor obligor in the manner prescribed for the
 7 service of a summons in a civil action in accordance with
 8 the provisions of the Montana Rules of Civil Procedure,
 9 demanding payment within 30 20 days of the date of receipt.

10 (2) The notice of debt shall include:

11 (a) a statement of the support debt accrued or
 12 accruing, computable on the amount required to be paid under
 13 any district-court support order to-which-the-department-is
 14 subrogated-or-has-an-assigned-interest;

15 (b) a statement that the property of the debtor is
 16 subject to collection action;

17 (c) a statement that the property is subject to
 18 distraint and seizure and sale;

19 (d) a statement that the net proceeds will be applied
 20 to the satisfaction of the support debt; and

21 (e) a statement that the debtor obligor is entitled to
 22 a fair hearing.

23 (3) Action to collect the subrogated--or--assigned
 24 support debt by distraint and seizure and sale shall--be is
 25 lawful after 30 20 days from the date of service upon the

debtor obligor or ~~30~~ 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the debtor obligor may request a fair hearing as provided in 40-5-226."

Section 12. Section 40-5-223, MCA, is amended to read:

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

(2) The notice of liability shall include:

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

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

(c) a statement of the name of the recipient obligee and the name of the child or children for whom assistance is

being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible-parent obligor make answer within ~~30~~ 20 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before ~~30~~ 20 days from the date of the service the support debt ~~shall~~ must be assessed and determined subject to computation and is subject to collection action;

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

(3) If no answer is had by the department to the notice of liability on or before ~~30~~ 20 days of the date of service, the support debt ~~shall~~ must be assessed and determined subject to the computation and the department may issue a warrant for distraint authorizing a collection action under this part.

(4) If the responsible-parent obligor, within ~~30~~ 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the responsible-parent obligor may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing ~~shall~~ must establish the obligor's

1 obligation of the responsible parent, if any, for repayment
2 of public assistance funds spent to date as an assessed and
3 determined support debt."

4 **Section 13.** Section 40-5-224, MCA, is amended to read:
5 "40-5-224. Finding of support liability based upon
6 payment of public assistance -- warrant for distraint --
7 bond to release warrant -- action to collect. (1) If the
8 department reasonably believes that the parent obligor is
9 not a resident of this state or is about to move from this
10 state or has concealed himself, absconded, absented himself
11 or has removed or is about to remove, secrete, waste, or
12 otherwise dispose of property which could be made subject to
13 collection action to satisfy the support debt, the
14 department may issue a warrant for distraint pursuant to
15 40-5-241 during the pendency of the fair hearing or
16 thereafter, whether or not appealed. No further action may
17 be taken on the warrant until final determination after fair
18 hearing and/or or appeal. The department shall in such cases
19 make and file in the record of the fair hearing an affidavit
20 stating the reasons upon which the belief is founded. The
21 responsible parent obligor may furnish a bond, not to exceed
22 the amount of the support debt, during pendency of the
23 hearing or thereafter, and in such case warrants issued
24 shall must be released. If the decision resulting from the
25 hearing is in favor of the responsible parent obligor, all

1 warrants issued shall must be released.

2 (2) The department may commence action under the
3 provisions of this part to collect the support debt on the
4 date of issuance of the decision resulting from the
5 hearing."

6 **Section 14.** Section 40-5-225, MCA, is amended to read:
7 "40-5-225. Notice and finding of financial
8 responsibility of responsible parent -- temporary and final
9 support obligations -- administrative procedure. (1) (a) In
10 lieu of the procedures provided in 40-5-223 and 40-5-224,
11 the In the absence of a support order, the department may,
12 in the absence of a district court order, serve on the
13 responsible parent an obligor with a notice and finding of
14 financial responsibility alleging a child's need for support
15 and the amount of the need and requiring a responsible
16 parent the obligor to appear and show cause at a hearing
17 held by the department why the finding of liability and the
18 amount of support liability should not be finally ordered
19 obligor should not be finally ordered to pay the amount
20 alleged in the notice. This notice and finding shall relate
21 to the support debt accrued or accruing under this part
22 and/or Title 53, chapter 4, including periodic payments to
23 be made in the future for the period of time any child of
24 the responsible parent is in need. The hearing shall be held
25 pursuant to this part and the rules of the department, which

1 ~~shall provide for a fair hearing.~~

2 (b) The notice must state:

3 (i) the names of the obligee and child;

4 (ii) the amount of current and future support to be
5 paid each month for the child;

6 (iii) that if the obligor does not file a written
7 answer within 20 days from the date of service or refusal of
8 service, the amount in the notice must be finally ordered;

9 (iv) that the obligor is entitled to a fair hearing
10 under 40-5-226.

