

HOUSE BILL NO. 335

INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,  
S. RICE, BOHLINGER, YELLOWTAIL,  
WATERMAN, L. NELSON, PETERSON  
BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

IN THE HOUSE

JANUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1993	PRINTING REPORT.
FEBRUARY 20, 1993	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 94; NOES, 5.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 30, 1993	ON MOTION, TAKEN FROM COMMITTEE AND PLACED ON SECOND READING NEXT LEGISLATIVE DAY.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 38; NOES, 10.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 12, 1993

ON MOTION, PREVIOUS ACTION  
RECONSIDERED.

APRIL 14, 1993

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

APRIL 15, 1993

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 19, 1993

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 22, 1993

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 22, 1993

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 335

INTRODUCED BY Handwritten Name

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Slue Nelson Peterson

Bohlinger Yellowknife

1 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
2 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND
3 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;
4 PROVIDING FOR ADDITIONAL FEES; STATUTORILY APPROPRIATING
5 FEES AND PENALTIES; REQUIRING NOTICE TO THE CHILD SUPPORT
6 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND
7 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE
8 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE
9 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;
10 EXTENDING SERVICES TO CHILDREN OVER AGE 18; REQUIRING
11 PRIVATE INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE
12 CERTAIN INFORMATION; ALLOWING CHILD SUPPORT PAYMENTS TO
13 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON
14 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE
15 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES
16 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO
17 DISTRIBUTE INCOME-WITHOLDING PAYMENTS BETWEEN MULTIPLE
18 OBLIGES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE
19 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF
20 LAW; CONFORMING INCOME-WITHOLDING PERIODS TO OBLIGOR PAY

1 PERIODS; AMENDING SECTIONS 17-7-502, 25-9-301, 25-9-302,
2 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118,
3 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,
4 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,
5 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND
6 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

8 WHEREAS, it is necessary to draft a composite bill
9 containing unrelated sections in order to present the
10 proposed program improvements in a single, comprehensive
11 bill that promotes the needs of legislative energy,
12 efficiency, and economy by limiting the number of possible
13 bills and by reducing the need for hearings and readings on
14 those bills.

15 THEREFORE, the Legislature finds it appropriate to enact
16 the following legislation.

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

19 Section 1. Section 17-7-502, MCA, is amended to read:
20 "17-7-502. Statutory appropriations -- definition --
21 requisites for validity. (1) A statutory appropriation is an
22 appropriation made by permanent law that authorizes spending
23 by a state agency without the need for a biennial
24 legislative appropriation or budget amendment.
25 (2) Except as provided in subsection (4), to be



HB 335
INTRODUCED BILL

1 effective, a statutory appropriation must comply with both  
2 of the following provisions:

3 (a) The law containing the statutory authority must be  
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory  
6 appropriation must specifically state that a statutory  
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing  
9 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
11 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
12 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
13 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
14 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
15 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
16 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
17 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
18 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
19 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
20 39-71-2504; 40-5-210; 40-5-226; 44-12-206; 44-13-102;  
21 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;  
22 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;  
23 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;  
24 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

25 (4) There is a statutory appropriation to pay the

1 principal, interest, premiums, and costs of issuing, paying,  
2 and securing all bonds, notes, or other obligations, as due,  
3 that have been authorized and issued pursuant to the laws of  
4 Montana. Agencies that have entered into agreements  
5 authorized by the laws of Montana to pay the state  
6 treasurer, for deposit in accordance with 17-2-101 through  
7 17-2-107, as determined by the state treasurer, an amount  
8 sufficient to pay the principal and interest as due on the  
9 bonds or notes have statutory appropriation authority for  
10 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
11 567, L. 1991, the inclusion of 19-6-709 terminates upon  
12 death of last recipient eligible for supplemental benefit;  
13 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
14 22-3-811 terminates June 30, 1993.)"

15 **Section 2.** Section 25-9-301, MCA, is amended to read:

16 "25-9-301. Docketing of judgment -- lien -- expiration.

17 (1) Immediately after the entry of the judgment in the  
18 judgment book, the clerk must make the proper entries of the  
19 judgment under appropriate heads in the docket kept by him  
20 the clerk.

21 (2) From the time the judgment is docketed, it becomes  
22 a lien upon all real property of the judgment debtor not  
23 exempt from execution in the county, owned by him the  
24 judgment debtor at the time or which he the judgment debtor  
25 may afterward acquire until the lien ceases. The Except as

1 provided in subsection (3), the lien continues for 6 years  
 2 unless the judgment be is previously satisfied.

3 (3) When the judgment is for the payment of child or  
 4 spousal support, the lien continues for 10 years from the  
 5 termination of the support obligation unless the judgment is  
 6 previously satisfied."

7 **Section 3.** Section 25-9-302, MCA, is amended to read:

8 "25-9-302. Filing of transcript of docket in another  
 9 county -- lien -- expiration. (1) A transcript of the  
 10 original docket, certified by the clerk, may be filed with  
 11 the district court clerk of any other county; and from the  
 12 time of the filing, the judgment becomes a lien upon all  
 13 real property of the judgment debtor, not exempt from  
 14 execution, in such that county, owned by him the judgment  
 15 debtor at the time or which he the judgment debtor may  
 16 afterward and before the lien expires acquire. The Except as  
 17 provided in subsection (2), the lien continues for 6 years  
 18 unless the judgment be is previously satisfied.

