

SENATE BILL NO. 129

INTRODUCED BY MANNING, MCLANE, NORMAN, PIPINICH,
REGAN, O'KEEFE, WALKER, CONNELLY, J. BROWN, BRADLEY

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON WELFARE

IN THE SENATE

JANUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
FEBRUARY 8, 1989	PRINTING REPORT.
FEBRUARY 9, 1989	SECOND READING, DO PASS.
FEBRUARY 10, 1989	ENGROSSING REPORT.
FEBRUARY 11, 1989	THIRD READING, PASSED. AYES, 42; NOES, 4.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
FEBRUARY 20, 1989	FIRST READING.
MARCH 22, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1989	SECOND READING, CONCURRED IN.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 97; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 4, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 6, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

APRIL 10, 1989

REPORTED CORRECTLY ENROLLED.

APRIL 11, 1989

SIGNED BY PRESIDENT

IN THE HOUSE

APRIL 17, 1989

SIGNED BY SPEAKER.

IN THE SENATE

APRIL 18, 1989

DELIVERED TO GOVERNOR.

APRIL 20, 1989

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 20, 1989

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 21, 1989

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 21, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *129*
 2 INTRODUCED BY *Sen. Richard E. Manning* *of the House* *Norman Rife*
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON WELFARE
 4 *Mike D. Jahn* *Connelly* *J. Brown* *Bradley*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT PARENTS
 6 FULFILL THE DUTY TO SUPPORT THEIR CHILDREN BY PROVIDING FOR
 7 A PRESUMPTIVE OBLIGATION OF SUPPORT IN CERTAIN LEGAL
 8 PROCEEDINGS; TO REQUIRE CONSIDERATION OF UNIFORM GUIDELINES
 9 TO ESTABLISH A MINIMUM SUPPORT LEVEL; TO REQUIRE PATERNITY
 10 CHILD SUPPORT ORDERS TO INCLUDE A PROVISION COVERING HEALTH
 11 INSURANCE IN CERTAIN CASES; TO PROVIDE FOR CHILD SUPPORT
 12 COLLECTION THROUGH AUTOMATIC INCOME WITHHOLDING; TO GRANT
 13 THE DEPARTMENT OF REVENUE THE AUTHORITY TO CHARGE FEES IN
 14 CASES IN WHICH AN OBLIGOR'S FAILURE OR REFUSAL TO PAY
 15 SUPPORT REQUIRES THE DEPARTMENT TO ACT; AMENDING SECTIONS
 16 40-4-204, 40-5-203, 40-5-214, 40-5-401, 40-5-404, 40-5-411
 17 THROUGH 40-5-417, AND 40-6-116, MCA; AND PROVIDING AN
 18 APPLICABILITY DATE."

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 **Section 1.** Section 40-4-204, MCA, is amended to read:

22 "40-4-204. Child support -- orders to address health
 23 insurance -- ~~warning-of~~ automatic withholding procedures of
 24 child support. (1) In a proceeding for dissolution of
 25 marriage, legal separation, maintenance, or child support,

1 the court ~~may~~ shall order either or both parents owing a
 2 duty of support to a child to pay an amount reasonable or
 3 necessary for his support, without regard to marital
 4 misconduct, ~~after considering.~~

5 (2) The court shall consider all relevant factors,
 6 including:

- 7 (a) the financial resources of the child;
- 8 (b) the financial resources of the custodial parent;
- 9 (c) the standard of living the child would have
- 10 enjoyed had the marriage not been dissolved;
- 11 (d) the physical and emotional condition of the child
- 12 and his educational and medical needs;
- 13 (e) the financial resources and needs of the
- 14 noncustodial parent; and
- 15 ~~(f) for the purposes of determining a minimum amount~~
- 16 ~~for support, the amount received by children under the APBE~~
- 17 ~~program, as defined in 53-2-702, the age of the child;~~
- 18 (g) the cost of day care for the child;
- 19 (h) any custody arrangement that is ordered or decided
- 20 upon; and
- 21 (i) the needs of any person, other than the child,
- 22 whom either parent is legally obligated to support.

23 (3) (a) Whenever a court issues or modifies an order
 24 concerning child support, the court shall determine the
 25 child support obligation by applying the standards in this

section and the uniform child support guidelines adopted by the department of revenue pursuant to [section 3], unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

†2†(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state the its reasons for not ordering child support.

†3†(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that

coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

†4†(5) (a) Each Except as provided in subsection (5)(b), each district court judgment, decree, or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing child support order must:

(i) provide that the amount of child support must be

1 withheld from the obligor's income and paid to the
 2 department pursuant to procedures established by the
 3 department under Title 40, chapter 5, part 4; and

4 (ii) include the obligor's social security number and
 5 the name and address of the obligor's employer and of any
 6 other payor of income to the obligor.

7 (b) Income is not subject to automatic withholding if:

8 (i) the obligee or obligor demonstrates and the court
 9 finds that there is good cause not to require automatic
 10 income withholding; or

11 (ii) the obligee and obligor agree in writing to an
 12 alternative arrangement regarding the payment of child
 13 support that provides sufficient security to ensure
 14 compliance with their agreement. The security is in addition
 15 to the child support obligation.

16 (c) When a judgment, decree, or order for child
 17 support is entered or modified and automatic income
 18 withholding is ordered, an obligee who is not a recipient of
 19 public assistance shall apply for the support enforcement
 20 services of the department pursuant to Title IV-D of the
 21 Social Security Act for the collection of support through
 22 automatic income withholding under Title 40, chapter 5, part
 23 4. The department shall accept the application. Pending an
 24 application, the department shall immediately implement
 25 automatic income withholding and hold any amounts collected

1 in trust for the obligee until the obligee makes
 2 application.

3 (d) When automatic income withholding is ordered under
 4 subsection (5)(a), the clerk of court shall immediately
 5 forward a copy of the order to the department.

6 (e) If an obligor is not subject to income withholding
 7 or is exempted from income withholding, the district court
 8 judgment or order establishing a--child--support--obligation
 9 under--this--title,--whether--temporary--or--final,--and--each
 10 modification-of-an-existing-order-for-child-support--entered
 11 after-October-17-1985, must include a warning statement that
 12 if the obligor is delinquent in the payment of support, the
 13 obligor's income may be subject to income withholding
 14 procedures under Title 40, chapter 5, part 3 or 4. Failure
 15 to include a warning statement in a judgment or order does
 16 not preclude the use of withholding procedures."

17 **Section 2.** Section 40-6-116, MCA, is amended to read:

18 **"40-6-116. Judgment or order.** (1) The judgment or
 19 order of the court determining the existence or nonexistence
 20 of the parent and child relationship is determinative for
 21 all purposes.

22 (2) If the judgment or order of the court is at
 23 variance with the child's birth certificate, the court shall
 24 order that a substitute birth certificate be issued under
 25 40-6-123.

1 (3) (a) The judgment or order may contain any other
 2 provision directed against the appropriate party to the
 3 proceeding concerning ~~the-duty-of-support~~, the custody and
 4 guardianship of the child, visitation privileges with the
 5 child, the furnishing of bond or other security for the
 6 payment of the judgment, or any other matter in the best
 7 interest of the child.

8 (b) Except when the financial responsibility of a
 9 responsible parent is in the process of being determined
 10 pursuant to the administrative procedure provided in
 11 40-5-225, the judgment or order must contain a provision
 12 concerning the duty of child support.

13 (c) The judgment or order may direct the father to pay
 14 the reasonable expenses of the mother's pregnancy and
 15 confinement.

16 (4) (a) Support judgments or orders ordinarily shall
 17 be for periodic payments which may vary in amount.

18 (b) In the best interest of the child, a lump-sum
 19 payment or the purchase of an annuity may be ordered in lieu
 20 of periodic payments of support.

21 (c) The court may limit the father's liability for
 22 past support of the child to the proportion of the expenses
 23 already incurred that the court deems just.

24 (5) In determining the amount to be paid by a parent
 25 for support of the child and the period during which the

1 duty of support is owed, a court enforcing the obligation of
 2 support shall consider all relevant facts, including:

3 (a) the needs of the child, including his medical
 4 needs;

5 (b) the standard of living and circumstances of the
 6 parents;

7 (c) the relative financial means of the parents;

8 (d) the earning ability of the parents;

9 (e) the need and capacity of the child for education,
 10 including higher education;

11 (f) the age of the child;

12 (g) the financial resources and the earning ability of
 13 the child;

14 (h) the responsibility of the parents for the support
 15 of others; and

16 (i) the value of services contributed by the custodial
 17 parent;

18 (j) the cost of day care for the child; and

19 (k) any custody arrangement that is ordered or decided
 20 upon.

21 (6) (a) Whenever a court issues or modifies an order
 22 concerning child support, the court shall determine the
 23 child support obligation by applying the standards in this
 24 section and the uniform child support guidelines adopted by
 25 the department of revenue pursuant to [section 3], unless

1 the court finds by clear and convincing evidence that the
 2 application of the standards and guidelines is unjust to the
 3 child or to any of the parties or is inappropriate in that
 4 particular case.

5 (b) If the court does not apply these standards and
 6 guidelines to determine child support, it shall state its
 7 reasons for finding that the application of such standards
 8 and guidelines is unjust to the child or a party or is
 9 inappropriate in that particular case.

10 (c) If the court does not order a parent owing a duty
 11 of support to a child to pay any amount for the child's
 12 support, the court shall state its reasons for not ordering
 13 child support.

14 (7) The judgment or order concerning child support and
 15 each modification of a judgment or order for child support
 16 must include a provision addressing health insurance
 17 coverage in the following cases:

18 (a) If either party has available through an employer
 19 or other organization health insurance coverage for the
 20 child or children for which the premium is partially or
 21 entirely paid by the employer or organization, the judgment
 22 or order may contain a provision requiring that coverage for
 23 the child or children be continued or obtained.

24 (b) In the event that health insurance required in a
 25 child support judgment or order becomes unavailable to the

1 party who is to provide it, through loss or change of
 2 employment or otherwise, that party shall, in the absence of
 3 an agreement to the contrary, obtain comparable insurance or
 4 request that the court modify the requirement.

5 (c) The parties may by written agreement provide for
 6 the health care coverage required by this section, subject
 7 to the approval of the court.

8 (d) Unless otherwise provided in the decree, the
 9 health care coverage required by this section is in addition
 10 to and not in substitution, in whole or in part, for the
 11 child support obligation.

12 (8) (a) Except as provided in subsection (8)(b), each
 13 district court judgment or order establishing a child
 14 support obligation under this part, whether temporary or
 15 final, and each modification of an existing child support
 16 order must:

17 (i) provide that the amount of child support must be
 18 withheld from the obligor's income and paid to the
 19 department pursuant to procedures established by the
 20 department under Title 40, chapter 5, part 4; and

21 (ii) include the obligor's social security number and
 22 the name and address of the obligor's employer and of any
 23 other payor of income to the obligor.

24 (b) Income is not subject to automatic withholding if:
 25 (i) the obligee or obligor demonstrates and the court

finds that there is good cause not to require automatic income withholding; or

(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.

(c) When a judgment or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.

(d) When automatic income withholding is ordered under subsection (8)(a), the clerk of court shall immediately forward a copy of the order to the department."

Section 3. Child support guidelines -- periodic review. (1) The department shall adopt uniform child support guidelines to be used to determine minimum child support

amounts. In addition to giving notice and publicizing the rules as provided in the Montana Administrative Procedure Act, the department shall give notice to the supreme court, the district courts, and the state bar of Montana prior to adopting the guidelines.

(2) The guidelines must consider the factors set forth in 40-4-204(2) and 40-6-116(5).

(3) At least once every 4 years, the department shall:

(a) review the uniform child support guidelines employed to determine child support obligations to ensure that their application results in the determination of appropriate child support award amounts; and

(b) propose any appropriate modification to the legislature.

Section 4. Section 40-5-214, MCA, is amended to read:

"40-5-214. Scale of suggested minimum contributions.

(1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part.

~~The scale shall:~~

~~(a)--include consideration of gross income;~~

~~(b)--authorize an expense deduction for determining net income;~~

~~(c)--designate other available resources to be~~

1 considered;

2 ~~(d)---specify---the---circumstances---which---should---be~~
3 ~~considered-in-reducing-support-contributions-on-the-basis-of~~
4 ~~hardship. The scale must be based on the uniform child~~
5 ~~support guidelines adopted by the department under [section~~
6 ~~3].~~

7 ~~(2) The--department-shall-accept-and-compile-pertinent~~
8 ~~and-reliable-information-from-any-available-source-in--order~~
9 ~~to--establish--a--minimum--scale-of-suggested-contributions.~~
10 Copies of the scale shall must be made available to courts,
11 county offices, county attorneys, and upon request, to any
12 other state or county officer or agency engaged in the
13 administration or enforcement of this part. Attorneys
14 admitted to practice in Montana may have access to the
15 minimum scale of-suggested-contribution.

16 ~~(3)---No--county,--court,--officer,--or--agency--may--be~~
17 ~~required-to-use-this-scale."~~

18 **Section 5.** Payor and obligor notice. (1) When a person
19 is hired for employment, the payor shall inquire whether or
20 not the person has a child support obligation that is
21 required by law to be withheld from income and the terms, if
22 any, of the order. The person shall disclose this
23 information at the time of hiring. If a payor fails to make
24 this inquiry, the payor is liable to the department for any
25 amount up to the accumulated amount the payor should have

1 withheld and delivered if it is not paid by the obligor.

2 (2) If a person discloses that he owes child support
3 that is required to be withheld, the payor shall begin
4 withholding according to the terms of the order and this
5 part.

6 (3) At any time an obligor is subject to automatic
7 income withholding, the obligor shall disclose to a payor
8 that the obligor owes child support in order that the payor
9 may begin withholding according to the terms of the order
10 and this part. If the obligor does not make such
11 disclosure, the failure to disclose may be considered a
12 contempt of the district court.

13 **Section 6.** Section 40-5-401, MCA, is amended to read:

14 "40-5-401. Short title. This part may be cited as the
15 "Child Support Enforcement Act of 1985"."

16 **Section 7.** Section 40-5-404, MCA, is amended to read:

17 "40-5-404. Remedies--additional--to-those-now-existing
18 Other remedies available. The remedy remedies provided in
19 this part is are in addition to and not in substitution for
20 any other remedy that may otherwise be available to the
21 department, and the department may simultaneously pursue
22 other remedies to enforce a support obligation or to collect
23 support arrearages."

24 **Section 8.** Section 40-5-411, MCA, is amended to read:

25 "40-5-411. Income withholding. (1) Whenever if an

obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established ~~by--order--of--a--court~~ as required by law or administrative process, income due or to become due within this state to the obligor is subject to withholding procedures under this part if:

(a) except as provided in 40-4-204 and 40-6-116, a support obligation is initially decreed and ordered or modified after January 1, 1990, by a district court or administrative process, regardless of whether child support payments are in arrears; or

(b) the obligor is found to owe a combination of unpaid child support under a support order in an amount equal to or in excess of 1 month's support payment.

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

(3) The provisions for income withholding under this part take precedence over any other law or court order."

Section 9. Section 40-5-412, MCA, is amended to read:

"40-5-412. Initiation of income withholding procedures. (1) ~~in--each--case--in--which--the--department--is--enforcing--a--support--order--assigned--to--the--state--pursuant--to--53-2-613--or--in--which--the--department--is--collecting--support--on--behalf--of--an--obligee--who--has--applied--for--services--under--40-5-203,~~ the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes any combination of unpaid support equal to or in excess of 1 month's support payment, the department shall commence withholding from the obligor's income. In a case concerning a support obligation referred to in 40-5-411, the department shall immediately issue an order under 40-5-415 for the payment of current support.

(2) In any other case, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support, the department shall commence proceedings to initiate withholding of the obligor's income as provided in this part.

(2)(3) To accomplish the purpose of subsection (1)(2), the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or

1 in excess of 1 month's support payment to pay all support
2 through the department, notwithstanding any court order
3 directing payments to be made to the obligee or clerk of
4 court.

5 ~~{3}~~(4) Whenever an obligation for support is paid
6 through the support enforcement and collections unit of the
7 department, the department must forward payment to the
8 obligee within 10 days of the department's receipt of
9 payment from the obligor."

10 **Section 10.** Section 40-5-413, MCA, is amended to read:

11 **"40-5-413. Notice of intent to withhold income.** (1)
12 Prior to service of an initial order on--the payor to
13 commence income withholding or a modification of an existing
14 order on the payor under 40-5-415, the department shall
15 serve upon the obligor a notice of the intended withholding
16 action: if:

17 (a) the department previously has not issued an order
18 to withhold and it has determined the obligor owes a
19 combination of unpaid support equal to or in excess of 1
20 month's support;

21 (b) additional arrearages have accrued subsequent to
22 the issuance of an order to withhold; or

23 (c) immediate withholding has commenced for current
24 support and there are arrearages due for a period prior to
25 entry of the order to withhold.