11 ~~(2) The notice and finding of financial responsibility~~
12 ~~shall be served in the same manner prescribed for the~~
13 ~~service of a summons in a civil action, in accordance with~~
14 ~~the provisions of the Montana Rules of Civil Procedure. Any~~
15 ~~responsible parent who objects to all or any part of the~~
16 ~~notice and finding shall have the right for not more than 30~~
17 ~~days from the date of service to request in writing a~~
18 ~~hearing, notice of which shall be served upon the department~~
19 ~~personally or by registered or certified mail. If no request~~
20 ~~is made, the notice and finding of financial responsibility~~
21 ~~becomes final. If a request is made, the execution of notice~~
22 ~~and finding of financial responsibility shall be stayed~~
23 ~~pending the decision on such hearing or any direct appeal to~~
24 ~~the courts from the decision. If, prior to the service of~~
25 ~~the notice under this section, the department has~~

1 information concerning the obligor's financial condition,
2 the department's allegation of the obligor's monthly support
3 responsibility must be based on the scale of suggested
4 minimum contributions under 40-5-214. If such information is
5 unknown to the department, the allegations of the obligor's
6 monthly support responsibility must be based on the greater
7 of:

8 (a) the amount of public assistance payable under
9 Title 53, chapter 4; or

10 (b) the alleged need.

11 ~~(3) The notice and finding of financial responsibility~~
12 ~~shall include:~~

13 ~~(a) the amount the department has determined the~~
14 ~~responsible parent owes, the support debt accrued or~~
15 ~~accruing, and, as appropriate, the amount to be paid thereon~~
16 ~~each month, all computable on the basis of the amount of the~~
17 ~~monthly public assistance payment previously paid or need~~
18 ~~alleged and the ability of the responsible parent to pay all~~
19 ~~or any portion of the debt;~~

20 ~~(b) a statement of the name of the recipient or~~
21 ~~custodian and the name of any child for whom assistance is~~
22 ~~being paid or need is alleged, or a statement of the amount~~
23 ~~of periodic future support payments for which financial~~
24 ~~responsibility is found;~~

25 ~~(c) a statement that the responsible parent may object~~

to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to distraint and seizure and sale to satisfy the debt. If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.

(4) (a) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered, the department may issue to the obligor a notice of temporary support obligation.

(b) The notice must contain:

(i) the names of the child and the person or agency having the custodial care of the child;

(ii) an amount for temporary monthly support determined as provided in subsection (2);

(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligation is inappropriate under the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.

(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and

(v) a statement that the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.

(5) (a) If a temporary support order is entered or if

proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice under this section if the parties subsequently separate.

(6) Any notice of financial responsibility and the notice of temporary support obligation must be served in the same manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure."

Section 15. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of findings final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) The At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the responsible-parent obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it shall must be scheduled within 30 20 days.

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

(5) If the responsible-parent obligor fails to appear at the hearing or fails to timely request a hearing, upon-a showing-of--valid--service, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the support-debt--and--payment--provisions amount stated in the notice and-finding-of-financial-responsibility to-be--assessed,--determined,--and--subject--to--collection action,--Within--30--days--of--entry--of--the--order,--the

1 responsible-parent-may-petition-the-department-to-vacate-the
2 order-upon-a-showing-of-any-of-the-grounds-enumerated-in-the
3 Montana-Rules-of-Civil-Procedure to be final.

4 (6) In a hearing to determine financial
5 responsibility, the monthly support responsibility must be
6 determined in accordance with the evidence presented and
7 with reference to the scale of suggested minimum
8 contributions under 40-5-214. The hearing officer is not
9 limited to the amounts stated in the notice.

10 (6)(7) Within 20 days of the hearing, The the hearing
11 officer shall,--within--20--days--of--the--hearing, enter
12 findings, conclusions,--and--a--final--decision--determining
13 liability--and--responsibility--and/or--future--periodic--support
14 payments a final decision and order. The determination of the
15 hearing officer entered-pursuant-to-this--section--shall--be
16 entered--as--an--order--unless--such--findings--are--set--aside
17 pursuant-to-40-5-253-and-shall-limit-the-support-debt--under
18 40-5-221-to-the-amounts-stated-in-the-decision constitutes a
19 final agency decision, subject to judicial review under
20 40-5-253 and the provisions of the Montana Administrative
21 Procedure Act.