19 (2) When the judgment is for the payment of child or  
 20 spousal support, the lien continues for 10 years from the  
 21 termination of the support obligation unless the judgment is  
 22 previously satisfied."

23 **Section 4.** Section 25-9-303, MCA, is amended to read:

24 "25-9-303. Filing of transcript of docket of federal  
 25 court -- lien -- expiration. (1) A transcript of the

1 original docket of any judgment rendered in the circuit or  
 2 district court of the United States, ninth circuit, district  
 3 of Montana, certified by the clerk of said court, may be  
 4 filed with the district court clerk of any county; and from  
 5 the time of the filing, the judgment becomes a lien upon all  
 6 real property of the judgment debtor, not exempt from  
 7 execution, in such the county, owned by him the judgment  
 8 debtor at the time or which he the judgment debtor may  
 9 afterward and before the lien expires acquire. The Except as  
 10 provided in subsection (2), the lien shall---continue  
 11 continues for 6 years unless the judgment be is previously  
 12 satisfied.

13 (2) When the judgment is for the payment of child or  
 14 spousal support, the lien continues for 10 years from the  
 15 termination of the support obligation unless the judgment is  
 16 previously satisfied."

17 **Section 5.** Section 25-13-101, MCA, is amended to read:

18 "25-13-101. Time limit for issuing execution. (1) The  
 19 Except as provided in subsection (2), the party in whose  
 20 favor the judgment is given may, at any time within 6 years  
 21 after the entry thereof, have a writ of execution issued for  
 22 its enforcement.

23 (2) When the judgment is for the payment of child or  
 24 spousal support, the party in whose favor the judgment is  
 25 given may, at any time within 10 years after the termination

1 of the support obligation, have a writ of execution issued  
2 for its enforcement."

3 **Section 6.** Section 27-2-201, MCA, is amended to read:

4 "27-2-201. **Actions upon judgments.** (1) The Except as  
5 provided in subsection (3), the period prescribed for the  
6 commencement of an action upon a judgment or decree of any  
7 court of record of the United States or of any state within  
8 the United States is within 10 years.

9 (2) The period prescribed for the commencement of an  
10 action upon a judgment or decree rendered in a court not of  
11 record is within 5 years. The cause of action is **deemed**  
12 **considered**, in **such that** case, to have accrued when final  
13 judgment was rendered.

14 (3) The period prescribed for the commencement of an  
15 action to collect past-due child or spousal support that has  
16 accrued after October 1, 1993, under an order entered by a  
17 court of record or administrative authority is within 10  
18 years of the termination of support obligation."

19 **Section 7.** Section 27-2-211, MCA, is amended to read:

20 "27-2-211. **Actions to enforce penalty or forfeiture or**  
21 **other statutory liability.** (1) Within 2 years is the period  
22 prescribed for the commencement of an action upon:

23 (a) a statute for a penalty or forfeiture when the  
24 action is given to an individual or to an individual and the  
25 state, except when the statute imposing it prescribes a

1 different limitation;

2 (b) a statute or an undertaking in a criminal action  
3 for a forfeiture or penalty to the state;

4 (c) a liability created by statute other than:

5 (i) a penalty or forfeiture; or

6 (ii) a statutory debt created by the payment of public  
7 assistance.

8 (2) The period prescribed for the commencement of an  
9 action by a municipal corporation for the violation of any  
10 city or town ordinance is within 1 year.

11 (3) Notwithstanding any other provision of this  
12 chapter, actions against directors or stockholders of a  
13 corporation to recover a penalty or forfeiture imposed or to  
14 enforce a liability created by law must be brought within 3  
15 years after the discovery by the aggrieved party of the  
16 facts upon which the penalty of forfeiture attached or the  
17 liability was created.

18 (4) Unless fraud is involved or unless a support  
19 obligation has been entered, an action to enforce a  
20 statutory debt created by the payment of public assistance  
21 must be brought within 5 years from the date the debt  
22 arises. If fraud is involved, an action must be brought  
23 within 5 years of the discovery of the fraud. If a support  
24 obligation has been entered, an action must be brought  
25 within 10 years of the termination of support obligation."

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

2       **\*40-4-204. Child support -- orders to address health**  
 3 **insurance -- withholding of child support.** (1) In a  
 4 proceeding for dissolution of marriage, legal separation,  
 5 maintenance, or child support, the court shall order either  
 6 or both parents owing a duty of support to a child to pay an  
 7 amount reasonable or necessary for his the child's support,  
 8 without regard to marital misconduct.