1 (2) The notice must contain a statement:

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

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

7 (c) of the obligor's right to a hearing under 40-5-414
8 to contest the implementation of income withholding or
9 modification of an existing order on the ground that
10 withholding,--including--the--amounts--to--be--withheld; the
11 intended action is not proper because of mistake of fact;
12 and

13 (d) of the period of time within which the obligor
14 must request a hearing and that failure to request the
15 hearing within the time limit will result in income
16 withholding orders being served upon the payor for the
17 amount stated in the notice.

18 ~~{2}~~(3) The notice must be served upon the obligor
19 personally or by certified mail."

20 **Section 11.** Section 40-5-414, MCA, is amended to read:

21 **"40-5-414. Hearing.** (1) The obligor may within 10 days
22 of being served with notice of the intended income
23 withholding action under 40-5-413 file with the department a
24 written request for an administrative hearing to be held
25 pursuant to the contested case provisions of Title 2,

1 chapter 4, part 6.

2 (2) If In a case initiated because an arrearage has
 3 accrued or because additional income is to be withheld to
 4 satisfy additional arrearages and in which the obligor
 5 requests a hearing within the time allowed, income
 6 withholding the intended action may not take effect until
 7 the conclusion of the hearing or the date of the hearing if
 8 the obligor fails to appear at a scheduled hearing.

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

14 (4) The administrative hearing must be held by
 15 teleconferencing methods unless the obligor or the
 16 department expressly requests an in-person hearing before
 17 the hearing examiner.

18 (5) For purposes of the hearing process, arrearages of
 19 support must be computed on the basis of the amount owed and
 20 unpaid on the date the obligor was served with the notice of
 21 intent to withhold income, and the fact that the obligor may
 22 have later paid the arrearage does not remove from the
 23 hearing examiner the authority to direct the department to
 24 order income withholding.

25 (6) The In a case initiated because an arrearage has

1 accrued or because additional income is being withheld to
 2 satisfy additional arrearages, the obligor, within 45 days
 3 of service of the notice of intent to withhold income, must
 4 be informed of the hearing decision on whether income
 5 withholding will take place.

6 (7) If the obligor fails to request a hearing within
 7 10 days or fails to appear at a scheduled hearing or if the
 8 hearing examiner determines that the obligor owes a
 9 combination of unpaid support equal to or in excess of 1
 10 month's support obligation, the department shall proceed
 11 with the intended action in accordance with 40-5-415."

12 **Section 12.** Section 40-5-415, MCA, is amended to read:

13 "40-5-415. Order to withhold income. (1) if--the
 14 obligor-fails-to-request-a-hearing-within-10-days--or--fails
 15 to--appear-at-a-scheduled-hearing-or-if-the-hearing-examiner
 16 determines-that-the-obligor-owes--a--combination--of--unpaid
 17 support--equal-to-or-in-excess-of-1-month's-support-payment;
 18 When the requirements of this part have been met, the
 19 department shall immediately serve an order or modification
 20 order to withhold and deliver income upon any payor or
 21 combination of payors. The order must:

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

25 (b) direct the payor to deliver the amount withheld to

1 the department in the same month in which the funds were
2 withheld;

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

5 (d) state the rights and duties of the payor under
6 this part.

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

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

16 **Section 13.** Section 40-5-416, MCA, is amended to read:

17 "40-5-416. Determination of amount of income to be
18 withheld. (1) (a) Except--as Subject to the limitations
19 provided in subsection (2), the amount of funds to be
20 withheld each month from the obligor's income must be:

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

24 (b) If income is being withheld to satisfy an
25 arrearage, the amount of funds to be withheld must include

1 the greater of:

2 (i) the amount of money which that, when deducted in
3 equal amounts each month, will pay all outstanding support
4 arrearages and interest, if any, within 2 years; plus or

5 (ii) 25% of the obligor's income.

6 (c) If income is being withheld to satisfy an
7 arrearage, the department may allow a fee not to exceed \$5
8 each month, which may be withheld by the payor as
9 compensation for the administrative costs of each
10 withholding.

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

15 (3) At any time, if the obligor can show that
16 substantial hardship will result if the maximum permissible
17 withholding is implemented or continued, the department for
18 cause shown may in its discretion determine a lesser amount
19 to be withheld each month in satisfaction of support
20 arrearages."

21 **Section 14.** Section 40-5-417, MCA, is amended to read:

22 "40-5-417. Modification or termination of withholding
23 orders. (1) The department may at any time modify the order
24 to withhold income to:

25 (a) reflect payment in full of the arrearages by

1 income withholding or otherwise;

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

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

6 (2) If an arrearage occurs while the department is
7 collecting an amount of money necessary to pay current
8 installments of support as they become due and payable, the
9 department may adjust the amount of income required to be
10 withheld to also satisfy the arrearage, as provided in this
11 part.

12 {2}{3} An income withholding order terminates only
13 when the department is no longer authorized under the law to
14 collect support or, when appropriate, services rendered
15 under 40-5-203 have come to an end or when the obligation to
16 pay support is terminated and all arrearages are paid in
17 full, whichever occurs first."

18 **Section 15.** Section 40-5-203, MCA, is amended to read:

19 "40-5-203. Support enforcement services. (1) The
20 department may accept applications for support enforcement
21 services on behalf of persons who are not recipients of
22 public assistance and may take appropriate action to
23 establish or enforce support obligations against persons
24 owing a duty to pay support.

25 (2) The department may establish by rule reasonable

1 standards necessary to limit applications for support
2 enforcement services. These standards shall take into
3 account the earnings, income, and other resources already
4 available to support the person for whom a support
5 obligation exists.

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

24 **Section 16.** Standardized fee schedule. (1) The
25 department shall by rule establish a standardized schedule

1 of fees for the recovery of administrative costs and
 2 expenses of child support enforcement. The fees may be
 3 recovered from an obligor if the obligor's failure or
 4 refusal to support a child makes it necessary for the
 5 department to provide child support enforcement services
 6 under this part. The fees must be commensurate with costs
 7 or an average of the expenditures related to specific or
 8 routine activities.

9 (2) In an action to establish paternity or to
 10 establish or enforce a child support obligation, whether in
 11 district court or by administrative process, the department
 12 must be awarded costs in the amount established in the fee
 13 schedule as part of any judgment, decree, or order in which
 14 the department is the prevailing party.

15 (3) Fees awarded under this section are in the nature
 16 of child support and are collectible in the same manner as a
 17 support order. The fee award may be collected separately or
 18 added to and collected with any balance due on a support
 19 debt.

20 (4) Collection of a fee award may not reduce any
 21 current child support payment due the obligee.

22 (5) Arrearage amounts collected that include a fee
 23 must be allocated as follows:

24 (a) If the obligee is a recipient of public
 25 assistance, the amount must be allocated first to satisfy

1 the fee.

2 (b) If the obligee is not a recipient of public
 3 assistance, the first 10% of each amount collected must be
 4 allocated to satisfy the fee.

5 (6) The department, upon a showing of necessity, may
 6 waive or defer any fee assessed under this section.

7 **Section 17. Extension of authority.** Any existing
 8 authority to make rules on the subject of the provisions of
 9 [this act] is extended to the provisions of [this act].

10 **Section 18. Codification instruction.** [Sections 3 and
 11 16] are intended to be codified as an integral part of Title
 12 40, chapter 5, part 2, and the provisions of Title 40,
 13 chapter 5, part 2, apply to [sections 3 and 16]. [Section
 14 5] is intended to be codified as an integral part of Title
 15 40, chapter 5, part 4, and the provisions of Title 40,
 16 chapter 5, part 4, apply to [section 5].

17 **Section 19. Applicability.** [This act] applies to child
 18 support orders and modifications of child support orders
 19 issued after September 30, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB129, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to ensure that parents fulfill the duty to support their children by providing for a presumptive obligation of support in certain legal proceedings; to require consideration of uniform guidelines to establish a minimum support level; to require paternity child support orders to include a provision covering health insurance in certain cases; to provide for child support collection through automatic income withholding; to grant the Department of Revenue the authority to charge fees in cases in which an obligor's failure or refusal to pay support requires the department to act; and providing an applicability date.

ASSUMPTIONS:

1. The non-public assistance caseload will increase by 2,945 cases for FY90 and 3,926 for FY91 resulting in 2,945 new cases in FY90 and 6,871 cases in FY91.
2. At 500 cases per FTE, eight FTE will be required in FY90; six at Grade 12 (caseworkers) and additional support staff of two at Grade 9.
3. Ten additional FTE will be required in FY91; eight at Grade 12 and two at Grade 9 for a total of fourteen at Grade 12 (caseworkers) and additional support staff of four at Grade 9.
4. Administrative expense for these positions is calculated 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.
5. Data processing costs will be \$21,376 FY90 and \$12,875 FY91.
6. Printing and distribution of Guidelines will cost \$5,000 and a rules hearing will cost \$1,500.
7. This proposal applies to child support orders and modifications of child support orders issued after September 30, 1989.
8. The federal government covers 68% of total administrative costs incurred prior to October 1, 1989; after that time the federal government will cover 66% of costs. (The additional administrative expense shown below reflects the state portion only.)
9. Department collections from these cases will be \$2,094,363 for FY90 and \$4,886,655 for FY91.
10. Federal government incentive payments (these are based on cost-effectiveness ratios) will be 7% of collections, or federal cap. (There is a cap on total NAFDC incentives of 115% of total AFDC incentives. Total AFDC incentives will be \$270,000, under current conditions, in each year of the biennium. Under current conditions, NAFDC total incentives will be \$190,000 for each year of the biennium.) Therefore, the amount of NAFDC incentives generated by this proposal will be \$120,500 for FY90 and \$120,500 for FY91.
11. Imposition of fees on obligors will yield \$135,000 per year. The state receives 34% of these and the federal government receives 66%.


RAY SHACKLEFORD, DIRECTOR

1/25/89
DATE


RICHARD E. MANNING, PRIMARY SPONSOR

1/26/89
DATE

Office of Budget and Program Planning

Fiscal Note for SB129, as introduced**SB 129**

Fiscal Note Request, SB129, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

	<u>Current</u> <u>Law</u>	<u>FY90</u> <u>Proposed</u> <u>Law</u>	<u>Difference</u>	<u>Current</u> <u>Law</u>	<u>FY91</u> <u>Proposed</u> <u>Law</u>	<u>Difference</u>
<u>Revenue Impact:</u>						
(General Fund)						
NAFDC Incentives	\$ -0-	\$120,500	\$120,500	\$ -0-	\$120,500	\$120,500
Obligor Fees	<u>-0-</u>	<u>33,919</u>	<u>33,919</u>	<u>-0-</u>	<u>45,900</u>	<u>45,900</u>
Total	\$ <u>-0-</u>	\$154,419	\$154,419	\$ <u>-0-</u>	\$166,400	\$166,400
<u>Expenditure Impact:</u>						
(General Fund)						
Personal Services	\$ -0-	\$ 58,938	\$ 58,938	\$ -0-	\$129,560	\$129,560
Operating Expenses	-0-	28,798	28,798	-0-	53,962	53,962
Capital Outlay	<u>-0-</u>	<u>5,700</u>	<u>5,700</u>	<u>-0-</u>	<u>7,232</u>	<u>7,232</u>
Total	\$ <u>-0-</u>	\$ 93,436	\$ 93,436	\$ <u>-0-</u>	\$190,754	\$190,754

SB 129

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 129

INTRODUCED BY MANNING, MCLANE, NORMAN, PIPINICH,

REGAN, O'KEEFE, WALKER, CONNELLY, J. BROWN, BRADLEY

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON WELFARE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT PARENTS FULFILL THE DUTY TO SUPPORT THEIR CHILDREN BY PROVIDING FOR A PRESUMPTIVE OBLIGATION OF SUPPORT IN CERTAIN LEGAL PROCEEDINGS; TO REQUIRE CONSIDERATION OF UNIFORM GUIDELINES TO ESTABLISH A MINIMUM SUPPORT LEVEL; TO REQUIRE PATERNITY CHILD SUPPORT ORDERS TO INCLUDE A PROVISION COVERING HEALTH INSURANCE IN CERTAIN CASES; TO PROVIDE FOR CHILD SUPPORT COLLECTION THROUGH AUTOMATIC INCOME WITHHOLDING; TO GRANT THE DEPARTMENT OF REVENUE THE AUTHORITY TO CHARGE FEES IN CASES IN WHICH AN OBLIGOR'S FAILURE OR REFUSAL TO PAY SUPPORT REQUIRES THE DEPARTMENT TO ACT; AMENDING SECTIONS 40-4-204, 40-5-203, 40-5-214, 40-5-401, 40-5-404, 40-5-411 THROUGH 40-5-417, AND 40-6-116, MCA; AND PROVIDING AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is needed for this bill because the department of revenue is required by [section 3] to adopt uniform child support guidelines for use by judges and other officials who have the power to determine child

support awards within this state. The department initially shall adopt and promulgate the uniform child support guidelines recommended by the Montana supreme court at 44 State Reporter 828 (1987). Thereafter, the department shall periodically review those guidelines to determine if they are appropriate to determine adequate minimum child support amounts. If the department determines that the guidelines are no longer adequate, it shall amend them, after considering the factors set forth in 40-4-204(2) and 40-6-116(5).

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

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- warning-of automatic withholding procedures of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, ~~after considering~~.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the custodial parent;

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

(d) the physical and emotional condition of the child and his educational and medical needs;

(e) the financial resources and needs of the noncustodial parent; and

(f) ~~for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program, as defined in 53-2-702,~~ the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of revenue pursuant to [section 3], unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its

reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

~~(2)(c)~~ If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state the its reasons for not ordering child support.

~~(3)(4)~~ Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a

1 provision requiring the party who has health insurance in
2 effect for the child or children of the parties to continue
3 the insurance coverage pending final disposition of the
4 case.

5 (d) The parties may by written agreement provide for
6 the health care coverage required by this section, subject
7 to the approval of the court.

8 (e) Unless otherwise provided in the decree, the
9 health care coverage required by this section is in addition
10 to and not in substitution, in whole or in part, for the
11 child support obligation.

12 (4)(5) (a) Each Except as provided in subsection
13 (5)(b), each district court judgment, decree, or order
14 establishing a child support obligation under this title,
15 whether temporary or final, and each modification of an
16 existing child support order must:

17 (i) provide that the amount of child support must be
18 withheld from the obligor's income and paid to the
19 department pursuant to procedures established by the
20 department under Title 40, chapter 5, part 4; and

21 (ii) include the obligor's social security number and
22 the name and address of the obligor's employer and of any
23 other payor of income to the obligor.

24 (b) Income is not subject to automatic withholding if:

25 (i) the obligee or obligor demonstrates and the court

1 finds that there is good cause not to require automatic
2 income withholding; or

3 (ii) the obligee and obligor agree in writing to an
4 alternative arrangement regarding the payment of child
5 support that provides sufficient security to ensure
6 compliance with their agreement. The security is in addition
7 to the child support obligation.

8 (c) When a judgment, decree, or order for child
9 support is entered or modified and automatic income
10 withholding is ordered, an obligee who is not a recipient of
11 public assistance shall apply for the support enforcement
12 services of the department pursuant to Title IV-D of the
13 Social Security Act for the collection of support through
14 automatic income withholding under Title 40, chapter 5, part
15 4. The department shall accept the application. Pending an
16 application, the department shall immediately implement
17 automatic income withholding and hold any amounts collected
18 in trust for the obligee until the obligee makes
19 application.

20 (d) When automatic income withholding is ordered under
21 subsection (5)(a), the clerk of court shall immediately
22 forward a copy of the order to the department.

23 (e) If an obligor is not subject to income withholding
24 or is exempted from income withholding, the district court
25 judgment or order establishing a child support obligation

~~under--this--title,--whether--temporary--or--final,--and--each~~
~~modification-of-an-existing-order-for-child-support--entered~~
~~after-October-17-1985,~~ must include a warning statement that
 if the obligor is delinquent in the payment of support, the
 obligor's income may be subject to income withholding
 procedures under Title 40, chapter 5, part 3 or 4. Failure
 to include a warning statement in a judgment or order does
 not preclude the use of withholding procedures."

Section 2. Section 40-6-116, MCA, is amended to read:

"40-6-116. Judgment or order. (1) The judgment or
 order of the court determining the existence or nonexistence
 of the parent and child relationship is determinative for
 all purposes.

(2) If the judgment or order of the court is at
 variance with the child's birth certificate, the court shall
 order that a substitute birth certificate be issued under
 40-6-123.

(3) (a) The judgment or order may contain any other
 provision directed against the appropriate party to the
 proceeding concerning ~~the-duty-of-support,~~ the custody and
 guardianship of the child, visitation privileges with the
 child, the furnishing of bond or other security for the
 payment of the judgment, or any other matter in the best
 interest of the child.

(b) Except when the financial responsibility of a

responsible parent is in the process of being determined
pursuant to the administrative procedure provided in
40-5-225, the judgment or order must contain a provision
concerning the duty of child support.

(c) The judgment or order may direct the father to pay
 the reasonable expenses of the mother's pregnancy and
 confinement.