22 (7)(8) The--decision-establishing-liability-and-future
23 periodic-support-payments-is--superseded--upon--entry--of--a
24 district--court-order-for-support-to-the-extent-the-district
25 court-order--is--inconsistent--with--the--hearing--order--or

1 decision--in--the--absence--of--a--district-court-order-the
2 responsible-parent-may-petition-the-department-for--issuance
3 of--an--order-to-appear-and-show-cause-based-on-a-showing-of
4 good-cause-and-material-change-of-circumstances--to--require
5 the--other--party--to-appear-and-show-cause-why-the-decision
6 previously-entered-should-not-be-prospectively-modified--The
7 order-to-appear-and-show-cause-together-with-a-copy--of--the
8 affidavit--upon--which-the-order-is-based-shall-be-served-by
9 the-petitioning-party-on-the-nonmoving-party-in--the--manner
10 of--a-summons-in-a-civil-action--A-hearing-shall-be-set If a
11 support order is established under this part, any party may
12 file a verified petition with the department alleging facts
13 constituting a material change of circumstances. Upon the
14 filing of such petition, the department shall issue an order
15 to the nonpetitioning party to appear and show cause why the
16 decision previously entered should not be prospectively
17 modified. The order to appear and show cause, together with
18 a copy of the verified petition, must be served by the
19 petitioner upon all other parties in the manner provided by
20 this part. Upon receipt of proof of service, the department
21 shall schedule a hearing not less than 15 or more than 30
22 days from the date of service, unless extended for good
23 cause shown. Prospective modification may be ordered but
24 only upon a showing of good cause and material change of
25 circumstances.

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

(9) Debts A support debt determined pursuant to this section, ~~accrued and not paid,~~ are is subject to collection action under this part without further necessity of action by the hearing officer.

(10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure."

Section 16. Section 40-5-241, MCA, is amended to read:

"40-5-241. Warrant for distraint. (1) Thirty-one Twenty-one days after receipt or refusal of a notice of a support debt under provisions of 40-5-222 or 31 21 days after service of notice of a support debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant for distraint based on the amount of the support debt.

(2) The warrant is subject to the provisions of this part and the provisions of 15-1-701, 15-1-704, 15-1-708, and 15-1-709, with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean "person owing the support debt", ~~as well as the provisions of this part~~ "obligor".

Section 17. Section 40-5-242, MCA, is amended to read:

"40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages. Should any person, firm, corporation, association, political subdivision, or department of the state fail or refuse to deliver property pursuant to the order, or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person, or fail or refuse to surrender upon demand property distrained under 40-5-241, or fail or refuse to honor an assignment of wages presented by the department, the A person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the support debt which that is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(1) fails or refuses to deliver property pursuant to the order;

(2) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien;

(3) fails or refuses to surrender upon demand property distrained under 40-5-241; or

(4) fails or refuses to honor an assignment of wages presented by the department."

Section 18. Section 40-5-243, MCA, is amended to read:

"40-5-243. Release of excess to debtor obligor. Whenever if any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus \$100, that person,--firm,--corporation,--association, political--subdivision,--or--department--of--the--state or entity may,--without--liability--under--this--part, release the excess to the debtor obligor without liability under this part."

Section 19. Section 40-5-244, MCA, is amended to read:

"40-5-244. Banks and savings and loan associations -- service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices,

service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the debtor obligor in the particular branch upon which service is made."

Section 20. Section 40-5-246, MCA, is amended to read:

"40-5-246. Release of distraint and return of seized property -- effect. The At any time, the department may at any--time release a distraint on all or part of the property of the debtor obligor or order the return of seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the same or other property."

Section 21. Section 40-5-251, MCA, is amended to read:

"40-5-251. Debt payment schedule. The At any time after notice to the obligor, the department may at--any--time after--notice--to--the--debtor set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor obligor."

Section 22. Section 40-5-252, MCA, is amended to read:

"40-5-252. Interest on debts due -- waiver. (1) Interest The department may collect interest on any support debt due and owing to the--department it at the statutory

1 interest rate payable on judgments recovered in the courts
2 of this state ~~under 40-5-221 may be collected by the~~
3 department.