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

- 11       (a) the financial resources of the child;  
 12       (b) the financial resources of the custodial parent;  
 13       (c) the standard of living the child would have enjoyed  
 14 had the marriage not been dissolved;  
 15       (d) the physical and emotional condition of the child  
 16 and his the child's educational and medical needs;  
 17       (e) the financial resources and needs of the  
 18 noncustodial parent;  
 19       (f) the age of the child;  
 20       (g) the cost of day care for the child;  
 21       (h) any custody arrangement that is ordered or decided  
 22 upon; and  
 23       (i) the needs of any person, other than the child, whom  
 24 either parent is legally obligated to support.  
 25       (3) (a) Whenever a court issues or modifies an order

1       concerning child support, the court shall determine the  
 2 child support obligation by applying the standards in this  
 3 section and the uniform child support guidelines adopted by  
 4 the department of social and rehabilitation services  
 5 pursuant to 40-5-209, unless the court finds by clear and  
 6 convincing evidence that the application of the standards  
 7 and guidelines is unjust to the child or to any of the  
 8 parties or is inappropriate in that particular case.

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

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

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

23       (a) If either party has available through an employer  
 24 or other organization health insurance coverage for the  
 25 child or children for which the premium is partially or

1 entirely paid by the employer or organization, the judgment,  
2 decree, or order may contain a provision requiring that  
3 coverage for the child or children be continued or obtained.

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

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

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

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

22 (5) (a) Unless the court makes a written exception  
23 under 40-5-315 or 40-5-411 and the exception is included in  
24 the support order, a support obligation established by  
25 judgment, decree, or order under this section, whether

1 temporary or final, and each modification of an existing  
2 support obligation under 40-4-208 must be enforced by  
3 immediate or delinquency income withholding, or both, under  
4 Title 40, chapter 5, part 3 or 4. A support order that omits  
5 the written exceptions provided in 40-5-315 or 40-5-411 or  
6 that provides for a payment arrangement inconsistent with  
7 this section is nevertheless subject to withholding for the  
8 payment of support without need for an amendment to the  
9 support order or for any further action by the court.

10 (b) If an obligor is exempt from immediate income  
11 withholding, the district court judgment or order must  
12 include a warning statement that if the obligor is  
13 delinquent in the payment of support, the obligor's income  
14 may be subject to income withholding procedures under Title  
15 40, chapter 5, part 3 or 4. Failure to include a warning  
16 statement in a judgment or order does not preclude the use  
17 of withholding procedures.

18 (c) After October 1, 1993, if a support order subject  
19 to income withholding is expressed in terms of a monthly  
20 obligation, the order may be annualized and withheld on a  
21 weekly or biweekly basis, corresponding to the obligor's  
22 regular pay period.

23 (6) For the purposes of income withholding under  
24 subsection (5), every district court judgment, decree, or  
25 order that establishes or modifies a child support



1 obligation must include a provision requiring the parent  
 2 obligated to pay support to inform the court and, if the  
 3 department of social and rehabilitation services is  
 4 providing services under Title IV-D of the Social Security  
 5 Act for the enforcement of the judgment, decree, or order,  
 6 the department, of the following:

7 (a) the name and address of the parent's current  
 8 employer;

9 (b) whether the parent has access to health insurance  
 10 through an employer or other group; and

11 (c) if insurance coverage is available, the health  
 12 insurance policy information.

13 (7) If the department of social and rehabilitation  
 14 services is providing or later provides support enforcement  
 15 services under Title IV-D of the Social Security Act, each  
 16 district court order or modification of an order must  
 17 contain a statement providing that the noncustodial parent,  
 18 without further order of the court, is required to obtain  
 19 and maintain health insurance coverage as provided in  
 20 40-5-208. Failure to include a warning statement in the  
 21 judgment or order does not preclude the imposition of  
 22 sanctions under 40-5-208.

23 (8) Each district court judgment, decree, or order  
 24 establishing a final child support obligation under this  
 25 part and each modification of a final order for child

1 support must contain a statement that the order is subject  
 2 to review and modification by the department of social and  
 3 rehabilitation services upon the request of the department  
 4 or a party under 40-5-271 through 40-5-273 when the  
 5 department is providing services under Title IV-D of the  
 6 Social Security Act for the enforcement of the order.

7 (9) Child support ordered on behalf of a minor child  
 8 must be paid to:

9 (a) the legal custodian of the minor child;

10 (b) (i) any other person, organization, or agency  
 11 having legal physical custody of the minor child under a  
 12 legal assignment of rights; or

13 (ii) the court for the benefit of the minor child;

14 (c) any other person or agency designated as caretaker  
 15 of the minor child by agreement of the legal custodian; or

16 (d) any assignee or other person, organization, or  
 17 agency authorized to receive or collect child support."

18 **Section 9.** Section 40-5-118, MCA, is amended to read:

19 **"40-5-118. State information agency.** (1) The state  
 20 department of social and rehabilitation services is  
 21 designated as the state information agency under this part.