(4) (a) Support judgments or orders ordinarily shall
 be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum
 payment or the purchase of an annuity may be ordered in lieu
 of periodic payments of support.

(c) The court may limit the father's liability for
 past support of the child to the proportion of the expenses
 already incurred that the court deems just.

(5) In determining the amount to be paid by a parent
 for support of the child and the period during which the
 duty of support is owed, a court enforcing the obligation of
 support shall consider all relevant facts, including:

(a) the needs of the child, including his medical
needs;

(b) the standard of living and circumstances of the
 parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

1 (e) the need and capacity of the child for education,
2 including higher education;

3 (f) the age of the child;

4 (g) the financial resources and the earning ability of
5 the child;

6 (h) the responsibility of the parents for the support
7 of others; and

8 (i) the value of services contributed by the custodial
9 parent-;

10 (j) the cost of day care for the child; and

11 (k) any custody arrangement that is ordered or decided
12 upon.

13 (6) (a) Whenever a court issues or modifies an order
14 concerning child support, the court shall determine the
15 child support obligation by applying the standards in this
16 section and the uniform child support guidelines adopted by
17 the department of revenue pursuant to [section 3], unless
18 the court finds by clear and convincing evidence that the
19 application of the standards and guidelines is unjust to the
20 child or to any of the parties or is inappropriate in that
21 particular case.

22 (b) If the court does not apply these standards and
23 guidelines to determine child support, it shall state its
24 reasons for finding that the application of such standards
25 and guidelines is unjust to the child or a party or is

1 inappropriate in that particular case.

2 (c) If the court does not order a parent owing a duty
3 of support to a child to pay any amount for the child's
4 support, the court shall state its reasons for not ordering
5 child support.

6 (7) The judgment or order concerning child support and
7 each modification of a judgment or order for child support
8 must include a provision addressing health insurance
9 coverage in the following cases:

10 (a) If either party has available through an employer
11 or other organization health insurance coverage for the
12 child or children for which the premium is partially or
13 entirely paid by the employer or organization, the judgment
14 or order may contain a provision requiring that coverage for
15 the child or children be continued or obtained.

16 (b) In the event that health insurance required in a
17 child support judgment or order becomes unavailable to the
18 party who is to provide it, through loss or change of
19 employment or otherwise, that party shall, in the absence of
20 an agreement to the contrary, obtain comparable insurance or
21 request that the court modify the requirement.

22 (c) The parties may by written agreement provide for
23 the health care coverage required by this section, subject
24 to the approval of the court.

25 (d) Unless otherwise provided in the decree, the

health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Except as provided in subsection (8)(b), each district court judgment or order establishing a child support obligation under this part, whether temporary or final, and each modification of an existing child support order must:

(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and

(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.

(b) Income is not subject to automatic withholding if:

(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or

(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.

(c) When a judgment or order for child support is

entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.

(d) When automatic income withholding is ordered under subsection (8)(a), the clerk of court shall immediately forward a copy of the order to the department."

NEW SECTION. Section 3. Child support guidelines --
periodic review. (1) The department shall adopt uniform child support guidelines to be used to determine minimum child support amounts. In addition to giving notice and publicizing the rules as provided in the Montana Administrative Procedure Act, the department shall give notice to the supreme court, the district courts, and the state bar of Montana prior to adopting the guidelines.

(2) The guidelines must consider the factors set forth in 40-4-204(2) and 40-6-116(5).

(3) At least once every 4 years, the department shall:

(a) review the uniform child support guidelines employed to determine child support obligations to ensure that their application results in the determination of appropriate child support award amounts; and

(b) propose any appropriate modification to the legislature.

Section 4. Section 40-5-214, MCA, is amended to read:

"40-5-214. Scale of suggested minimum contributions.

(1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part.

~~The scale shall:~~

~~(a)--include consideration of gross income;~~

~~(b)--authorize an expense deduction for determining net income;~~

~~(c)--designate other available resources to be considered;~~

~~(d)--specify the circumstances which should be considered in reducing support contributions on the basis of hardship; The scale must be based on the uniform child support guidelines adopted by the department under [section 3].~~

~~(2) The department shall accept and compile pertinent and reliable information from any available source in order~~

~~to establish a minimum scale of suggested contributions. Copies of the scale shall must be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the minimum scale of suggested contribution.~~

~~(3) No county, court, officer, or agency may be required to use this scale."~~

NEW SECTION. Section 5. Payor and obligor notice. (1)

When a person is hired for employment, the payor shall inquire whether or not the person has a child support obligation that is required by law to be withheld from income and the terms, if any, of the order. The person shall disclose this information at the time of hiring. ~~if a payor fails to make this inquiry, the payor is liable to the department for any amount up to the accumulated amount the payor should have withheld and delivered if it is not paid by the obligor.~~

(2) If a person discloses that he owes child support that is required to be withheld, the payor shall begin withholding according to the terms of the order and this part.

(3) At any time an obligor is subject to automatic income withholding, the obligor shall disclose to a payor

1 that the obligor owes child support in order that the payor
2 may begin withholding according to the terms of the order
3 and this part. If the obligor does not make such
4 disclosure, the failure to disclose may be considered a
5 contempt of the district court.

6 **Section 6.** Section 40-5-401, MCA, is amended to read:

7 "40-5-401. Short title. This part may be cited as the
8 "Child Support Enforcement Act of 1985".

9 **Section 7.** Section 40-5-404, MCA, is amended to read:

10 "~~40-5-404. Remedies-additional-to-those-now-existing~~
11 Other remedies available. The remedy remedies provided in
12 this part ~~is~~ are in addition to and not in substitution for
13 any other remedy that may otherwise be available to the
14 department, and the department may simultaneously pursue
15 other remedies to enforce a support obligation or to collect
16 support arrearages."

17 **Section 8.** Section 40-5-411, MCA, is amended to read:

18 "40-5-411. Income withholding. (1) Whenever If an
19 obligation for support is being enforced by the department
20 pursuant to Title IV-D of the Social Security Act and the
21 obligation has been established ~~by--order--of--a--court~~ as
22 required by law or administrative process, income due or to
23 become due within this state to the obligor is subject to
24 withholding procedures under this part if:

25 (a) except as provided in 40-4-204 and 40-6-116, a

1 support obligation is initially decreed and ordered or
2 modified after January 1, 1990, by a district court or
3 administrative process, regardless of whether child support
4 payments are in arrears; or

5 (b) the obligor is found to owe a combination of
6 unpaid child support under a support order in an amount
7 equal to or in excess of 1 month's support payment.

8 (2) When the requirements of this part have been met,
9 the department, without necessity for amendment of the
10 support order or further order by a court or other entity,
11 shall issue an order directing the obligor's employer or
12 other payor to withhold and deliver to the department such
13 amount of the obligor's income as will be sufficient to meet
14 the support obligation imposed by the support order and to
15 defray arrearages, if any, due when the withholding order
16 takes place.

17 (3) The provisions for income withholding under this
18 part take precedence over any other law or court order."

19 **Section 9.** Section 40-5-412, MCA, is amended to read:

20 "40-5-412. Initiation of income withholding
21 ~~procedures. (1) In each case in which the department is~~
22 ~~enforcing a support order assigned to the state pursuant to~~
23 ~~53-2-613 or in which the department is collecting support on~~
24 ~~behalf of an obligee who has applied for services under~~
25 ~~40-5-203, the department shall monitor and track all support~~

1 ~~payments required by the support order. If at any time these~~
 2 ~~records indicate that the obligor owes any combination of~~
 3 ~~unpaid support equal to or in excess of one month's support~~
 4 ~~payment, the department shall commence withholding from the~~
 5 ~~obligor's income. In a case concerning a support obligation~~
 6 ~~referred to in 40-5-411, the department shall immediately~~
 7 ~~issue an order under 40-5-415 for the payment of current~~
 8 ~~support.~~

9 (2) In any other case, the department shall monitor
 10 and track all support payments required by the support
 11 order. If at any time these records indicate that the
 12 obligor owes a combination of unpaid support equal to or in
 13 excess of 1 month's support, the department shall commence
 14 proceedings to initiate withholding of the obligor's income
 15 as provided in this part.

16 (2)(3) To accomplish the purpose of subsection (2),
 17 the department by written notice to the obligor may direct
 18 an obligor who does not owe unpaid child support equal to or
 19 in excess of 1 month's support payment to pay all support
 20 through the department, notwithstanding any court order
 21 directing payments to be made to the obligee or clerk of
 22 court.

23 (3)(4) Whenever an obligation for support is paid
 24 through the support enforcement and collections unit of the
 25 department, the department must forward payment to the

1 obligee within 10 days of the department's receipt of
 2 payment from the obligor."

3 **Section 10.** Section 40-5-413, MCA, is amended to read:

4 "40-5-413. Notice of intent to withhold income. (1)
 5 Prior to service of an initial order on the payor to
 6 commence income withholding or a modification of an existing
 7 order on the payor under 40-5-415, the department shall
 8 serve upon the obligor a notice of the intended withholding
 9 action if:

10 (a) the department previously has not issued an order
 11 to withhold and it has determined the obligor owes a
 12 combination of unpaid support equal to or in excess of 1
 13 month's support;

14 (b) additional arrearages have accrued subsequent to
 15 the issuance of an order to withhold; or

16 (c) immediate withholding has commenced for current
 17 support and there are arrearages due for a period prior to
 18 entry of the order to withhold.

19 (2) The notice must contain a statement:

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

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

25 (c) of the obligor's right to a hearing under 40-5-414

to contest the implementation of income withholding or
modification of an existing order on the ground that
~~withholding, including the amounts to be withheld,~~ the
intended action is not proper because of mistake of fact;
 and

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

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

Section 11. Section 40-5-414, MCA, is amended to read:

"40-5-414. **Hearing.** (1) The obligor may within 10 days
 of being served with notice of the intended income
 withholding action under 40-5-413 file with the department a
 written request for an administrative hearing to be held
 pursuant to the contested case provisions of Title 2,
 chapter 4, part 6.

(2) ~~If~~ In a case initiated because an arrearage has
accrued or because additional income is to be withheld to
satisfy additional arrearages and in which the obligor
 requests a hearing within the time allowed, income
 withholding the intended action may not take effect until
 the conclusion of the hearing or the date of the hearing if

the obligor fails to appear at a scheduled hearing.

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

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

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

(6) ~~The~~ In a case initiated because an arrearage has
accrued or because additional income is being withheld to
satisfy additional arrearages, the obligor, within 45 days
 of service of the notice of intent to withhold income, must
 be informed of the hearing decision on whether income
 withholding will take place.

(7) If the obligor fails to request a hearing within
10 days or fails to appear at a scheduled hearing or if the

1 hearing examiner determines that the obligor owes a
 2 combination of unpaid support equal to or in excess of 1
 3 month's support obligation, the department shall proceed
 4 with the intended action in accordance with 40-5-415."

5 **Section 12.** Section 40-5-415, MCA, is amended to read:

6 "40-5-415. Order to withhold income. (1) ~~If---the~~
 7 ~~obligor---fails---to-request-a-hearing-within-10-days-or-fails~~
 8 ~~to-appear-at-a-scheduled-hearing-or-if-the-hearing-examiner~~
 9 ~~determines---that---the---obligor---owes-a-combination-of-unpaid~~
 10 ~~support-equal-to-or-in-excess-of-1-month's-support---payment,~~
 11 When the requirements of this part have been met, the
 12 department shall immediately serve an order or modification
 13 order to withhold and deliver income upon any payor or
 14 combination of payors. The order must:

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

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

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

23 (d) state the rights and duties of the payor under
 24 this part.

25 (2) An order or modification order to withhold and

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

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

9 **Section 13.** Section 40-5-416, MCA, is amended to read:

10 "40-5-416. Determination of amount of income to be
 11 withheld. (1) (a) Except--as Subject to the limitations
 12 provided in subsection (2), the amount of funds to be
 13 withheld each month from the obligor's income must be:

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

17 (b) If income is being withheld to satisfy an
 18 arrearage, the amount of funds to be withheld must include
 19 the greater of:

20 (i) the amount of money which that, when deducted in
 21 equal amounts each month, will pay all outstanding support
 22 arrearages and interest, if any, within 2 years; plus or

23 (ii) 25% of the obligor's income.

24 (c) If income is being withheld to satisfy an
 25 arrearage, the department may allow a fee not to exceed \$5

1 each month, which may be withheld by the payor as
2 compensation for the administrative costs of each
3 withholding.

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

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

14 **Section 14.** Section 40-5-417, MCA, is amended to read:

15 "40-5-417. **Modification or termination of withholding**
16 **orders.** (1) The department may at any time modify the order
17 to withhold income to:

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

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

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

24 (2) If an arrearage occurs while the department is
25 collecting an amount of money necessary to pay current

1 installments of support as they become due and payable, the
2 department may adjust the amount of income required to be
3 withheld to also satisfy the arrearage, as provided in this
4 part.

5 {2}{3} An income withholding order terminates only
6 when the department is no longer authorized under the law to
7 collect support or, when appropriate, services rendered
8 under 40-5-203 have come to an end or when the obligation to
9 pay support is terminated and all arrearages are paid in
10 full, whichever occurs first."

11 **Section 15.** Section 40-5-203, MCA, is amended to read:

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

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

24 ~~{3}--The--department--may--not--charge--the--applicant--a--fee~~
25 ~~as--compensation--for--services--rendered--in--establishment--of--or~~

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

17 NEW SECTION. **Section 16.** Standardized fee schedule.

18 (1) The department shall by rule establish a standardized
 19 schedule of fees for the recovery of administrative costs
 20 and expenses of child support enforcement. The fees may be
 21 recovered from an obligor if the obligor's failure or
 22 refusal to support a child makes it necessary for the
 23 department to provide child support enforcement services
 24 under this part. The fees must be commensurate with costs
 25 or an average of the expenditures related to specific or

1 routine activities.

2 (2) In an action to establish paternity or to
 3 establish or enforce a child support obligation, whether in
 4 district court or by administrative process, the department
 5 must be awarded costs in the amount established in the fee
 6 schedule as part of any judgment, decree, or order in which
 7 the department is the prevailing party.

8 (3) Fees awarded under this section are in the nature
 9 of child support and are collectible in the same manner as a
 10 support order. The fee award may be collected separately or
 11 added to and collected with any balance due on a support
 12 debt.

13 (4) Collection of a fee award may not reduce any
 14 current child support payment due the obligee.

15 (5) Arrearage amounts collected that include a fee
 16 must be allocated as follows:

17 (a) If the obligee is a recipient of public
 18 assistance, the amount must be allocated first to satisfy
 19 the fee.

20 (b) If the obligee is not a recipient of public
 21 assistance, the first 10% of each amount collected must be
 22 allocated to satisfy the fee.

23 (6) The department, upon a showing of necessity, may
 24 waive or defer any fee assessed under this section.

25 NEW SECTION. **Section 17.** Extension of authority. Any

1 existing authority to make rules on the subject of the
2 provisions of [this act] is extended to the provisions of
3 [this act].

4 NEW SECTION. Section 18. Codification instruction.
5 [Sections 3 and 16] are intended to be codified as an
6 integral part of Title 40, chapter 5, part 2, and the
7 provisions of Title 40, chapter 5, part 2, apply to
8 [sections 3 and 16]. [Section 5] is intended to be codified
9 as an integral part of Title 40, chapter 5, part 4, and the
10 provisions of Title 40, chapter 5, part 4, apply to [section
11 5].

12 NEW SECTION. Section 19. Applicability. [This act]
13 applies to child support orders and modifications of child
14 support orders issued after September 30, 1989.

-End-

1 SENATE BILL NO. 129

2 INTRODUCED BY MANNING, MCLANE, NORMAN, PIPINICH,

3 REGAN, O'KEEFE, WALKER, CONNELLY, J. BROWN, BRADLEY

4 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON WELFARE

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT PARENTS
7 FULFILL THE DUTY TO SUPPORT THEIR CHILDREN BY PROVIDING FOR
8 A PRESUMPTIVE OBLIGATION OF SUPPORT IN CERTAIN LEGAL
9 PROCEEDINGS; TO REQUIRE CONSIDERATION OF UNIFORM GUIDELINES
10 TO ESTABLISH A MINIMUM SUPPORT LEVEL; TO REQUIRE PATERNITY
11 CHILD SUPPORT ORDERS TO INCLUDE A PROVISION COVERING HEALTH
12 INSURANCE IN CERTAIN CASES; TO PROVIDE FOR CHILD SUPPORT
13 COLLECTION THROUGH AUTOMATIC INCOME WITHHOLDING; TO GRANT
14 THE DEPARTMENT OF REVENUE THE AUTHORITY TO CHARGE FEES IN
15 CASES IN WHICH AN OBLIGOR'S FAILURE OR REFUSAL TO PAY
16 SUPPORT REQUIRES THE DEPARTMENT TO ACT; AMENDING SECTIONS
17 40-4-204, 40-5-203, 40-5-214, 40-5-401, 40-5-404, 40-5-411
18 THROUGH 40-5-417, AND 40-6-116, MCA; AND PROVIDING AN
19 APPLICABILITY DATE."