4 (2) No provision of this part may be construed to
5 require the department to maintain interest balance due
6 ~~accounts, and interest may be waived by the department. The~~
7 department may waive interest if waiver would facilitate the
8 collection of the debt."

9 **Section 23.** Section 40-5-253, MCA, is amended to read:

10 "40-5-253. Administrative findings and order --
11 administrative remedies -- judicial review. (1) It is the
12 intent of this part that administrative findings and orders
13 be subject to judicial review, but that administrative
14 remedies must be exhausted prior to judicial review. The
15 administrative procedures described in this part are subject
16 to review in the appropriate district court. Such review
17 ~~shall~~ must be conducted pursuant to the Montana
18 Administrative Procedure Act. Upon a showing by the
19 department that administrative remedies have not been
20 exhausted, the district court shall refuse review until such
21 remedies are exhausted.

22 (2) Nothing in this part may be construed to abridge
23 or in any way affect the defendant's obligor's right to
24 counsel during any and all judicial or administrative
25 proceedings pursuant to this part."

1 **Section 24.** Section 40-5-254, MCA, is amended to read:

2 "40-5-254. Statutory limitations. Debts Support debts
3 ensuing as a result of determinations made through the
4 administrative procedures described in this part are subject
5 to statutory limitations as set forth in Title 27, chapter
6 2."

7 **Section 25.** Section 40-5-255, MCA, is amended to read:

8 "40-5-255. Charging off child support debts as
9 uncollectible. (1) Any support debt due the department from
10 ~~a responsible parent or former spouse~~ an obligor, which debt
11 the department determines uncollectible, may be transferred
12 from accounts receivable to a suspense account and cease to
13 be accounted as an asset. ~~in the event~~ If a warrant for
14 distraint has been filed and the support debt has
15 subsequently been charged off as uncollectible, the
16 department shall issue a release of lien.

17 (2) At any time after 6 years from the date a support
18 debt was incurred, the department may charge off as
19 uncollectible any support debt upon which the department
20 finds there is no available, practical, or lawful means by
21 which the support debt may be collected. No proceedings or
22 action under the provisions of this part may be begun after
23 expiration of the 6-year period to institute collection of a
24 support debt. Nothing herein may be construed to render
25 invalid or nonactionable a warrant for distraint filed with

the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period."

Section 26. Section 40-5-257, MCA, is amended to read:

"40-5-257. Assignment of earnings to be honored -- effect. (1) Any person, firm, corporation, association, political subdivision, or department of the state employing a person owing a support debt or obligation an obligor shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to court a support order, presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department.

(2) Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received."

SECTION 27. 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 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; or

(iii) upon application by the department of revenue, whenever the department of revenue is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under [section 3 of Senate Bill No. 129]. A modification under this subsection may not be made within 12 months after the

1 establishment of the order or the most recent modification.

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

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

5 (b) if the court finds the existence of conditions
6 that justify the reopening of a judgment under the laws of
7 this state.

8 (4) Unless otherwise agreed in writing or expressly
9 provided in the decree, the obligation to pay future
10 maintenance is terminated upon the death of either party or
11 the remarriage of the party receiving maintenance.

12 (5) Unless otherwise agreed in writing or expressly
13 provided in the decree, provisions for the support of a
14 child are terminated by emancipation of the child but not by
15 the death of a parent obligated to support the child. When
16 a parent obligated to pay support dies, the amount of
17 support may be modified, revoked, or commuted to a lump-sum
18 payment, to the extent just and appropriate in the
19 circumstances."

20 NEW SECTION. Section 28. Extension of authority. Any
21 existing authority to make rules on the subject of the
22 provisions of [this act] is extended to the provisions of
23 [this act].

24 NEW SECTION. SECTION 29. COORDINATION INSTRUCTION.
25 IF [SECTION 3 OF SENATE BILL NO. 129] IS NOT PASSED AND

1 APPROVED, [SECTION 27 OF THIS ACT] IS VOID.

2 NEW SECTION. Section 30. Severability. If a part of
3 [this act] is invalid, all valid parts that are severable
4 from the invalid part remain in effect. If a part of [this
5 act] is invalid in one or more of its applications, the part
6 remains in effect in all valid applications that are
7 severable from the invalid applications.

-End-