22 (2) It shall:

23 (a) compile a list of the courts and their addresses in  
 24 this state having jurisdiction under this part and transmit  
 25 it to the state information agency of every other state

1 which that has adopted this or a substantially similar law;  
 2 and upon the adjournment of each session of the legislature  
 3 the agency shall distribute copies of any amendments to this  
 4 part and a statement of their effective date to all other  
 5 state information agencies;

6 (b) maintain a register of lists of courts received  
 7 from other states and transmit furnish, upon request, copies  
 8 thereof of the list promptly to every court in this state  
 9 having jurisdiction under this part; and

10 (c) forward to the court in this state which has  
 11 jurisdiction over the obligor or his property petitions,  
 12 certificates, and copies of the reciprocal enforcement of  
 13 support act it receives from courts or information agencies  
 14 of other states;

15 (3) If the state information agency does not know the  
 16 location of the obligor or his property in the state and no  
 17 state location service is available, it shall use all means  
 18 at its disposal to obtain this information, including the  
 19 examination of official records in the state and other  
 20 sources such as telephone directories, real property  
 21 records, vital statistics records, police records, requests  
 22 for the name and address from employers who are able or  
 23 willing to cooperate, records of motor vehicle license  
 24 offices, requests made to the tax offices both state and  
 25 federal where such offices are able to cooperate, and

1 requests made to the social security administration as  
 2 permitted by the Social Security Act, as amended;

3 (4) After the deposit of three copies of the petition  
 4 and certificate and one copy of the reciprocal enforcement  
 5 of support act of the initiating state with the clerk of the  
 6 appropriate court, if the state information agency knows or  
 7 believes that the prosecuting attorney is not prosecuting  
 8 the case diligently, it shall inform the attorney general  
 9 who may undertake the representation;"

10 **Section 10.** Section 40-5-201, MCA, is amended to read:

11 **"40-5-201. Definitions.** As used in this part, the  
 12 following definitions apply:

13 (1) "Alleged father" means a man who is alleged to have  
 14 engaged in sexual intercourse with a child's mother during a  
 15 possible time of conception of the child or a man who is  
 16 presumed to be a child's father under the provisions of  
 17 40-6-105.

18 (2) (a) "Child" means any person under 18 years of age  
 19 who is not otherwise emancipated, self-supporting, married,  
 20 or a member of the armed forces of the United States, any  
 21 person under 19 years of age and still in high school, or  
 22 any person who is mentally or physically incapacitated if  
 23 the incapacity began prior to the person's 18th birthday and  
 24 for whom:

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

- 1 (b)(ii) a public assistance payment has been made;
- 2 (c)(iii) the department is providing support enforcement  
3 services under 40-5-203; or
- 4 (d)(iv) the department has received a referral for  
5 interstate services from an agency of another state under  
6 the provisions of the Uniform Reciprocal Enforcement of  
7 Support Act or under Title IV-D of the Social Security Act.
- 8 (b) Child may not be construed to limit the ability of  
9 the department to enforce a support order according to its  
10 terms when the order provides for support to extend beyond  
11 the child's 18th birthday.
- 12 (3) "Department" means the department of social and  
13 rehabilitation services.
- 14 (4) "Director" means the director of the department of  
15 social and rehabilitation services or his the director's  
16 authorized representative.
- 17 (5) "Guidelines" means the child support guidelines  
18 adopted pursuant to 40-5-209.
- 19 (6) "Hearing officer" or "hearing examiner" means the  
20 hearing officer appointed by the department for the purposes  
21 of this chapter.
- 22 (7) "Need" means the necessary costs of food, clothing,  
23 shelter, and medical care for the support of a child or  
24 children.
- 25 (8) "Obligee" means:

- 1 (a) a person to whom a duty of support is owed and who  
2 is receiving support enforcement services under this part;  
3 or
- 4 (b) a public agency of this or another state having the  
5 right to receive current or accrued support payments.
- 6 (9) "Obligor" means a person, including an alleged  
7 father, who owes a duty of support.
- 8 (10) "Parent" means the natural or adoptive parent of a  
9 child.
- 10 (11) "Paternity blood test" means a test that  
11 demonstrates through examination of genetic markers either  
12 that an alleged father is not the natural father of a child  
13 or that there is a probability that an alleged father is the  
14 natural father of a child. Paternity blood tests may include  
15 but are not limited to the human leukocyte antigen test and  
16 DNA probe technology.
- 17 (12) "Public assistance" means any type of monetary or  
18 other assistance for a child, including medical and foster  
19 care benefits. The term includes payments to meet the needs  
20 of a relative with whom the child is living, if assistance  
21 has been furnished with respect to the child by a state or  
22 county agency of this state or any other state.
- 23 (13) "Support debt" or "support obligation" means the  
24 amount created by:
- 25 (a) the failure to provide support to a child under the

1 laws of this or any other state or a support order; or

2 (b) a support order for spousal maintenance if the  
3 judgment or order requiring payment of maintenance also  
4 contains a judgment or order requiring payment of child  
5 support for a child of whom the person awarded maintenance  
6 is the custodial parent.

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

10 (a) a district court of this state;

11 (b) a court of appropriate jurisdiction of another  
12 state, Indian tribe, or foreign country;

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

15 (d) an administrative agency of another state, Indian  
16 tribe, or foreign country with a hearing function and  
17 process similar to those of the department under this part.

18 (15) "IV-D" means the provisions of Title IV-D of the  
19 Social Security Act and the regulations promulgated  
20 thereunder."