20

21 STATEMENT OF INTENT

22 A statement of intent is needed for this bill because
23 the department of revenue is required by [section 3] to
24 adopt uniform child support guidelines for use by judges and
25 other officials who have the power to determine child

There is no change on SB 129 and will
not be reprinted. Please refer to
second reading copy (yellow) for complete
text.



STANDING COMMITTEE REPORT

March 22, 1989
Page 2 of 4

March 22, 1989
Page 1 of 4

Mr. Speaker: We, the committee on Human Services and Aging report that SENATE BILL 129 (third reading copy -- blue), with statement of intent attached, be concurred in as amended.

Signed: 
Stella Jean Hansen, Chairmar

And, that such amendments read:

1. Title, line 17.
Following: "40-5-203,"
Insert: "40-5-208,"

2. Title, line 18.
Following: "40-5-417,"
Insert: "40-5-422,"

3. Page 7.
Following: line 8
Insert: "(6) If the department of revenue is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208."

4. Page 12.
Following: line 14
Insert: "(9) If the department of revenue is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208."

5. Page 14, lines 11 through 15.

Strike: line 11 through "hiring." on line 15
Insert: "After a person is hired for employment, the payor shall submit to the person a written form inquiring whether the person owes child support that is required by law to be withheld from income according to the terms of an order, if any, concerning child support. The person shall immediately complete, sign, and date the form and return it to the payor. The completed form must be retained by the payor for at least 3 years after the date of hiring or at least 1 year after the date that employment is terminated, whichever is longer."

6. Page 15.
Following: line 5
Insert: "(4) A payor may not inquire as to whether a prospective employee owes child support that is required by law to be withheld from income according to the terms of an order, if any, concerning child support, until employment has been offered and accepted."

7. Page 26.
Following: line 24
Insert: "Section 17. Section 40-5-208, MCA, is amended to read:
"40-5-208. Medical support obligation -- enforcement -- sanctions. (1)(a) In all proceedings initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require parents obligated to pay child support the obligor to ~~secure~~ obtain and maintain health insurance coverage for each dependent child, at a cost not to exceed 5% of ~~not income, whenever such~~ if health insurance coverage is available through ~~their~~ the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section. ~~However, if a court of competent jurisdiction has entered an order establishing a current support obligation and has ordered the obligated parent to secure and maintain health insurance coverage for each dependent child, the department shall enforce the obligation as ordered by the court.~~

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

March 22, 1989
Page 3 of 4

March 22, 1989
Page 4 of 4

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) (a) If the department is providing child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation.

(b) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

~~42~~ (3) (a) If the department determines that an obligated parent has failed to maintain health insurance coverage required by the order of a court of competent jurisdiction or an administrative agency empowered to enter such order, it The department 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 determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or failure to appear, that health insurance coverage has not been secured obtained or maintained in accordance with the court or administrative order, or that the obligor has failed to provide the information required, the department may assess against the obligated parent not more than \$100 for each month health insurance coverage has not been secured obtained or maintained or for each month information has not been provided. Such amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-241 and income withholding provided for in Title 40, chapter 5, part 4.

~~(3) Whenever an obligated parent 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 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 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 to pay the sum assessed in accordance with this section for each month coverage was not maintained.~~

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

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

"Section 18. Section 40-5-422, MCA, is amended to read:

"40-5-422. Obligor rights protected -- penalties. (1) No An employer may not discharge, discipline, or refuse to hire an obligor :

(a) because the person has a child support obligation; or

(b) because of the institution of income withholding on the obligor's income or the initiation of proceedings under this part.

(2) Any person who violates this section may be fined not more than \$500 and not less than \$150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and backpay."

Renumber: subsequent section

8. Page 27.

Following: line 3

Insert: "NEW SECTION. Section 20. Coordination. If [this act] and Senate Bill No. 70 are both passed and approved, then the amendment to 40-4-204, MCA, in Senate Bill No. 70 is void."

Renumber: subsequent sections

SENATE BILL NO. 129

INTRODUCED BY MANNING, MCLANE, NORMAN, PIPINICH,

REGAN, O'KEEFE, WALKER, CONNELLY, J. BROWN, BRADLEY

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON WELFARE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT PARENTS FULFILL THE DUTY TO SUPPORT THEIR CHILDREN BY PROVIDING FOR A PRESUMPTIVE OBLIGATION OF SUPPORT IN CERTAIN LEGAL PROCEEDINGS; TO REQUIRE CONSIDERATION OF UNIFORM GUIDELINES TO ESTABLISH A MINIMUM SUPPORT LEVEL; TO REQUIRE PATERNITY CHILD SUPPORT ORDERS TO INCLUDE A PROVISION COVERING HEALTH INSURANCE IN CERTAIN CASES; TO PROVIDE FOR CHILD SUPPORT COLLECTION THROUGH AUTOMATIC INCOME WITHHOLDING; TO GRANT THE DEPARTMENT OF REVENUE THE AUTHORITY TO CHARGE FEES IN CASES IN WHICH AN OBLIGOR'S FAILURE OR REFUSAL TO PAY SUPPORT REQUIRES THE DEPARTMENT TO ACT; AMENDING SECTIONS 40-4-204, 40-5-203, 40-5-208, 40-5-214, 40-5-401, 40-5-404, 40-5-411 THROUGH 40-5-417, 40-5-422, AND 40-6-116, MCA; AND PROVIDING AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is needed for this bill because the department of revenue is required by [section 3] to adopt uniform child support guidelines for use by judges and other officials who have the power to determine child

support awards within this state. The department initially shall adopt and promulgate the uniform child support guidelines recommended by the Montana supreme court at 44 State Reporter 828 (1987). Thereafter, the department shall periodically review those guidelines to determine if they are appropriate to determine adequate minimum child support amounts. If the department determines that the guidelines are no longer adequate, it shall amend them, after considering the factors set forth in 40-4-204(2) and 40-6-116(5).

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

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- ~~warning-of automatic withholding procedures of child support~~. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court ~~may shall~~ order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, ~~after considering~~.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the custodial parent;



1 (c) the standard of living the child would have
 2 enjoyed had the marriage not been dissolved;
 3 (d) the physical and emotional condition of the child
 4 and his educational and medical needs;
 5 (e) the financial resources and needs of the
 6 noncustodial parent; and
 7 (f) ~~for the purposes of determining a minimum amount~~
 8 ~~for support, the amount received by children under the AP&C~~
 9 ~~program, as defined in 53-2-702,~~ the age of the child;
 10 (g) the cost of day care for the child;
 11 (h) any custody arrangement that is ordered or decided
 12 upon; and
 13 (i) the needs of any person, other than the child,
 14 whom either parent is legally obligated to support.
 15 (3) (a) Whenever a court issues or modifies an order
 16 concerning child support, the court shall determine the
 17 child support obligation by applying the standards in this
 18 section and the uniform child support guidelines adopted by
 19 the department of revenue pursuant to [section 3], unless
 20 the court finds by clear and convincing evidence that the
 21 application of the standards and guidelines is unjust to the
 22 child or to any of the parties or is inappropriate in that
 23 particular case.
 24 (b) If the court does not apply these standards and
 25 guidelines to determine child support, it shall state its

1 reasons for finding that the application of such standards
 2 and guidelines is unjust to the child or a party or is
 3 inappropriate in that particular case.
 4 {2}(c) If the court does not order a parent owing a
 5 duty of support to a child to pay any amount for the child's
 6 support, the court shall state the its reasons for not
 7 ordering child support.
 8 {3}(4) Each district court judgment, decree, or order
 9 establishing a final child support obligation under this
 10 title and each modification of a final order for child
 11 support must include a provision addressing health insurance
 12 coverage in the following cases:
 13 (a) If either party has available through an employer
 14 or other organization health insurance coverage for the
 15 child or children for which the premium is partially or
 16 entirely paid by the employer or organization, the judgment,
 17 decree, or order may contain a provision requiring that
 18 coverage for the child or children be continued or obtained.
 19 (b) In the event that health insurance required in a
 20 child support judgment, decree, or order becomes unavailable
 21 to the party who is to provide it, through loss or change of
 22 employment or otherwise, that party must, in the absence of
 23 an agreement to the contrary, obtain comparable insurance or
 24 request that the court modify the requirement.
 25 (c) All temporary child support orders must contain a

1 provision requiring the party who has health insurance in
2 effect for the child or children of the parties to continue
3 the insurance coverage pending final disposition of the
4 case.

5 (d) The parties may by written agreement provide for
6 the health care coverage required by this section, subject
7 to the approval of the court.

8 (e) Unless otherwise provided in the decree, the
9 health care coverage required by this section is in addition
10 to and not in substitution, in whole or in part, for the
11 child support obligation.

12 ~~†4†~~(5) (a) Each Except as provided in subsection
13 (5)(b), each district court judgment, decree, or order
14 establishing a child support obligation under this title,
15 whether temporary or final, and each modification of an
16 existing child support order must:

17 (i) provide that the amount of child support must be
18 withheld from the obligor's income and paid to the
19 department pursuant to procedures established by the
20 department under Title 40, chapter 5, part 4; and

21 (ii) include the obligor's social security number and
22 the name and address of the obligor's employer and of any
23 other payor of income to the obligor.

24 (b) Income is not subject to automatic withholding if:

25 (i) the obligee or obligor demonstrates and the court

1 finds that there is good cause not to require automatic
2 income withholding; or

3 (ii) the obligee and obligor agree in writing to an
4 alternative arrangement regarding the payment of child
5 support that provides sufficient security to ensure
6 compliance with their agreement. The security is in addition
7 to the child support obligation.

8 (c) When a judgment, decree, or order for child
9 support is entered or modified and automatic income
10 withholding is ordered, an obligee who is not a recipient of
11 public assistance shall apply for the support enforcement
12 services of the department pursuant to Title IV-D of the
13 Social Security Act for the collection of support through
14 automatic income withholding under Title 40, chapter 5, part
15 4. The department shall accept the application. Pending an
16 application, the department shall immediately implement
17 automatic income withholding and hold any amounts collected
18 in trust for the obligee until the obligee makes
19 application.

20 (d) When automatic income withholding is ordered under
21 subsection (5)(a), the clerk of court shall immediately
22 forward a copy of the order to the department.

23 (e) If an obligor is not subject to income withholding
24 or is exempted from income withholding, the district court
25 judgment or order establishing-a-child-support-obligation

1 under--this--title,--whether--temporary--or--final,--and--each
 2 modification-of-an-existing-order-for-child-support--entered
 3 after-October-17-1985, must include a warning statement that
 4 if the obligor is delinquent in the payment of support, the
 5 obligor's income may be subject to income withholding
 6 procedures under Title 40, chapter 5, part 3 or 4. Failure
 7 to include a warning statement in a judgment or order does
 8 not preclude the use of withholding procedures.

9 (6) IF THE DEPARTMENT OF REVENUE IS PROVIDING OR LATER
 10 PROVIDES SUPPORT ENFORCEMENT SERVICES UNDER TITLE IV-D OF
 11 THE SOCIAL SECURITY ACT, EACH DISTRICT COURT ORDER OR
 12 MODIFICATION OF AN ORDER MUST CONTAIN A STATEMENT PROVIDING
 13 THAT THE NONCUSTODIAL PARENT, WITHOUT FURTHER ORDER OF THE
 14 COURT, IS REQUIRED TO OBTAIN AND MAINTAIN HEALTH INSURANCE
 15 COVERAGE AS PROVIDED IN 40-5-208. FAILURE TO INCLUDE A
 16 WARNING STATEMENT IN THE JUDGMENT OR ORDER DOES NOT PRECLUDE
 17 THE IMPOSITION OF SANCTIONS UNDER 40-5-208."

18 **Section 2.** Section 40-6-116, MCA, is amended to read:

19 **"40-6-116. Judgment or order.** (1) The judgment or
 20 order of the court determining the existence or nonexistence
 21 of the parent and child relationship is determinative for
 22 all purposes.

23 (2) If the judgment or order of the court is at
 24 variance with the child's birth certificate, the court shall
 25 order that a substitute birth certificate be issued under

1 40-6-123.

2 (3) (a) The judgment or order may contain any other
 3 provision directed against the appropriate party to the
 4 proceeding concerning the-duty-of-support, the custody and
 5 guardianship of the child, visitation privileges with the
 6 child, the furnishing of bond or other security for the
 7 payment of the judgment, or any other matter in the best
 8 interest of the child.

9 (b) Except when the financial responsibility of a
 10 responsible parent is in the process of being determined
 11 pursuant to the administrative procedure provided in
 12 40-5-225, the judgment or order must contain a provision
 13 concerning the duty of child support.

14 (c) The judgment or order may direct the father to pay
 15 the reasonable expenses of the mother's pregnancy and
 16 confinement.

17 (4) (a) Support judgments or orders ordinarily shall
 18 be for periodic payments which may vary in amount.

19 (b) In the best interest of the child, a lump-sum
 20 payment or the purchase of an annuity may be ordered in lieu
 21 of periodic payments of support.

22 (c) The court may limit the father's liability for
 23 past support of the child to the proportion of the expenses
 24 already incurred that the court deems just.

25 (5) In determining the amount to be paid by a parent

for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including his medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others; and

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by

the department of revenue pursuant to [section 3], unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a

child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Except as provided in subsection (8)(b), each district court judgment or order establishing a child support obligation under this part, whether temporary or final, and each modification of an existing child support order must:

(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and

(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.

(b) Income is not subject to automatic withholding if:

(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or

(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.

(c) When a judgment or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.

(d) When automatic income withholding is ordered under subsection (8)(a), the clerk of court shall immediately forward a copy of the order to the department.

(9) IF THE DEPARTMENT OF REVENUE IS PROVIDING OR LATER PROVIDES SUPPORT ENFORCEMENT SERVICES UNDER TITLE IV-D OF

THE SOCIAL SECURITY ACT, EACH DISTRICT COURT ORDER OR
 MODIFICATION OF AN ORDER MUST CONTAIN A STATEMENT PROVIDING
 THAT THE NONCUSTODIAL PARENT, WITHOUT FURTHER ORDER OF THE
 COURT, IS REQUIRED TO OBTAIN AND MAINTAIN HEALTH INSURANCE
 COVERAGE AS PROVIDED IN 40-5-208. FAILURE TO INCLUDE A
 WARNING STATEMENT IN THE JUDGMENT OR ORDER DOES NOT PRECLUDE
 THE IMPOSITION OF SANCTIONS UNDER 40-5-208."

NEW SECTION. Section 3. Child support guidelines --

periodic review. (1) The department shall adopt uniform
 child support guidelines to be used to determine minimum
 child support amounts. In addition to giving notice and
 publicizing the rules as provided in the Montana
 Administrative Procedure Act, the department shall give
 notice to the supreme court, the district courts, and the
 state bar of Montana prior to adopting the guidelines.

(2) The guidelines must consider the factors set forth
 in 40-4-204(2) and 40-6-116(5).

(3) At least once every 4 years, the department shall:

(a) review the uniform child support guidelines
 employed to determine child support obligations to ensure
 that their application results in the determination of
 appropriate child support award amounts; and

(b) propose any appropriate modification to the
 legislature.

Section 4. Section 40-5-214, MCA, is amended to read:

"40-5-214. Scale of suggested minimum contributions.

(1) The department shall establish a scale of suggested
 minimum contributions to assist counties and courts in
 determining the amount that a parent should be expected to
 contribute toward the support of his child under this part.

The scale shall:

(a) include consideration of gross income;

(b) authorize an expense deduction for determining net
 income;

(c) designate other available resources to be
 considered;

(d) specify the circumstances which should be
 considered in reducing support contributions on the basis of
 hardship. The scale must be based on the uniform child
 support guidelines adopted by the department under [section
 3].

(2) The department shall accept and compile pertinent
 and reliable information from any available source in order
 to establish a minimum scale of suggested contributions.
 Copies of the scale shall must be made available to courts,
 county offices, county attorneys, and upon request, to any
 other state or county officer or agency engaged in the
 administration or enforcement of this part. Attorneys
 admitted to practice in Montana may have access to the
 minimum scale of suggested contribution.