21 **Section 11.** Section 40-5-202, MCA, is amended to read:

22 "40-5-202. Department of social and rehabilitation  
23 services -- powers and duties regarding collection of  
24 support debt. (1) The department may take action under the  
25 provisions of this part, the abandonment or nonsupport

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

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

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

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

14 (2) ~~If--the--department--is--providing--child--support~~  
15 ~~enforcement--services--for--a--child--under--this--part, the~~  
16 ~~department-becomes-trustee-of-any-cause--of--action--of--the~~  
17 ~~child--or-the-obligee-to-recover-support-due-to-the-child-or~~  
18 ~~obligee-from-the-obligor,--The--department--may--bring--and~~  
19 ~~maintain--the--action--in-its-own-name-or-in-the-name-of-the~~  
20 ~~obligee. A verified statement, filed by the department, that~~  
21 ~~it is providing services is prima facie evidence of its~~  
22 ~~authority to act. The department may initiate, participate~~  
23 ~~in, or exercise any remedy available in a judicial or an~~  
24 ~~administrative action on the same basis as any other party.~~

25 (3) The department has the power of attorney to act in

1 the name of any obligee to endorse and cash any and all  
2 drafts, checks, money orders, or other negotiable  
3 instruments received by the department on behalf of a child.

4 ~~(4) For purposes of prosecuting any civil action, the~~  
5 ~~department is a real party in interest if it is providing~~  
6 ~~child support enforcement services under this part. The~~  
7 ~~department is a party to and must be afforded notice and an~~  
8 ~~opportunity to participate in any proceeding relating to~~  
9 ~~paternity or to the establishment, enforcement, or~~  
10 ~~modification of a support obligation, whether initiated by~~  
11 ~~the obligee, the obligor, or the child. No obligee A~~  
12 ~~recipient of services may not act to prejudice the rights of~~  
13 ~~the department while such the services are being provided.~~

14 (5) If child support enforcement services are being or  
15 have been provided under this part, no an agreement between  
16 any obligee and any obligor either relieving an obligor of  
17 any duty of support or purporting to settle past, present,  
18 or future support obligations either as settlement or  
19 prepayment may not act to reduce or terminate any rights of  
20 the department to recover from the obligor for support debt  
21 provided unless the department has consented to the  
22 agreement in writing.

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

1 (7) The department is subrogated to the right of the  
2 child or obligee to maintain any civil action or execute any  
3 administrative remedy available under the laws of this or  
4 any other state to collect a support debt. This right of  
5 subrogation is in addition to and independent of the  
6 assignment under 53-2-613 and the support debt created by  
7 40-5-221.

8 (8) If public assistance is being or has been paid, the  
9 department is subrogated to the debt created by a support  
10 order and any money judgment is considered to be in favor of  
11 the department. This subrogation is an addition to any  
12 assignment made under 53-2-613 and applies to the lesser of:

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

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

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

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

22 (11) When a person is required to give notice to, serve,  
23 or provide a written response to the department in a  
24 proceeding concerning the establishment or enforcement of  
25 child support, the notice, service, or response must be made

1 to the department's child support enforcement division."

2 **Section 12.** Section 40-5-206, MCA, is amended to read:

3 "40-5-206. Central unit for information and  
4 administration -- cooperation enjoined -- availability of  
5 records. (1) The department shall establish a central unit  
6 to serve as a registry for the receipt of information, for  
7 answering interstate inquiries concerning deserting parents,  
8 for receiving and answering requests for information made by  
9 consumer reporting agencies under 40-5-261, to coordinate  
10 and supervise departmental activities in relation to  
11 deserting parents, and to assure effective cooperation with  
12 law enforcement agencies.

13 (2) If services are provided to a child under this  
14 part, the department may request and, notwithstanding any  
15 statute making the information confidential, all state,  
16 county, and city agencies, officers, and employees and all  
17 corporations, partnerships, associations, organizations, or  
18 individuals doing business in the state must provide on  
19 request any information, if known, concerning the ~~location,~~  
20 ~~income,~~ and assets of an obligor, including:

21 (a) name;

22 (b) address of obligor's residence;

23 (c) date of birth;

24 (d) social security number;

25 (e) wages or other income;

1 (f) number of dependents claimed for state and federal  
2 income tax withholding purposes;

3 (g) name and address of employer;

4 (h) name and address of any financial institution  
5 maintaining an account for the obligor;

6 (i) account number, account balances, account type, and  
7 the name under which the obligor has an interest in an  
8 account or deposit with a financial institution;

9 (j) address of any real property owned by the obligor;

10 and

11 (k) any other asset in which the obligor may have an  
12 interest, including the extent, nature, and value of the  
13 interest.

14 ~~(3) Except as provided in 40-5-261 and rules adopted~~  
15 ~~under 40-5-262, any records established pursuant to the~~  
16 ~~provisions of this section are available only to the~~  
17 ~~department. A person who knowingly fails or refuses to~~  
18 ~~provide information or who knowingly provides false or~~  
19 ~~incorrect information concerning an obligor, in response to~~  
20 ~~a request by the department, is subject to citation for~~  
21 ~~contempt under the provisions of this part.~~

22 (4) Any information obtained by the department during  
23 the course of a child support investigation that is  
24 confidential at the source must be treated by the department  
25 as confidential and must be safeguarded accordingly.

1 (5) Use or disclosure of information obtained by the  
 2 department from confidential sources of and information  
 3 maintained by the department in its records, including the  
 4 names, addresses, and social security numbers of obligors  
 5 and obligees, is limited to:

6 (a) purposes directly related to the provision of  
 7 services under this chapter;

8 (b) county attorneys, and courts having jurisdiction in  
 9 support and abandonment proceedings or actions or agencies  
 10 in other states engaged in the enforcement of support of  
 11 minor children as authorized by the rules of the department  
 12 and by the provisions of the federal Social Security Act;  
 13 and

14 (c) any other use permitted or required by the federal  
 15 Social Security Act."

16 **Section 13.** Section 40-5-208, MCA, is amended to read:

17 **"40-5-208. Medical support -- obligation enforcement --**  
 18 **sanctions.** (1) (a) In any proceeding initiated pursuant to  
 19 this part to establish a child support order, whether final  
 20 or temporary, and in each modification of an existing order,  
 21 the department shall require the obligor to obtain and  
 22 maintain health insurance coverage for each child if health  
 23 insurance coverage is available through the obligor's  
 24 employment or other group health insurance plan. The order  
 25 or modification of an order must include a statement that

1 the insurance must be obtained and maintained whenever the  
 2 department is providing support enforcement services and  
 3 that the failure to do so may result in the imposition of  
 4 sanctions under this section.

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

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

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

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

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

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

7 (3) (a) The department may issue a notice commanding  
8 the obligor to appear at a hearing held by the department  
9 and show cause why a sum of not more than \$100 should not be  
10 assessed for each month health insurance coverage is not  
11 secured or maintained if the department determines an  
12 obligor has failed to:

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

15 (ii) provide information required under this section.

16 (b) If the department finds, after hearing or the  
17 obligor's failure to appear, that health insurance coverage  
18 has not been obtained or maintained or that the obligor has  
19 failed to provide the information required, the department  
20 may assess against the obligor not more than \$100 for each  
21 month health insurance coverage has not been obtained or  
22 maintained or for each month information has not been  
23 provided. Such The amounts may be enforced by any  
24 administrative remedy available to the department for the  
25 enforcement of child support obligations, including warrant

1 for distraint provided for in ~~40-5-241~~ 40-5-247 and income  
2 withholding provided for in Title 40, chapter 5, part 4.

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

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

10 **Section 14.** Section 40-5-210, MCA, is amended to read:

11 "40-5-210. Standardized fee schedule -- rules. (1) The  
12 department ~~shall-by-rule-establish-a--standardized--schedule~~  
13 ~~of--fees--for--the--recovery--of--administrative--costs--and~~  
14 ~~expenses--of--child--support--enforcement--The--fees--may--be~~  
15 ~~recovered--from--an--obligor--if--the--obligor's--failure--or~~  
16 ~~refusal--to--support--a--child--makes--it--necessary--for--the~~  
17 ~~department--to--provide--child--support--enforcement--services~~  
18 ~~under--this--part--The--fees--must--be--commensurate--with--costs--or~~  
19 ~~an--average--of--the--expenditures--related--to--specific--or~~  
20 ~~routine--activities~~ may charge an application fee to each  
21 person applying for services under 40-5-203, except that the  
22 fee may not be charged to persons who receive continuing  
23 services under 40-5-203(3). The application fee may be:

24 (a) a flat dollar amount; or

25 (b) an amount based on a sliding fee schedule that is



1 based on the applicant's income level.

2 (2) The department may charge a handling fee for each  
 3 payment of support collected on behalf of any obligee who is  
 4 not a recipient of public assistance. The department may  
 5 withhold the fee from the support payment before  
 6 distribution to the obligee.

7 (3) The department may charge an obligor a late payment  
 8 fee for each late payment of support collected on behalf of  
 9 any obligee who is not a recipient of public assistance.

10 (4) The department may establish a fee schedule in  
 11 order to recover costs and expenses in excess of the  
 12 application, handling, and late fees. The fees must be  
 13 commensurate with costs or an average of the expenditures  
 14 related to specific or routine activities.

15 (a) The department shall develop procedures for  
 16 determining whether it is appropriate for either the obligor  
 17 or the obligee to be responsible for payment of the fee. In  
 18 developing the procedures, the department shall consider  
 19 federal regulations promulgated under Title IV-D of the  
 20 Social Security Act.

21 (b)†2) In an action to establish paternity or to  
 22 establish or enforce a child support obligation, whether in  
 23 district court or by administrative process, the department  
 24 must be awarded costs in the amount established in the fee  
 25 schedule as part of any judgment, decree, or order in--which

1 whenever the department:

2 (i) is the a prevailing party in the action; or

3 (ii) is not a party but incurs expenses and costs  
 4 related to the action.