1 ~~(3) -- No -- county -- court -- officer -- or -- agency -- may -- be~~
2 ~~required to use this scale.~~"

3 **NEW SECTION. Section 5. Payor and obligor notice. (1)**

4 ~~When -- a -- person -- is -- hired -- for -- employment, the payor shall~~
5 ~~inquire whether or not the person has a child support~~
6 ~~obligation that is required by law to be withheld from~~
7 ~~income and the terms, if any, of the order. The person shall~~
8 ~~disclose this information at the time of hiring. If a payor~~
9 ~~fails to make this inquiry, the payor is liable to the~~
10 ~~department for any amount up to the accumulated amount the~~
11 ~~payor should have withheld and delivered if it is not paid~~
12 ~~by the obligor. AFTER A PERSON IS HIRED FOR EMPLOYMENT, THE~~
13 ~~PAYOR SHALL SUBMIT TO THE PERSON A WRITTEN FORM INQUIRING~~
14 ~~WHETHER THE PERSON OWES CHILD SUPPORT THAT IS REQUIRED BY~~
15 ~~LAW TO BE WITHHELD FROM INCOME ACCORDING THE TERMS OF AN~~
16 ~~ORDER, IF ANY, CONCERNING CHILD SUPPORT. THE PERSON SHALL~~
17 ~~IMMEDIATELY COMPLETE, SIGN, AND DATE THE FORM AND RETURN IT~~
18 ~~TO THE PAYOR. THE COMPLETED FORM MUST BE RETAINED BY THE~~
19 ~~PAYOR FOR AT LEAST 3 YEARS AFTER THE DATE OF HIRING OR AT~~
20 ~~LEAST 1 YEAR AFTER THE DATE THAT EMPLOYMENT IS TERMINATED,~~
21 ~~WHICHEVER IS LONGER.~~

22 (2) If a person discloses that he owes child support
23 that is required to be withheld, the payor shall begin
24 withholding according to the terms of the order and this
25 part.

1 (3) At any time an obligor is subject to automatic
2 income withholding, the obligor shall disclose to a payor
3 that the obligor owes child support in order that the payor
4 may begin withholding according to the terms of the order
5 and this part. If the obligor does not make such
6 disclosure, the failure to disclose may be considered a
7 contempt of the district court.

8 (4) A PAYOR MAY NOT INQUIRE AS TO WHETHER A
9 PROSPECTIVE EMPLOYEE OWES CHILD SUPPORT THAT IS REQUIRED BY
10 LAW TO BE WITHHELD FROM INCOME ACCORDING TO THE TERMS OF AN
11 ORDER, IF ANY, CONCERNING CHILD SUPPORT, UNTIL EMPLOYMENT
12 HAS BEEN OFFERED AND ACCEPTED.

13 **Section 6.** Section 40-5-401, MCA, is amended to read:
14 "40-5-401. Short title. This part may be cited as the
15 "Child Support Enforcement Act of 1985".

16 **Section 7.** Section 40-5-404, MCA, is amended to read:
17 "40-5-404. Remedies--additional--to--those--now--existing
18 Other remedies available. The remedy remedies provided in
19 this part ~~is~~ are in addition to and not in substitution for
20 any other remedy that may otherwise be available to the
21 department, and the department may simultaneously pursue
22 other remedies to enforce a support obligation or to collect
23 support arrearages."

24 **Section 8.** Section 40-5-411, MCA, is amended to read:
25 "40-5-411. Income withholding. (1) Whenever if an

obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established by--order--of--a--court as required by law or administrative process, income due or to become due within this state to the obligor is subject to withholding procedures under this part if:

(a) except as provided in 40-4-204 and 40-6-116, a support obligation is initially decreed and ordered or modified after January 1, 1990, by a district court or administrative process, regardless of whether child support payments are in arrears; or

(b) the obligor is found to owe a combination of unpaid child support under a support order in an amount equal to or in excess of 1 month's support payment.

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

(3) The provisions for income withholding under this part take precedence over any other law or court order."

Section 9. Section 40-5-412, MCA, is amended to read:

"40-5-412. Initiation of income withholding procedures. (1) in--each--case--in--which--the--department--is enforcing--a--support--order--assigned--to--the--state--pursuant--to 53-2-613--or--in--which--the--department--is--collecting--support--on behalf--of--an--obligee--who--has--applied--for--services--under 40-5-203,--the--department--shall--monitor--and--track--all--support payments--required--by--the--support--order;--if--at--any--time--these records--indicate--that--the--obligor--owes--any--combination--of unpaid--support--equal--to--or--in--excess--of--1--month's--support payment,--the--department--shall--commence--withholding--from--the obligor's--income. In a case concerning a support obligation referred to in 40-5-411, the department shall immediately issue an order under 40-5-415 for the payment of current support.

(2) In any other case, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support, the department shall commence proceedings to initiate withholding of the obligor's income as provided in this part.

(2)(3) To accomplish the purpose of subsection (2), the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or

1 in excess of 1 month's support payment to pay all support
2 through the department, notwithstanding any court order
3 directing payments to be made to the obligee or clerk of
4 court.

5 ~~(3)~~(4) Whenever an obligation for support is paid
6 through the support enforcement and collections unit of the
7 department, the department must forward payment to the
8 obligee within 10 days of the department's receipt of
9 payment from the obligor."

10 **Section 10.** Section 40-5-413, MCA, is amended to read:

11 **"40-5-413. Notice of intent to withhold income.** (1)
12 Prior to service of an initial order on--the-payor-to
13 commence-income-withholding or a modification of an existing
14 order on the payor under 40-5-415, the department shall
15 serve upon the obligor a notice of the intended withholding
16 action: if:

17 (a) the department previously has not issued an order
18 to withhold and it has determined the obligor owes a
19 combination of unpaid support equal to or in excess of 1
20 month's support;

21 (b) additional arrearages have accrued subsequent to
22 the issuance of an order to withhold; or

23 (c) immediate withholding has commenced for current
24 support and there are arrearages due for a period prior to
25 entry of the order to withhold.

1 (2) The notice must contain a statement:

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

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

7 (c) of the obligor's right to a hearing under 40-5-414
8 to contest the implementation of income withholding or
9 modification of an existing order on the ground that
10 withholding,--including--the--amounts--to--be--withheld, the
11 intended action is not proper because of mistake of fact;
12 and

13 (d) of the period of time within which the obligor
14 must request a hearing and that failure to request the
15 hearing within the time limit will result in income
16 withholding orders being served upon the payor for the
17 amount stated in the notice.

18 ~~(2)~~(3) The notice must be served upon the obligor
19 personally or by certified mail."

20 **Section 11.** Section 40-5-414, MCA, is amended to read:

21 **"40-5-414. Hearing.** (1) The obligor may within 10 days
22 of being served with notice of the intended income
23 withholding action under 40-5-413 file with the department a
24 written request for an administrative hearing to be held
25 pursuant to the contested case provisions of Title 2,

chapter 4, part 6.

(2) If In a case initiated because an arrearage has accrued or because additional income is to be withheld to satisfy additional arrearages and in which the obligor requests a hearing within the time allowed, income withholding the intended action may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.

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

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

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

(6) The In a case initiated because an arrearage has

accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(7) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation, the department shall proceed with the intended action in accordance with 40-5-415."

Section 12. Section 40-5-415, MCA, is amended to read:

"40-5-415. Order to withhold income. (1) ~~if--the obligor-fails-to-request-a-hearing-within-10-days--or--fails to--appear-at-a-scheduled-hearing-or-if-the-hearing-examiner determines-that-the-obligor-owes--a--combination--of--unpaid support--equal-to-or-in-excess-of-1-month's-support-payment;~~ When the requirements of this part have been met, the department shall immediately serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

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

(b) direct the payor to deliver the amount withheld to

1 the department in the same month in which the funds were
2 withheld;

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

5 (d) state the rights and duties of the payor under
6 this part.

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

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

16 **Section 13.** Section 40-5-416, MCA, is amended to read:

17 "40-5-416. Determination of amount of income to be
18 withheld. (1) (a) Except--as Subject to the limitations
19 provided in subsection (2), the amount of funds to be
20 withheld each month from the obligor's income must be:

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

24 (b) If income is being withheld to satisfy an
25 arrearage, the amount of funds to be withheld must include

1 the greater of:

2 (i) the amount of money which that, when deducted in
3 equal amounts each month, will pay all outstanding support
4 arrearages and interest, if any, within 2 years; plus or

5 (ii) 25% of the obligor's income.

6 (c) If income is being withheld to satisfy an
7 arrearage, the department may allow a fee not to exceed \$5
8 each month, which may be withheld by the payor as
9 compensation for the administrative costs of each
10 withholding.

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

15 (3) At any time, if the obligor can show that
16 substantial hardship will result if the maximum permissible
17 withholding is implemented or continued, the department for
18 cause shown may in its discretion determine a lesser amount
19 to be withheld each month in satisfaction of support
20 arrearages."

21 **Section 14.** Section 40-5-417, MCA, is amended to read:

22 "40-5-417. Modification or termination of withholding
23 orders. (1) The department may at any time modify the order
24 to withhold income to:

25 (a) reflect payment in full of the arrearages by

income withholding or otherwise;

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

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

(2) If an arrearage occurs while the department is collecting an amount of money necessary to pay current installments of support as they become due and payable, the department may adjust the amount of income required to be withheld to also satisfy the arrearage, as provided in this part.

~~(2)(3)~~ An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first."

Section 15. Section 40-5-203, MCA, is amended to read:

"40-5-203. Support enforcement services. (1) The department may accept applications for 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.

~~(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. 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. 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 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."~~

NEW SECTION. **Section 16.** Standardized fee schedule.

(1) The department shall by rule establish a standardized

1 schedule of fees for the recovery of administrative costs
2 and expenses of child support enforcement. The fees may be
3 recovered from an obligor if the obligor's failure or
4 refusal to support a child makes it necessary for the
5 department to provide child support enforcement services
6 under this part. The fees must be commensurate with costs
7 or an average of the expenditures related to specific or
8 routine activities.

9 (2) In an action to establish paternity or to
10 establish or enforce a child support obligation, whether in
11 district court or by administrative process, the department
12 must be awarded costs in the amount established in the fee
13 schedule as part of any judgment, decree, or order in which
14 the department is the prevailing party.

15 (3) Fees awarded under this section are in the nature
16 of child support and are collectible in the same manner as a
17 support order. The fee award may be collected separately or
18 added to and collected with any balance due on a support
19 debt.

20 (4) Collection of a fee award may not reduce any
21 current child support payment due the obligee.

22 (5) Arrearage amounts collected that include a fee
23 must be allocated as follows:

24 (a) If the obligee is a recipient of public
25 assistance, the amount must be allocated first to satisfy

1 the fee.

2 (b) If the obligee is not a recipient of public
3 assistance, the first 10% of each amount collected must be
4 allocated to satisfy the fee.

5 (6) The department, upon a showing of necessity, may
6 waive or defer any fee assessed under this section.

7 **SECTION 17. SECTION 40-5-208, MCA, IS AMENDED TO READ:**

8 "40-5-208. Medical support -- obligation enforcement
9 -- sanctions. (1) (a) In all proceedings initiated pursuant
10 to this part to establish a child support order, whether
11 final or temporary, and in each modification of an existing
12 order, the department shall require parents-obligated-to-pay
13 child--support the obligor to secure obtain and maintain
14 health insurance coverage for each dependent child--at-a
15 cost-not-to-exceed-5%-of-net-income,--whenever-such if health
16 insurance coverage is available through their the obligor's
17 employment or other group health insurance plan. The order
18 or modification of an order must include a statement that
19 the insurance must be obtained and maintained whenever the
20 department is providing support enforcement services and
21 that the failure to do so may result in the imposition of
22 sanctions under this section. However,--if--a-court--of
23 competent-jurisdiction-has-entered-an-order--establishing--a
24 current--support--obligation--and--has-ordered-the-obligated
25 parent-to-secure-and-maintain-health-insurance-coverage--for

1 ~~each dependent child, the department shall enforce the~~
2 ~~obligation as ordered by the court:~~

3 (b) If the support order or modification of an order
4 does not include a provision requiring the obligor to
5 provide health insurance coverage for a child, upon notice
6 to the obligor that the child is receiving support
7 enforcement services under Title IV-D of the Social Security
8 Act, the obligor shall obtain and maintain health insurance
9 coverage as provided for in subsection (1)(a). This
10 insurance is in addition to:

11 (i) an order requiring the obligee to maintain health
12 insurance coverage;

13 (ii) an agreement that the obligee will maintain health
14 insurance coverage; or

15 (iii) a failure or omission of the court order or
16 modification of an order to require health insurance
17 coverage.

18 (2) (a) If the department is providing child support
19 enforcement services and the obligor is required by an
20 existing district court order or an administrative order
21 under this section to provide health insurance coverage for
22 a child, the department shall also enforce the health
23 insurance obligation.

24 (b) To ensure that health insurance coverage is
25 available for the child, the obligor, upon written request

1 by the department, shall provide the name of the insurance
2 carrier, the policy identification name and number, the
3 names of the persons covered, and any other pertinent
4 information regarding coverage.

5 ~~{2}(3)~~ (a) if the department determines that an
6 obligated parent has failed to maintain health insurance
7 coverage required by the order of a court of competent
8 jurisdiction or an administrative agency empowered to enter
9 such order, it The department may issue a notice commanding
10 the parent obligor to appear at a hearing held by the
11 department and show cause why a sum of not more than \$100
12 should not be assessed for each month health insurance
13 coverage is not secured or maintained if the department
14 determines an obligor has failed to:

15 (i) obtain or maintain health insurance coverage as
16 required under this section; or

17 (ii) provide information required under this section.

18 (b) If the department finds, after hearing or failure
19 to appear, that health insurance coverage has not been
20 secured obtained or maintained in accordance with the court
21 or administrative order, or that the obligor has failed to
22 provide the information required, the department may assess
23 against the obligated parent not more than \$100 for each
24 month health insurance coverage has not been secured
25 obtained or maintained or for each month information has not

been provided. Such amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-241 and income withholding provided for in Title 40, chapter 5, part 4.

(3)--Whenever an obligated parent 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 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 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 to pay the sum assessed in accordance with this

section for each month coverage was not maintained.

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

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

SECTION 18. SECTION 40-5-422, MCA, IS AMENDED TO READ:

"40-5-422. Obligor rights protected -- penalties. (1)

No An employer may not discharge, discipline, or refuse to hire an obligor:

(a) because the person has a child support obligation;

or

(b) because of the institution of income withholding on the obligor's income or the initiation of proceedings under this part.

(2) Any person who violates this section may be fined not more than \$500 and not less than \$150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and backpay."

NEW SECTION. Section 19. 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].

1 NEW SECTION. SECTION 20. COORDINATION. IF [THIS ACT]
2 AND SENATE BILL NO. 70 ARE BOTH PASSED AND APPROVED, THEN
3 THE AMENDMENT TO 40-4-204 IN SENATE BILL NO. 70 IS VOID.

4 NEW SECTION. Section 21. Codification instruction.
5 [Sections 3 and 16] are intended to be codified as an
6 integral part of Title 40, chapter 5, part 2, and the
7 provisions of Title 40, chapter 5, part 2, apply to
8 [sections 3 and 16]. [Section 5] is intended to be codified
9 as an integral part of Title 40, chapter 5, part 4, and the
10 provisions of Title 40, chapter 5, part 4, apply to [section
11 5].

12 NEW SECTION. Section 22. Applicability. [This act]
13 applies to child support orders and modifications of child
14 support orders issued after September 30, 1989.

-End-

GOVERNOR'S AMENDMENTS TO
SENATE BILL 129
(REFERENCE COPY AS AMENDED)
April 20, 1989

1. Title, line 14.

Strike: "REVENUE"

Insert: "SOCIAL AND REHABILITATION SERVICES"

2. Title, line 16.

Following: "ACT;"

Insert: "TO TRANSFER TO THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES FROM THE DEPARTMENT OF REVENUE THE
AUTHORITY FOR CHILD SUPPORT ENFORCEMENT;"

Following: "SECTIONS"

Insert: "39-71-743,"

3. Title, line 17.

Following: "40-4-204,"

Insert: "40-4-209, 40-5-113, 40-5-202,"

Following: "40-5-214,"

Insert: "40-5-241, 40-5-303,"

Following: "40-5-401,"

Insert: "40-5-403,"

4. Title, line 18.

Following: "40-5-422,"

Strike: "AND"

Following: "40-6-116,"

Insert: "AND 53-2-613,"

5. Title, line 19.

Following: "AN"

Insert: "EFFECTIVE DATE AND AN"

6. Page 1, line 23.

Page 3, line 19.

Page 7, line 9.

Page 10, line 1.

Page 12, line 24.

Strike: "revenue", "revenue", or "REVENUE"

Insert: "social and rehabilitation services"

7. Page 32.

Following: line 21

Insert: "Section 19. Section 39-71-743, MCA, is amended to
read: "39-71-743. Assignment or attachment of payments. (1) No
payments under this chapter shall be assignable, subject to
attachment or garnishment, or be held liable in any way for
debts, except:

(a) as provided in 71-3-1118; or

(b) a portion of any lump-sum award or periodic payment to
pay a monetary obligation for current or past-due child support,
subject to the limitations in subsection (2), whenever the

support obligation is established by order of a court of
competent jurisdiction or by order rendered in an administrative
process authorized by state law.

(2) Payments under this chapter are subject to assignment,
attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the
percentage amount established in the guidelines promulgated in
~~supreme court order No. 86-223, dated January 13, 1987 by the~~
department of social and rehabilitation services pursuant to
[section 3]; or

(b) for any lump-sum award, an amount up to that portion of
the award that is approved for payment on the basis of a past-due
child support obligation.