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

10 ~~†4) Collection of a fee award may not reduce any~~  
 11 ~~current child support payment due the obligee.~~

12 ~~†5) Arrearage amounts collected that include a fee must~~  
 13 ~~be allocated as follows:~~

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

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

19 (5) The department may collect the fees awarded under  
 20 this section by one of the following means:

21 (a) if the fee is owed by an obligor, the fee may be:

22 (i) collected through any remedy available to the  
 23 department for the collection of child support arrearages;

24 or

25 (ii) deducted from any payments made by the obligor

1 before the payment is distributed to the obligee. Credit for  
 2 the payment must be reduced by the amount of the deduction  
 3 for the fee. The deduction for fees may not reduce any  
 4 current support due to the obligee. The deduction for a late  
 5 payment fee may not reduce any current or past-due support  
 6 due to the obligee.

7 (b) if the fee is owed by the obligee, the fee may be  
 8 collected separately through any remedy available to the  
 9 department for the collection of child support or the  
 10 department may withhold the fee amount out of any payment  
 11 collected on behalf of the obligee. The obligor must receive  
 12 full credit for the payment as if the withholding of fees  
 13 did not occur.

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

16 (7) The department may adopt rules necessary to  
 17 implement fee schedules under this section.

18 (8) The department may retain any fees collected under  
 19 this section to help offset administrative costs and  
 20 expenses of operating the child support enforcement program.  
 21 For this purpose, the fees are statutorily appropriated as  
 22 provided in 17-7-502."

23 **Section 15.** Section 40-5-224, MCA, is amended to read:

24 "40-5-224. Finding of support liability based upon  
 25 payment of public assistance -- warrant for distraint --

1 bond to release warrant -- action to collect. (1) If the  
 2 department reasonably believes that the obligor is not a  
 3 resident of this state or is about to move from this state  
 4 or has ~~concealed-himself~~ hidden, absconded, ~~absented-himself~~  
 5 or left, or has removed or is about to remove, secrete,  
 6 waste, or otherwise dispose of property which that could be  
 7 made subject to collection action to satisfy the support  
 8 debt, the department may issue a warrant for distraint  
 9 pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the  
 10 fair hearing or ~~thereafter~~ after the hearing, whether or not  
 11 appealed. ~~No-further~~ Further action may not be taken on the  
 12 warrant until final determination after fair hearing or  
 13 appeal. The department shall make and file in the record of  
 14 the fair hearing an affidavit stating the reasons upon which  
 15 the belief is founded. The obligor may furnish a bond, not  
 16 to exceed the amount of the support debt, during pendency of  
 17 the hearing or ~~thereafter~~ after the hearing, and in such  
 18 that case warrants issued must be released. If the decision  
 19 resulting from the hearing is in favor of the obligor, all  
 20 warrants issued must be released.

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

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

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

5       (2) At the discretion of the hearing officer, the  
6 administrative hearing may be held:

7       (a) in the county of residence or other county  
8 convenient to the obligor or obligee; or

9       (b) in the county in which the department or any of its  
10 offices are located.

11       (3) If a hearing is requested, it must be scheduled  
12 within 20 days.

13       (4) The hearing officer shall determine the liability  
14 and responsibility, if any, of the obligor under the notice  
15 and shall enter a final decision and order in accordance  
16 with such the determination.

17       (5) If the obligor fails to appear at the hearing or  
18 fails to timely request a hearing, the hearing officer, upon  
19 a showing of valid service, shall enter a decision and order  
20 declaring the amount stated in the notice to be final.

21       (6) In a hearing to determine financial responsibility,  
22 the monthly support responsibility must be determined in  
23 accordance with the evidence presented and with reference to  
24 the scale of suggested minimum contributions under 40-5-214.  
25 The hearing officer is not limited to the amounts stated in

1 the notice.

2       (7) Within 20 days of the hearing, the hearing officer  
3 shall enter a final decision and order. The determination of  
4 the hearing officer constitutes a final agency decision,  
5 subject to judicial review under 40-5-253 and the provisions  
6 of the Montana Administrative Procedure Act.

7       (8) A support order entered under this part must  
8 contain a statement that the order is subject to review and  
9 modification by the department upon the request of the  
10 department or a party under 40-5-271 through 40-5-273 when  
11 the department is providing services under IV-D for the  
12 enforcement of the order.

13       (9) A support debt determined pursuant to this section  
14 is subject to collection action without further necessity of  
15 action by the hearing officer.

16       (10) A support debt or a support responsibility  
17 determined under this part by reason of the obligor's  
18 failure to request a hearing under this part or failure to  
19 appear at a scheduled hearing may be vacated, upon the  
20 motion of an obligor, by the hearing officer within the time  
21 provided and upon a showing of any of the grounds enumerated  
22 in the Montana Rules of Civil Procedure.

23       (11) Unless the hearing officer makes a written  
24 exception under 40-5-315 or 40-5-411 and the exception is  
25 included in the support order, every order establishing a

1 child support obligation, whether temporary or final, and  
 2 each modification of an existing child support order under  
 3 this part is enforceable by immediate or delinquency income  
 4 withholding, or both, under Title 40, chapter 5, part 4. A  
 5 support order that omits that provision or that provides for  
 6 a payment arrangement inconsistent with this section is  
 7 nevertheless subject to withholding for the payment of  
 8 support without need for an amendment of the support order  
 9 or for any further action by the hearing officer.