(3) After determination that the claim is covered under the
Workers' Compensation Act or Occupational Disease Act of Montana,
the liability for payment of the claim is the responsibility of
the appropriate workers' compensation insurer. No fee or charge
shall be payable by the injured worker for treatment of injuries
sustained if liability is accepted by the insurer."

Section 20. Section 40-4-209, MCA, is amended to read:

"40-4-209. Security or guaranty to secure support. (1) Upon
verified application by a person authorized to enforce or collect
a child support obligation, ~~the department of revenue~~, the
department of family services, or the department of social and
rehabilitation services showing that a person obligated to pay
child support or maintenance pursuant to court or administrative
order is delinquent in an amount equal to the total of 6 months'
support payments, the court may direct the obligated person to
appear and show cause why an order should not be entered ordering
that he post bond, give a mortgage, or provide other security or
guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the
total of 6 months of support is owed and that the obligated
person has the ability to post bond, give a mortgage, or provide
security or other guaranty, the court may enter an order
requiring him to post bond, give a mortgage, or provide security
or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to
the total support due for a 2-year period and must be approved by
the court. The bond must include the name and address of the
issuer. Any person issuing a bond under this section must, if the
bond is cancelled, notify the court and the person or public
agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or
maintenance fails to make payments as required by the court or
administrative order, the person or public agency entitled to
receive payment may recover on the bond or other security. The
amount recovered on the bond or other security must first be
applied toward satisfaction of any support arrearages.

(5) The department of ~~revenue~~ social and rehabilitation
services shall adopt guidelines which take into account the
payment record of the obligated person, the availability of other
remedies, and other considerations which it determines relevant
for determining whether the procedure provided in this section

would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of ~~revenue~~ social and rehabilitation services determines an application for an order requiring security is not appropriate, it may not request the order."

Section 21. Section 40-5-113, MCA, is amended to read:
"40-5-113. Officials to represent obligee. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, ~~the department of revenue~~, the department of family services, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Section 22. Section 40-5-202, MCA, is amended to read:
"40-5-202. Department of ~~revenue~~ social and rehabilitation services -- 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~~ the 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~~ shall promptly take action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to ~~insure~~ ensure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(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, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's 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 any and all drafts, checks, money orders, or other negotiable instruments received by the department 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. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) 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 obligor for support debt provided unless the department has consented to the agreement in writing.

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

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

(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.

(9) The department may adopt and enforce ~~such~~ the 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, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 23. Section 40-5-303, MCA, is amended to read:

"40-5-303. Petition for income deduction -- who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) ~~the department of revenue~~, the department of family services, or the department of social and rehabilitation services of the state of Montana."

Section 24. Section 40-5-403, MCA, is amended to read:

"40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~revenue~~ social and rehabilitation services provided for in ~~2-15-1301~~ 2-15-2201.

(2) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not

include:

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

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

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

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

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

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

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

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

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

Section 25. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance -- assignment of support rights. (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application shall be submitted, the manner and form prescribed by the department of social and rehabilitation services, and shall contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, the department of social and rehabilitation services, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in his own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation is assigned to the department of social and rehabilitation services pursuant to this section is referred to the department of revenue pursuant to 40-5-202, the following provisions apply:

(a) If such support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department of revenue may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) No recipient or former recipient of public assistance may commence or maintain an action to recover a delinquent support obligation without notifying the department of revenue. The department of social and rehabilitation services may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department of revenue has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) No recipient or former recipient of public assistance may take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department of revenue is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department of revenue are void with respect to the state, the department of social and rehabilitation services, the department of revenue, and the county welfare department."

Section 26. Section 40-5-241, MCA, is amended to read:

"40-5-241. Warrant for distraint. (1) Thirty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or 31 days after service of notice of 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 plus penalty and fees, if any, and accumulated interest. The warrant is subject to 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.

(2) A warrant for distraint is an order, under the official seal of the department, directed to a sheriff of any county of

Montana or to any agent authorized by law to enforce a district court judgment. The order commands the recipient to levy upon and sell the real and personal property of a delinquent obligor."

NEW SECTION. Section 27. Filing warrant with district court --effect of filing -- release. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the delinquent obligor listed as the judgment debtor.

(2) Upon filing the warrant, there is a lien against all real and personal property of the delinquent obligor located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent child support and enforce the lien in the same manner as a judgment is enforced. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

(3)(a) A copy of the filed warrant may be sent by the department to the sheriff or authorized agent. Upon receipt of a copy of the filed warrant, the sheriff or authorized agent shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A sheriff or agent shall return a warrant along with any funds collected within 90 days of the receipt of the copy of the warrant.

(c) If the warrant is returned not fully satisfied the department has the same remedies to collect the deficiency as are available for any civil judgment.

(4)(a) Upon receiving payment in full of the unpaid child support amount plus penalty and fees, if any, and accumulated interest, the department shall release the lien.

(b) Upon receiving partial payment of the unpaid child support amount or if the department determines that a release or partial release of the lien will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(5) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts.

NEW SECTION. Section 28. Name change -- code commissioner instruction -- reorganization procedure. (1)(a) In 17-4-105(3)(d), 31-3-127, 40-5-201, and 40-5-205 the term "department of revenue" or "department", meaning the department of revenue, is changed to "department of social and rehabilitation services" or "department", meaning the department of social and rehabilitation services.

(b) The code commissioner is instructed to substitute the term "department of social and rehabilitation services" or "department", meaning the department of social and rehabilitation services, for the term "department of revenue" or "department",

meaning the department of revenue, in legislation enacted by the 51st legislature relating to the enforcement of child support.

(2) The provisions of 2-15-131 through 2-15-137 govern the transfer of the authority for the child support enforcement function from the department of revenue to the department of social and rehabilitation services. It is intended that the current employees of the department of revenue whose functions are transferred to the department of social and rehabilitation services shall retain the employment rights consistent with their positions at the time of transfer."

Renumber: subsequent sections

8. Page 33, line 5.

Strike: "and"

Insert: ", "

Following: "16"

Insert: ", and 27"

9. Page 33, line 8.

Strike: "and"

Insert: ", "

Following: "16"

Insert: ", and 27"

10. Page 33.

Following: line 14

Insert: "NEW SECTION. Section 33. Effective date. [Sections 19 through 29 and this section] are effective July 1, 1989."

-END-

SENATE BILL NO. 129

INTRODUCED BY MANNING, MCLANE, NORMAN, PIPINICH,

REGAN, O'KEEFE, WALKER, CONNELLY, J. BROWN, BRADLEY

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON WELFARE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT PARENTS FULFILL THE DUTY TO SUPPORT THEIR CHILDREN BY PROVIDING FOR A PRESUMPTIVE OBLIGATION OF SUPPORT IN CERTAIN LEGAL PROCEEDINGS; TO REQUIRE CONSIDERATION OF UNIFORM GUIDELINES TO ESTABLISH A MINIMUM SUPPORT LEVEL; TO REQUIRE PATERNITY CHILD SUPPORT ORDERS TO INCLUDE A PROVISION COVERING HEALTH INSURANCE IN CERTAIN CASES; TO PROVIDE FOR CHILD SUPPORT COLLECTION THROUGH AUTOMATIC INCOME WITHHOLDING; TO GRANT THE DEPARTMENT OF REVENUE SOCIAL AND REHABILITATION SERVICES THE AUTHORITY TO CHARGE FEES IN CASES IN WHICH AN OBLIGOR'S FAILURE OR REFUSAL TO PAY SUPPORT REQUIRES THE DEPARTMENT TO ACT; TO TRANSFER TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FROM THE DEPARTMENT OF REVENUE THE AUTHORITY FOR CHILD SUPPORT ENFORCEMENT; AMENDING SECTIONS 39-71-743, 40-4-204, 40-4-209, 40-5-113, 40-5-202, 40-5-203, 40-5-208, 40-5-214, 40-5-241, 40-5-303, 40-5-401, 40-5-403, 40-5-404, 40-5-411 THROUGH 40-5-417, 40-5-422, AND 40-6-116, AND 53-2-613, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is needed for this bill because the department of revenue SOCIAL AND REHABILITATION SERVICES is required by [section 3] to adopt uniform child support guidelines for use by judges and other officials who have the power to determine child support awards within this state. The department initially shall adopt and promulgate the uniform child support guidelines recommended by the Montana supreme court at 44 State Reporter 828 (1987). Thereafter, the department shall periodically review those guidelines to determine if they are appropriate to determine adequate minimum child support amounts. If the department determines that the guidelines are no longer adequate, it shall amend them, after considering the factors set forth in 40-4-204(2) and 40-6-116(5).

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

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- warning-of automatic withholding procedures of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court ~~may~~ shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital

1 misconduct, ~~after considering,~~

2 (2) The court shall consider all relevant factors,
3 including:

- 4 (a) the financial resources of the child;
- 5 (b) the financial resources of the custodial parent;
- 6 (c) the standard of living the child would have
- 7 enjoyed had the marriage not been dissolved;
- 8 (d) the physical and emotional condition of the child
- 9 and his educational and medical needs;
- 10 (e) the financial resources and needs of the
- 11 noncustodial parent; and
- 12 ~~(f) for--the--purposes-of-determining-a-minimum-amount~~
- 13 ~~for-support,--the-amount-received-by-children-under-the--APBE~~
- 14 ~~program,--as-defined-in-53-2-702; the age of the child;~~
- 15 (g) the cost of day care for the child;
- 16 (h) any custody arrangement that is ordered or decided
- 17 upon; and
- 18 (i) the needs of any person, other than the child,
- 19 whom either parent is legally obligated to support.

20 (3) (a) Whenever a court issues or modifies an order
21 concerning child support, the court shall determine the
22 child support obligation by applying the standards in this
23 section and the uniform child support guidelines adopted by
24 the department of revenue SOCIAL AND REHABILITATION SERVICES
25 pursuant to [section 3], unless the court finds by clear and

1 convincing evidence that the application of the standards
2 and guidelines is unjust to the child or to any of the
3 parties or is inappropriate in that particular case.

4 (b) If the court does not apply these standards and
5 guidelines to determine child support, it shall state its
6 reasons for finding that the application of such standards
7 and guidelines is unjust to the child or a party or is
8 inappropriate in that particular case.

9 ~~(2)(c)~~ If the court does not order a parent owing a
10 duty of support to a child to pay any amount for the child's
11 support, the court shall state the its reasons for not
12 ordering child support.

13 ~~(3)(4)~~ Each district court judgment, decree, or order
14 establishing a final child support obligation under this
15 title and each modification of a final order for child
16 support must include a provision addressing health insurance
17 coverage in the following cases:

18 (a) If either party has available through an employer
19 or other organization health insurance coverage for the
20 child or children for which the premium is partially or
21 entirely paid by the employer or organization, the judgment,
22 decree, or order may contain a provision requiring that
23 coverage for the child or children be continued or obtained.

24 (b) In the event that health insurance required in a
25 child support judgment, decree, or order becomes unavailable

1 to the party who is to provide it, through loss or change of
2 employment or otherwise, that party must, in the absence of
3 an agreement to the contrary, obtain comparable insurance or
4 request that the court modify the requirement.

5 (c) All temporary child support orders must contain a
6 provision requiring the party who has health insurance in
7 effect for the child or children of the parties to continue
8 the insurance coverage pending final disposition of the
9 case.

10 (d) The parties may by written agreement provide for
11 the health care coverage required by this section, subject
12 to the approval of the court.

13 (e) Unless otherwise provided in the decree, the
14 health care coverage required by this section is in addition
15 to and not in substitution, in whole or in part, for the
16 child support obligation.

17 ~~†4†~~(5) (a) Each Except as provided in subsection
18 (5)(b), each district court judgment, decree, or order
19 establishing a child support obligation under this title,
20 whether temporary or final, and each modification of an
21 existing child support order must:

22 (i) provide that the amount of child support must be
23 withheld from the obligor's income and paid to the
24 department pursuant to procedures established by the
25 department under Title 40, chapter 5, part 4; and

1 (ii) include the obligor's social security number and
2 the name and address of the obligor's employer and of any
3 other payor of income to the obligor.

4 (b) Income is not subject to automatic withholding if:
5 (i) the obligee or obligor demonstrates and the court
6 finds that there is good cause not to require automatic
7 income withholding; or

8 (ii) the obligee and obligor agree in writing to an
9 alternative arrangement regarding the payment of child
10 support that provides sufficient security to ensure
11 compliance with their agreement. The security is in addition
12 to the child support obligation.

13 (c) When a judgment, decree, or order for child
14 support is entered or modified and automatic income
15 withholding is ordered, an obligee who is not a recipient of
16 public assistance shall apply for the support enforcement
17 services of the department pursuant to Title IV-D of the
18 Social Security Act for the collection of support through
19 automatic income withholding under Title 40, chapter 5, part
20 4. The department shall accept the application. Pending an
21 application, the department shall immediately implement
22 automatic income withholding and hold any amounts collected
23 in trust for the obligee until the obligee makes
24 application.

25 (d) When automatic income withholding is ordered under

subsection (5)(a), the clerk of court shall immediately forward a copy of the order to the department.

(e) If an obligor is not subject to income withholding or is exempted from income withholding, the district court judgment or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing order for child support entered after October 1, 1985, must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(6) IF THE DEPARTMENT OF REVENUE SOCIAL AND REHABILITATION SERVICES IS PROVIDING OR LATER PROVIDES SUPPORT ENFORCEMENT SERVICES UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT, EACH DISTRICT COURT ORDER OR MODIFICATION OF AN ORDER MUST CONTAIN A STATEMENT PROVIDING THAT THE NONCUSTODIAL PARENT, WITHOUT FURTHER ORDER OF THE COURT, IS REQUIRED TO OBTAIN AND MAINTAIN HEALTH INSURANCE COVERAGE AS PROVIDED IN 40-5-208. FAILURE TO INCLUDE A WARNING STATEMENT IN THE JUDGMENT OR ORDER DOES NOT PRECLUDE THE IMPOSITION OF SANCTIONS UNDER 40-5-208."

Section 2. Section 40-6-116, MCA, is amended to read:

"40-6-116. Judgment or order. (1) The judgment or

order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum

1 payment or the purchase of an annuity may be ordered in lieu
2 of periodic payments of support.

3 (c) The court may limit the father's liability for
4 past support of the child to the proportion of the expenses
5 already incurred that the court deems just.

6 (5) In determining the amount to be paid by a parent
7 for support of the child and the period during which the
8 duty of support is owed, a court enforcing the obligation of
9 support shall consider all relevant facts, including:

10 (a) the needs of the child, including his medical
11 needs;

12 (b) the standard of living and circumstances of the
13 parents;

14 (c) the relative financial means of the parents;

15 (d) the earning ability of the parents;

16 (e) the need and capacity of the child for education,
17 including higher education;

18 (f) the age of the child;

19 (g) the financial resources and the earning ability of
20 the child;

21 (h) the responsibility of the parents for the support
22 of others; and

23 (i) the value of services contributed by the custodial
24 parent;

25 (j) the cost of day care for the child; and

1 (k) any custody arrangement that is ordered or decided
2 upon.

3 (6) (a) Whenever a court issues or modifies an order
4 concerning child support, the court shall determine the
5 child support obligation by applying the standards in this
6 section and the uniform child support guidelines adopted by
7 the department of revenue SOCIAL AND REHABILITATION SERVICES
8 pursuant to [section 3], unless the court finds by clear and
9 convincing evidence that the application of the standards
10 and guidelines is unjust to the child or to any of the
11 parties or is inappropriate in that particular case.

12 (b) If the court does not apply these standards and
13 guidelines to determine child support, it shall state its
14 reasons for finding that the application of such standards
15 and guidelines is unjust to the child or a party or is
16 inappropriate in that particular case.

17 (c) If the court does not order a parent owing a duty
18 of support to a child to pay any amount for the child's
19 support, the court shall state its reasons for not ordering
20 child support.

21 (7) The judgment or order concerning child support and
22 each modification of a judgment or order for child support
23 must include a provision addressing health insurance
24 coverage in the following cases:

25 (a) If either party has available through an employer

1 or other organization health insurance coverage for the
 2 child or children for which the premium is partially or
 3 entirely paid by the employer or organization, the judgment
 4 or order may contain a provision requiring that coverage for
 5 the child or children be continued or obtained.

6 (b) In the event that health insurance required in a
 7 child support judgment or order becomes unavailable to the
 8 party who is to provide it, through loss or change of
 9 employment or otherwise, that party shall, in the absence of
 10 an agreement to the contrary, obtain comparable insurance or
 11 request that the court modify the requirement.

12 (c) The parties may by written agreement provide for
 13 the health care coverage required by this section, subject
 14 to the approval of the court.

15 (d) Unless otherwise provided in the decree, the
 16 health care coverage required by this section is in addition
 17 to and not in substitution, in whole or in part, for the
 18 child support obligation.

19 (8) (a) Except as provided in subsection (8)(b), each
 20 district court judgment or order establishing a child
 21 support obligation under this part, whether temporary or
 22 final, and each modification of an existing child support
 23 order must:

24 (i) provide that the amount of child support must be
 25 withheld from the obligor's income and paid to the

1 department pursuant to procedures established by the
 2 department under Title 40, chapter 5, part 4; and

3 (ii) include the obligor's social security number and
 4 the name and address of the obligor's employer and of any
 5 other payor of income to the obligor.

6 (b) Income is not subject to automatic withholding if:

7 (i) the obligee or obligor demonstrates and the court
 8 finds that there is good cause not to require automatic
 9 income withholding; or

10 (ii) the obligee and obligor agree in writing to an
 11 alternative arrangement regarding the payment of child
 12 support that provides sufficient security to ensure
 13 compliance with their agreement. The security is in addition
 14 to the child support obligation.

15 (c) When a judgment or order for child support is
 16 entered or modified and automatic income withholding is
 17 ordered, an obligee who is not a recipient of public
 18 assistance shall apply for the support enforcement services
 19 of the department pursuant to Title IV-D of the Social
 20 Security Act for the collection of support through automatic
 21 income withholding under Title 40, chapter 5, part 4. The
 22 department shall accept the application. Pending an
 23 application, the department shall immediately implement
 24 automatic income withholding and hold any amounts collected
 25 in trust for the obligee until the obligee makes

1 application.

2 (d) When automatic income withholding is ordered under
3 subsection (8)(a), the clerk of court shall immediately
4 forward a copy of the order to the department.

5 (9) IF THE DEPARTMENT OF REVENUE SOCIAL AND
6 REHABILITATION SERVICES IS PROVIDING OR LATER PROVIDES
7 SUPPORT ENFORCEMENT SERVICES UNDER TITLE IV-D OF THE SOCIAL
8 SECURITY ACT, EACH DISTRICT COURT ORDER OR MODIFICATION OF
9 AN ORDER MUST CONTAIN A STATEMENT PROVIDING THAT THE
10 NONCUSTODIAL PARENT, WITHOUT FURTHER ORDER OF THE COURT, IS
11 REQUIRED TO OBTAIN AND MAINTAIN HEALTH INSURANCE COVERAGE AS
12 PROVIDED IN 40-5-208. FAILURE TO INCLUDE A WARNING
13 STATEMENT IN THE JUDGMENT OR ORDER DOES NOT PRECLUDE THE
14 IMPOSITION OF SANCTIONS UNDER 40-5-208."

15 NEW SECTION. Section 3. Child support guidelines --
16 periodic review. (1) The department shall adopt uniform
17 child support guidelines to be used to determine minimum
18 child support amounts. In addition to giving notice and
19 publicizing the rules as provided in the Montana
20 Administrative Procedure Act, the department shall give
21 notice to the supreme court, the district courts, and the
22 state bar of Montana prior to adopting the guidelines.

23 (2) The guidelines must consider the factors set forth
24 in 40-4-204(2) and 40-6-116(5).

25 (3) At least once every 4 years, the department shall:

1 (a) review the uniform child support guidelines
2 employed to determine child support obligations to ensure
3 that their application results in the determination of
4 appropriate child support award amounts; and

5 (b) propose any appropriate modification to the
6 legislature.

7 **Section 4.** Section 40-5-214, MCA, is amended to read:

8 "40-5-214. Scale of suggested minimum contributions.

9 (1) The department shall establish a scale of suggested
10 minimum contributions to assist counties and courts in
11 determining the amount that a parent should be expected to
12 contribute toward the support of his child under this part.

13 ~~The scale shall:~~

14 ~~(a) include consideration of gross income;~~

15 ~~(b) authorize an expense deduction for determining net~~
16 ~~income;~~

17 ~~(c) designate other available resources to be~~
18 ~~considered;~~

19 ~~(d) specify the circumstances which should be~~
20 ~~considered in reducing support contributions on the basis of~~
21 ~~hardship. The scale must be based on the uniform child~~
22 ~~support guidelines adopted by the department under [section~~
23 ~~3].~~

24 ~~(2) The department shall accept and compile pertinent~~
25 ~~and reliable information from any available source in order~~

to--establish--a--minimum--scale-of-suggested-contributions--
 Copies of the scale shall must be made available to courts,
 county offices, county attorneys, and upon request, to any
 other state or county officer or agency engaged in the
 administration or enforcement of this part. Attorneys
 admitted to practice in Montana may have access to the
 minimum scale of-suggested-contribution.

{3}--No--county,--court,--officer,--or--agency--may--be
 required-to-use-this-scale."

NEW SECTION. Section 5. Payor and obligor notice. (1)

~~When-a-person-is--hired--for--employment,--the--payor--shall
 inquire--whether--or--not--the--person--has--a-child-support
 obligation--that-is-required--by--law--to--be--withheld--from
 income--and--the--terms,--if--any,--of--the--order. The person shall
 disclose--this-information-at-the-time-of-hiring. If-a-payor
 fails-to-make-this-inquiry,--the--payor--is--liable--to--the
 department--for--any-amount-up-to-the-accumulated-amount-the
 payor-should-have-withheld-and-delivered-if-it-is--not--paid
 by--the-obligor.~~ AFTER A PERSON IS HIRED FOR EMPLOYMENT, THE
 PAYOR SHALL SUBMIT TO THE PERSON A WRITTEN FORM INQUIRING
 WHETHER THE PERSON OWES CHILD SUPPORT THAT IS REQUIRED BY
 LAW TO BE WITHHELD FROM INCOME ACCORDING THE TERMS OF AN
 ORDER, IF ANY, CONCERNING CHILD SUPPORT. THE PERSON SHALL
 IMMEDIATELY COMPLETE, SIGN, AND DATE THE FORM AND RETURN IT
 TO THE PAYOR. THE COMPLETED FORM MUST BE RETAINED BY THE

PAYOR FOR AT LEAST 3 YEARS AFTER THE DATE OF HIRING OR AT
 LEAST 1 YEAR AFTER THE DATE THAT EMPLOYMENT IS TERMINATED,
 WHICHEVER IS LONGER.

(2) If a person discloses that he owes child support
 that is required to be withheld, the payor shall begin
 withholding according to the terms of the order and this
 part.

(3) At any time an obligor is subject to automatic
 income withholding, the obligor shall disclose to a payor
 that the obligor owes child support in order that the payor
 may begin withholding according to the terms of the order
 and this part. If the obligor does not make such
 disclosure, the failure to disclose may be considered a
 contempt of the district court.

(4) A PAYOR MAY NOT INQUIRE AS TO WHETHER A
 PROSPECTIVE EMPLOYEE OWES CHILD SUPPORT THAT IS REQUIRED BY
 LAW TO BE WITHHELD FROM INCOME ACCORDING TO THE TERMS OF AN
 ORDER, IF ANY, CONCERNING CHILD SUPPORT, UNTIL EMPLOYMENT
 HAS BEEN OFFERED AND ACCEPTED.

Section 6. Section 40-5-401, MCA, is amended to read:

"40-5-401. Short title. This part may be cited as the
 "Child Support Enforcement Act of 1985"."

Section 7. Section 40-5-404, MCA, is amended to read:

"40-5-404. Remedies-additional-to-those--now--existing
 Other remedies available. The remedy remedies provided in

1 this part ~~is~~ are in addition to and not in substitution for
 2 any other remedy that may otherwise be available to the
 3 department, and the department may simultaneously pursue
 4 other remedies to enforce a support obligation or to collect
 5 support arrearages."

6 **Section 8.** Section 40-5-411, MCA, is amended to read:

7 "40-5-411. Income withholding. (1) Whenever If an
 8 obligation for support is being enforced by the department
 9 pursuant to Title IV-D of the Social Security Act and the
 10 obligation has been established ~~by--order--of-a-court as~~
 11 required by law or administrative process, income due or to
 12 become due within this state to the obligor is subject to
 13 withholding procedures under this part if:

14 (a) except as provided in 40-4-204 and 40-6-116, a
 15 support obligation is initially decreed and ordered or
 16 modified after January 1, 1990, by a district court or
 17 administrative process, regardless of whether child support
 18 payments are in arrears; or

19 (b) the obligor is found to owe a combination of
 20 unpaid child support under a support order in an amount
 21 equal to or in excess of 1 month's support payment.

22 (2) When the requirements of this part have been met,
 23 the department, without necessity for amendment of the
 24 support order or further order by a court or other entity,
 25 shall issue an order directing the obligor's employer or

1 other payor to withhold and deliver to the department such
 2 amount of the obligor's income as will be sufficient to meet
 3 the support obligation imposed by the support order and to
 4 defray arrearages, if any, due when the withholding order
 5 takes place.

6 (3) The provisions for income withholding under this
 7 part take precedence over any other law or court order."

8 **Section 9.** Section 40-5-412, MCA, is amended to read:

9 "40-5-412. Initiation of income withholding
 10 procedures. (1) ~~in each case in which the department is~~
 11 ~~enforcing a support order assigned to the state pursuant to~~
 12 ~~53-2-613 or in which the department is collecting support on~~
 13 ~~behalf of an obligee who has applied for services under~~
 14 ~~40-5-203, the department shall monitor and track all support~~
 15 ~~payments required by the support order; if at any time these~~
 16 ~~records indicate that the obligor owes any combination of~~
 17 ~~unpaid support equal to or in excess of 1 month's support~~
 18 ~~payment, the department shall commence withholding from the~~
 19 ~~obligor's income. In a case concerning a support obligation~~
 20 ~~referred to in 40-5-411, the department shall immediately~~
 21 ~~issue an order under 40-5-415 for the payment of current~~
 22 support.

23 (2) In any other case, the department shall monitor
 24 and track all support payments required by the support
 25 order. If at any time these records indicate that the

1 obligor owes a combination of unpaid support equal to or in
 2 excess of 1 month's support, the department shall commence
 3 proceedings to initiate withholding of the obligor's income
 4 as provided in this part.

5 {2}(3) To accomplish the purpose of subsection {1}(2),
 6 the department by written notice to the obligor may direct
 7 an obligor who does not owe unpaid child support equal to or
 8 in excess of 1 month's support payment to pay all support
 9 through the department, notwithstanding any court order
 10 directing payments to be made to the obligee or clerk of
 11 court.

12 {3}(4) Whenever an obligation for support is paid
 13 through the support enforcement and collections unit of the
 14 department, the department must forward payment to the
 15 obligee within 10 days of the department's receipt of
 16 payment from the obligor."

17 **Section 10.** Section 40-5-413, MCA, is amended to read:

18 "40-5-413. Notice of intent to withhold income. (1)
 19 Prior to service of an initial order on--the--payor--to
 20 commence-income-withholding or a modification of an existing
 21 order on the payor under 40-5-415, the department shall
 22 serve upon the obligor a notice of the intended withholding
 23 action: if:

24 (a) the department previously has not issued an order
 25 to withhold and it has determined the obligor owes a

1 combination of unpaid support equal to or in excess of 1
 2 month's support;

3 (b) additional arrearages have accrued subsequent to
 4 the issuance of an order to withhold; or

5 (c) immediate withholding has commenced for current
 6 support and there are arrearages due for a period prior to
 7 entry of the order to withhold.

8 (2) The notice must contain a statement:

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

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

14 (c) of the obligor's right to a hearing under 40-5-414
 15 to contest the implementation of income withholding or
 16 modification of an existing order on the ground that
 17 ~~withholding--including--the--amounts--to--be--withheld,~~ the
 18 intended action is not proper because of mistake of fact;
 19 and

20 (d) of the period of time within which the obligor
 21 must request a hearing and that failure to request the
 22 hearing within the time limit will result in income
 23 withholding orders being served upon the payor for the
 24 amount stated in the notice.

25 {2}(3) The notice must be served upon the obligor

personally or by certified mail."

Section 11. Section 40-5-414, MCA, is amended to read:

"40-5-414. **Hearing.** (1) The obligor may within 10 days of being served with notice of the intended income withholding action under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) if in a case initiated because an arrearage has accrued or because additional income is to be withheld to satisfy additional arrearages and in which the obligor requests a hearing within the time allowed, income withholding the intended action may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.

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

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

(5) For purposes of the hearing process, arrearages of

support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income, and the fact that the obligor may have later paid the arrearage does not remove from the hearing examiner the authority to direct the department to order income withholding.

(6) The in a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(7) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation, the department shall proceed with the intended action in accordance with 40-5-415."

Section 12. Section 40-5-415, MCA, is amended to read:

"40-5-415. **Order to withhold income.** (1) ~~if the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support payment, when the requirements of this part have been met, the~~

department shall immediately serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

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

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

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

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

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

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

Section 13. Section 40-5-416, MCA, is amended to read:

"40-5-416. Determination of amount of income to be withheld. (1) (a) Except--as Subject to the limitations

provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be:

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

(b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:

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

(ii) 25% of the obligor's income.

(c) If income is being withheld to satisfy an arrearage, the department may allow a fee not to exceed \$5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

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

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount

1 to be withheld each month in satisfaction of support
2 arrearages."

3 **Section 14.** Section 40-5-417, MCA, is amended to read:

4 "40-5-417. Modification or termination of withholding
5 orders. (1) The department may at any time modify the order
6 to withhold income to:

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

9 (b) recognize an increase or decrease in the support
10 order; or

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

13 (2) If an arrearage occurs while the department is
14 collecting an amount of money necessary to pay current
15 installments of support as they become due and payable, the
16 department may adjust the amount of income required to be
17 withheld to also satisfy the arrearage, as provided in this
18 part.

19 ~~(2)~~(3) An income withholding order terminates only
20 when the department is no longer authorized under the law to
21 collect support or, when appropriate, services rendered
22 under 40-5-203 have come to an end or when the obligation to
23 pay support is terminated and all arrearages are paid in
24 full, whichever occurs first."

25 **Section 15.** Section 40-5-203, MCA, is amended to read:

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

7 (2) The department may establish by rule reasonable
8 standards necessary to limit applications for support
9 enforcement services. These standards shall take into
10 account the earnings, income, and other resources already
11 available to support the person for whom a support
12 obligation exists.

13 ~~(3) The department may not charge the applicant a fee~~
14 ~~as compensation for services rendered in establishment of or~~
15 ~~enforcement of support obligations. However, the department~~
16 ~~may charge a fee to the person from whom the support is~~
17 ~~being collected. This fee must be in addition to the support~~
18 ~~payment. The department shall by rule establish reasonable~~
19 ~~fees commensurate with the cost of enforcement support~~
20 ~~services to be paid by the person from whom the support is~~
21 ~~being collected. When payments are scheduled to be paid on~~
22 ~~an installment basis, a portion of the collection fee owed~~
23 ~~to the department shall be added to each payment. If the~~
24 ~~person from whom the support is being collected makes a~~
25 ~~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.~~

NEW SECTION. Section 16. Standardized fee schedule.

(1) The department shall by rule establish a standardized schedule of fees for the recovery of administrative costs and expenses of child support enforcement. The fees may be recovered from an obligor if the obligor's failure or refusal to support a child makes it necessary for the department to provide child support enforcement services under this part. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(2) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order in which the department is the prevailing party.

(3) Fees awarded under this section are in the nature of child support and are collectible in the same manner as a support order. The fee award may be collected separately or added to and collected with any balance due on a support

debt.

(4) Collection of a fee award may not reduce any current child support payment due the obligee.

(5) Arrearage amounts collected that include a fee must be allocated as follows:

(a) If the obligee is a recipient of public assistance, the amount must be allocated first to satisfy the fee.

(b) If the obligee is not a recipient of public assistance, the first 10% of each amount collected must be allocated to satisfy the fee.

(6) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

SECTION 17. SECTION 40-5-208, MCA, IS AMENDED TO READ:

"40-5-208. Medical support -- obligation enforcement -- sanctions. (1) (a) In all proceedings initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require parents-obligated-to-pay child-support the obligor to secure obtain and maintain health insurance coverage for each dependent child, at a cost not to exceed 5% of net income, whenever such if health insurance coverage is available through their the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that

the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section. However,--if--a--court--of competent--jurisdiction--has-entered-an-order-establishing-a current-support-obligation-and--has--ordered--the--obligated parent--to-secure-and-maintain-health-insurance-coverage-for each-dependent--child,--the--department--shall--enforce--the obligation-as-ordered-by-the-court;

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) (a) If the department is providing child support

enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation.

(b) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

{2}(3) (a) If--the--department--determines---that---an obligated--parent--has--failed--to-maintain-health-insurance coverage-required-by-the--order--of--a--court--of--competent jurisdiction--or-an-administrative-agency-empowered-to-enter such-order,--it The department 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 determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or failure

1 to appear, that health insurance coverage has not been
 2 secured obtained or maintained in accordance with the court
 3 or administrative order, or that the obligor has failed to
 4 provide the information required, the department may assess
 5 against the obligated parent not more than \$100 for each
 6 month health insurance coverage has not been secured
 7 obtained or maintained or for each month information has not
 8 been provided. Such amounts may be enforced by any
 9 administrative remedy available to the department for the
 10 enforcement of child support obligations, including warrant
 11 for distraint provided for in 40-5-241 and income
 12 withholding provided for in Title 40, chapter 5, part 4.

13 ~~{3}--Whenever an obligated parent who has been served~~
 14 ~~with notice under this section appears before the department~~
 15 ~~and shows that health insurance coverage in accordance with~~
 16 ~~the court or administrative order;~~

17 ~~{a}--has been secured and maintained continuously since~~
 18 ~~the date of the order; the department shall dismiss the~~
 19 ~~pending action; or~~

20 ~~{b}--has not been secured or continuously maintained~~
 21 ~~but such coverage is presently in effect; the department~~
 22 ~~shall suspend the pending action for a period of 12 months;~~

23 ~~{4}--At the end of the suspension period, the~~
 24 ~~department may schedule a hearing. If at this hearing the~~
 25 ~~department finds that during the suspension period health~~

1 insurance coverage;

2 ~~{a}--has been continuously maintained; the department~~
 3 ~~shall dismiss the pending action and the obligated parent~~
 4 ~~will not be assessed under this section; or~~

5 ~~{b}--has not been continuously maintained; the~~
 6 ~~department may enter a final order requiring the obligated~~
 7 ~~parent to pay the sum assessed in accordance with this~~
 8 ~~section for each month coverage was not maintained;~~

9 (4) The health insurance coverage must be provided
 10 under this section even though it may reduce the amount of
 11 the child support obligation or reduce the obligor's ability
 12 to pay child support as required.

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

16 **SECTION 18. SECTION 40-5-422, MCA, IS AMENDED TO READ:**

17 "40-5-422. Obligor rights protected -- penalties. (1)
 18 No An employer may not discharge, discipline, or refuse to
 19 hire an obligor;

20 (a) because the person has a child support obligation;
 21 or

22 (b) because of the institution of income withholding
 23 on the obligor's income or the initiation of proceedings
 24 under this part.

25 (2) Any person who violates this section may be fined

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

4 **SECTION 19. SECTION 39-71-743, MCA, IS AMENDED TO**

5 **READ:**

6 "39-71-743. Assignment or attachment of payments. (1)
 7 No payments under this chapter shall be assignable, subject
 8 to attachment or garnishment, or be held liable in any way
 9 for debts, except:

10 (a) as provided in 71-3-1118; or

11 (b) a portion of any lump-sum award or periodic
 12 payment to pay a monetary obligation for current or past-due
 13 child support, subject to the limitations in subsection (2),
 14 whenever the support obligation is established by order of a
 15 court of competent jurisdiction or by order rendered in an
 16 administrative process authorized by state law.

17 (2) Payments under this chapter are subject to
 18 assignment, attachment, or garnishment for child support as
 19 follows:

20 (a) for any periodic payment, an amount up to the
 21 percentage amount established in the guidelines promulgated
 22 in-supreme-court-order-no.-86-2237-dated-january-137-1987 by
 23 the department of social and rehabilitation services
 24 pursuant to [section 3]; or

25 (b) for any lump-sum award, an amount up to that

1 portion of the award that is approved for payment on the
 2 basis of a past-due child support obligation.

3 (3) After determination that the claim is covered
 4 under the Workers' Compensation Act or Occupational Disease
 5 Act of Montana, the liability for payment of the claim is
 6 the responsibility of the appropriate workers' compensation
 7 insurer. No fee or charge shall be payable by the injured
 8 worker for treatment of injuries sustained if liability is
 9 accepted by the insurer."

10 **SECTION 20. SECTION 40-4-209, MCA, IS AMENDED TO READ:**

11 "40-4-209. Security or guaranty to secure support. (1)
 12 Upon verified application by a person authorized to enforce
 13 or collect a child support obligation, ~~the department of~~
 14 ~~revenue,~~ the department of family services, or the
 15 department of social and rehabilitation services showing
 16 that a person obligated to pay child support or maintenance
 17 pursuant to court or administrative order is delinquent in
 18 an amount equal to the total of 6 months' support payments,
 19 the court may direct the obligated person to appear and show
 20 cause why an order should not be entered ordering that he
 21 post bond, give a mortgage, or provide other security or
 22 guaranty for the payment of the delinquency.

23 (2) If the court finds that a delinquency greater than
 24 the total of 6 months of support is owed and that the
 25 obligated person has the ability to post bond, give a

1 mortgage, or provide security or other guaranty, the court
2 may enter an order requiring him to post bond, give a
3 mortgage, or provide security or guaranty for so long as
4 there is a support delinquency.

5 (3) The bond or other security may be in an amount up
6 to the total support due for a 2-year period and must be
7 approved by the court. The bond must include the name and
8 address of the issuer. Any person issuing a bond under this
9 section must, if the bond is cancelled, notify the court and
10 the person or public agency entitled to receive payments
11 under the support order.

12 (4) If the person obligated to pay child support or
13 maintenance fails to make payments as required by the court
14 or administrative order, the person or public agency
15 entitled to receive payment may recover on the bond or other
16 security. The amount recovered on the bond or other security
17 must first be applied toward satisfaction of any support
18 arrearages.

19 (5) The department of revenue social and
20 rehabilitation services shall adopt guidelines which take
21 into account the payment record of the obligated person, the
22 availability of other remedies, and other considerations
23 which it determines relevant for determining whether the
24 procedure provided in this section would carry out the
25 purpose of enforcing payments of child support or would be

1 appropriate in the circumstances. If after application of
2 the guidelines the department of revenue social and
3 rehabilitation services determines an application for an
4 order requiring security is not appropriate, it may not
5 request the order."

6 **SECTION 21. SECTION 40-5-113, MCA, IS AMENDED TO READ:**

7 "40-5-113. Officials to represent obligee. If this
8 state is acting as an initiating state, the prosecuting
9 attorney, upon the request of the court, the department of
10 social and rehabilitation services, ~~the--department--of~~
11 ~~revenue~~, the department of family services, a county
12 commissioner, or other local welfare officer, shall
13 represent the obligee in any proceeding under this part. If
14 the prosecuting attorney neglects or refuses to represent
15 the obligee, the attorney general may order him to comply
16 with the request of the court or may undertake the
17 representation."

18 **SECTION 22. SECTION 40-5-202, MCA, IS AMENDED TO READ:**

19 "40-5-202. Department of revenue social and
20 rehabilitation services -- powers and duties regarding
21 collection of support debt. (1) Whenever the department of
22 social and rehabilitation services or the department of
23 family services receives an application for public
24 assistance on behalf of a child and it appears to the
25 satisfaction of that department that the child has been

1 abandoned by his parents; the child and one parent have been
 2 abandoned by the other parent; or the parent or other person
 3 who has a responsibility for the care, support, or
 4 maintenance of such the child has failed or neglected to
 5 give proper care or support to the child, the department of
 6 social and rehabilitation services ~~or--the--department--of~~
 7 ~~family--services--shall--promptly--refer--the--matter--to--the~~
 8 ~~department-of-revenue-for~~ shall promptly take action under
 9 the provisions of this part, the abandonment or nonsupport
 10 statutes, or other appropriate statutes of this state to
 11 ~~insure~~ ensure that the parent or other person responsible
 12 pays for the care, support, or maintenance of the dependent
 13 child.

14 (2) In the event that public assistance is furnished
 15 by a state or county agency or in instances where the
 16 department has contracted to collect support, the department
 17 shall become trustee of any cause of action of the dependent
 18 child or the person having legal custody of the dependent
 19 child to recover support due to that obligee from any person
 20 and may bring and maintain the action either in the
 21 department's own name or in the name of the obligee.

22 (3) The department has the power of attorney to act in
 23 the name of any recipient of public assistance in endorsing
 24 and cashing any and all drafts, checks, money orders, or
 25 other negotiable instruments received by the department 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. No obligee
 6 shall act to prejudice the rights of the department after
 7 the receipt of public assistance.

8 (5) No agreement between any obligee and any obligor
 9 either relieving an obligor of any duty of support or
 10 purporting to settle past, present, or future support
 11 obligations either as settlement or prepayment may act to
 12 reduce or terminate any rights of the department to recover
 13 from that obligor for support debt provided unless the
 14 department has consented to the agreement in writing.

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

18 (7) The department shall be subrogated to the right of
 19 the child or children or person having the care, custody,
 20 and control of the child or children to maintain any civil
 21 action or execute any administrative remedy existing under
 22 the laws of the state to obtain reimbursement of money thus
 23 spent.

24 (8) If a district court orders an amount of support to
 25 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.

(9) The department may adopt and enforce such the 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, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

SECTION 23. SECTION 40-5-303, MCA, IS AMENDED TO READ:

"40-5-303. Petition for income deduction -- who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of revenue, the department of family services, or the department of social and rehabilitation services of the state of Montana."

SECTION 24. SECTION 40-5-403, MCA, IS AMENDED TO READ:

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

(1) "Department" means the department of revenue social and rehabilitation services provided for in 2-15-1301 2-15-2201.

(2) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

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

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

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

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

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

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

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

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

(c) an order requiring payment of interest due on

unpaid judgments for child support."

SECTION 25. SECTION 53-2-613, MCA, IS AMENDED TO READ:

"53-2-613. Application for assistance -- assignment of support rights. (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application shall be submitted, the manner and form prescribed by the department of social and rehabilitation services, and shall contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, the department of social and rehabilitation services, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in his own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of

any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation is assigned to the department of social and rehabilitation services pursuant to this section ~~is--referred--to--the--department--of--revenue pursuant-to-40-5-202~~, the following provisions apply:

(a) If such support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department ~~of--revenue~~ may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) No recipient or former recipient of public assistance may commence or maintain an action to recover a delinquent support obligation without notifying the department ~~of--revenue~~. The department ~~of---social---and rehabilitation--services~~ may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the

department ~~of--revenue~~ has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) No recipient or former recipient of public assistance may take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department ~~of--revenue~~ is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department ~~of--revenue~~ are void with respect to the state, the department of social and rehabilitation services, ~~the-department-of-revenue~~, and the county welfare department."

SECTION 26. SECTION 40-5-241, MCA, IS AMENDED TO READ:

"40-5-241. Warrant for distraint. (1) Thirty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or 31 days after service of notice of 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 plus penalty and fees, if any, and accumulated interest. The warrant is subject to the provisions of 15-1-701, 15-1-704, 15-1-708, and 15-1-709, with references to "tax" taken to mean

1 ~~"support-debt"-and-references-to-"taxpayer"--taken--to--mean~~
 2 ~~"person--owing--the-support-debt",-as-well-as-the-provisions~~
 3 ~~of-this-part;~~

4 (2) A warrant for distraint is an order, under the
 5 official seal of the department, directed to a sheriff of
 6 any county of Montana or to any agent authorized by law to
 7 enforce a district court judgment. The order commands the
 8 recipient to levy upon and sell the real and personal
 9 property of a delinquent obligor.

10 NEW SECTION. SECTION 27. FILING WARRANT WITH DISTRICT
 11 COURT -- EFFECT OF FILING -- RELEASE. (1) AFTER ISSUING A
 12 WARRANT, THE DEPARTMENT MAY FILE THE WARRANT WITH THE CLERK
 13 OF A DISTRICT COURT. THE CLERK SHALL FILE THE WARRANT IN
 14 THE JUDGMENT DOCKET, WITH THE NAME OF THE DELINQUENT OBLIGOR
 15 LISTED AS THE JUDGMENT DEBTOR.

16 (2) UPON FILING THE WARRANT, THERE IS A LIEN AGAINST
 17 ALL REAL AND PERSONAL PROPERTY OF THE DELINQUENT OBLIGOR
 18 LOCATED IN THE COUNTY WHERE THE WARRANT IS FILED. THE
 19 RESULTING LIEN IS TREATED IN THE SAME MANNER AS A PROPERLY
 20 DOCKETED JUDGMENT LIEN, AND THE DEPARTMENT MAY COLLECT
 21 DELINQUENT CHILD SUPPORT AND ENFORCE THE LIEN IN THE SAME
 22 MANNER AS A JUDGMENT IS ENFORCED. THE LIEN IS FOR THE AMOUNT
 23 INDICATED ON THE WARRANT PLUS ACCRUED INTEREST FROM THE DATE
 24 OF THE WARRANT.

25 (3) (A) A COPY OF THE FILED WARRANT MAY BE SENT BY THE

1 DEPARTMENT TO THE SHERIFF OR AUTHORIZED AGENT. UPON RECEIPT
 2 OF A COPY OF THE FILED WARRANT, THE SHERIFF OR AUTHORIZED
 3 AGENT SHALL PROCEED TO EXECUTE UPON THE WARRANT IN THE SAME
 4 MANNER AS PRESCRIBED FOR EXECUTION UPON A JUDGMENT.

5 (B) A SHERIFF OR AGENT SHALL RETURN A WARRANT ALONG
 6 WITH ANY FUNDS COLLECTED WITHIN 90 DAYS OF THE RECEIPT OF
 7 THE COPY OF THE WARRANT.

8 (C) IF THE WARRANT IS RETURNED NOT FULLY SATISFIED THE
 9 DEPARTMENT HAS THE SAME REMEDIES TO COLLECT THE DEFICIENCY
 10 AS ARE AVAILABLE FOR ANY CIVIL JUDGMENT.

11 (4) (A) UPON RECEIVING PAYMENT IN FULL OF THE UNPAID
 12 CHILD SUPPORT AMOUNT PLUS PENALTY AND FEES, IF ANY, AND
 13 ACCUMULATED INTEREST, THE DEPARTMENT SHALL RELEASE THE LIEN.

14 (B) UPON RECEIVING PARTIAL PAYMENT OF THE UNPAID CHILD
 15 SUPPORT AMOUNT OR IF THE DEPARTMENT DETERMINES THAT A
 16 RELEASE OR PARTIAL RELEASE OF THE LIEN WILL FACILITATE THE
 17 COLLECTION OF THE UNPAID AMOUNT, PENALTY, AND INTEREST, THE
 18 DEPARTMENT MAY RELEASE OR MAY PARTIALLY RELEASE THE LIEN
 19 ACQUIRED BY FILING THE WARRANT FOR DISTRAINT. THE
 20 DEPARTMENT MAY RELEASE THE LIEN IF IT DETERMINES THAT THE
 21 LIEN IS UNENFORCEABLE.

22 (5) THE USE OF THE WARRANT FOR DISTRAINT IS NOT
 23 EXCLUSIVE, AND THE DEPARTMENT MAY USE ANY OTHER REMEDY
 24 PROVIDED BY LAW FOR THE COLLECTION OF CHILD SUPPORT AMOUNTS.

25 NEW SECTION. SECTION 28. NAME CHANGE -- CODE

COMMISSIONER INSTRUCTION -- REORGANIZATION PROCEDURE.

(1) (A) IN 17-4-105(3)(D), 31-3-127, 40-5-201, AND 40-5-205
THE TERM "DEPARTMENT OF REVENUE" OR "DEPARTMENT", MEANING
THE DEPARTMENT OF REVENUE, IS CHANGED TO "DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES" OR "DEPARTMENT", MEANING
THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.

(B) THE CODE COMMISSIONER IS INSTRUCTED TO SUBSTITUTE
THE TERM "DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES"
OR "DEPARTMENT", MEANING THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES, FOR THE TERM "DEPARTMENT OF
REVENUE" OR "DEPARTMENT", MEANING THE DEPARTMENT OF REVENUE,
IN LEGISLATION ENACTED BY THE 51ST LEGISLATURE RELATING TO
THE ENFORCEMENT OF CHILD SUPPORT.

(2) THE PROVISIONS OF 2-15-131 THROUGH 2-15-137 GOVERN
THE TRANSFER OF THE AUTHORITY FOR THE CHILD SUPPORT
ENFORCEMENT FUNCTION FROM THE DEPARTMENT OF REVENUE TO THE
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES. IT IS
INTENDED THAT THE CURRENT EMPLOYEES OF THE DEPARTMENT OF
REVENUE WHOSE FUNCTIONS ARE TRANSFERRED TO THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES SHALL RETAIN THE
EMPLOYMENT RIGHTS CONSISTENT WITH THEIR POSITIONS AT THE
TIME OF TRANSFER.

NEW SECTION. Section 29. 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].

NEW SECTION. SECTION 30. COORDINATION. IF [THIS ACT]
AND SENATE BILL NO. 70 ARE BOTH PASSED AND APPROVED, THEN
THE AMENDMENT TO 40-4-204 IN SENATE BILL NO. 70 IS VOID.

NEW SECTION. Section 31. Codification instruction.
[Sections 3 and, 16, AND 27] are intended to be codified as
an integral part of Title 40, chapter 5, part 2, and the
provisions of Title 40, chapter 5, part 2, apply to
[sections 3 and, 16, AND 27]. [Section 5] is intended to be
codified as an integral part of Title 40, chapter 5, part 4,
and the provisions of Title 40, chapter 5, part 4, apply to
[section 5].

NEW SECTION. Section 32. Applicability. [This act]
applies to child support orders and modifications of child
support orders issued after September 30, 1989.

NEW SECTION. SECTION 33. EFFECTIVE DATE. [SECTIONS
19 THROUGH 29 AND THIS SECTION] ARE EFFECTIVE JULY 1, 1989.

-End-