10 (12) For the purposes of income withholding provided for  
 11 in subsection (11), whenever the department establishes or  
 12 modifies a child support obligation, the department's order  
 13 must include a provision requiring the obligor, for as long  
 14 as the department is providing support enforcement services,  
 15 to keep the department informed of the name and address of  
 16 the obligor's current employer, whether the obligor has  
 17 access to health insurance through an employer or other  
 18 group, and, if so, the health insurance policy information.

19 (13) The hearing officer may:

20 (a) compel obedience to the hearing officer's orders,  
 21 judgments, and process and to any orders issued by the  
 22 department, including income-withholding orders issued  
 23 pursuant to 40-5-415;

24 (b) compel the attendance of witnesses at  
 25 administrative hearings;

1 (c) compel obedience of subpoenas for paternity blood  
 2 tests;

3 (d) compel the production of accounts, books,  
 4 documents, and other evidence; and

5 (e) punish for civil contempt. Contempt authority does  
 6 not prevent the department from proceeding in accordance  
 7 with the provisions of 2-4-104.

8 (14) A contempt occurs whenever:

9 (a) a person acts in disobedience of any lawful order,  
 10 judgment, or process of the hearing officer or of the  
 11 department;

12 (b) a person compelled by subpoena to appear and  
 13 testify at an administrative hearing or to appear for  
 14 genetic paternity tests fails to do so;

15 (c) a person compelled by subpoena duces tecum to  
 16 produce evidence at an administrative hearing fails to do  
 17 so;

18 (d) an obligor or obligee subject to a discovery order  
 19 issued by the hearing officer fails to comply with discovery  
 20 requests; or

21 (e) a payor under an order to withhold issued pursuant  
 22 to 40-5-415 fails to comply with the provisions of the  
 23 order. In the case of a payor under an income-withholding  
 24 order, a separate contempt occurs each time income is  
 25 required to be withheld and paid to the department and the

1 payor fails to take the required action.

2 (15) An affidavit of the facts constituting a contempt  
 3 must be submitted to the hearing officer, who shall review  
 4 it to determine whether there is cause to believe that a  
 5 contempt has been committed. If cause is found, the hearing  
 6 officer shall issue a citation requiring the alleged  
 7 contemnor to appear and show cause why the alleged contemnor  
 8 should not be determined to be in contempt and required to  
 9 pay a penalty of not more than \$500 for each count of  
 10 contempt. The citation, along with a copy of the affidavit,  
 11 must be served upon the alleged contemnor either by personal  
 12 service or by certified mail. All other interested persons  
 13 may be served a copy of the citation by first-class mail.

14 (16) At the time and date set for hearing, the hearing  
 15 officer shall proceed to hear witnesses and take evidence  
 16 regarding the alleged contempt and any defenses to the  
 17 contempt. If the alleged contemnor fails to appear for the  
 18 hearing, the hearing may proceed in the alleged contemnor's  
 19 absence. If the hearing officer finds the alleged contemnor  
 20 in contempt, the hearing officer may impose a penalty of not  
 21 more than \$500 for each count found. The hearing officer's  
 22 decision constitutes a final agency decision, subject to  
 23 judicial review under 40-5-253 and subject to the provisions  
 24 of Title 2, chapter 4.

25 (17) An amount imposed as a penalty may be collected by

1 any remedy available to the department for the enforcement  
 2 of child support obligations, including warrant for  
 3 distrainment pursuant to 40-5-247, income withholding pursuant  
 4 to Title 40, chapter 5, part 4, and state debt offset,  
 5 pursuant to Title 17, chapter 4, part 1. The department may  
 6 retain any penalties collected under this section to offset  
 7 the costs of administrative hearings conducted under this  
 8 chapter.

9 (18) The money collected as a penalty under this section  
 10 is statutorily appropriated, as provided in 17-7-502, to the  
 11 department to help offset expenditures for administrative  
 12 hearings conducted under this chapter."

13 **Section 17.** Section 40-5-227, MCA, is amended to read:

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

25 **(2) A final administrative order that determines and**

1 sets periodic support payments in the absence of a district  
2 court order, when filed and docketed under this section, may  
3 be modified by a district court order only as to  
4 installments accruing after actual notice to the parties of  
5 any motion for modification. The standard for ~~any--such~~ a  
6 modification is that set forth in 40-4-208.

7 (3) The department may issue a warrant for distraint  
8 based upon a properly filed and docketed order pursuant to  
9 ~~40-5-241~~ 40-5-247."

10 **Section 18.** Section 40-5-232, MCA, is amended to read:

11 \*40-5-232. **Establishment of paternity -- notice of**  
12 **paternity determination -- contents.** (1) When the paternity  
13 of a child has not been legally established under the  
14 provisions of Title 40, chapter 6, part 1, or otherwise, the  
15 department may proceed to establish paternity under the  
16 provisions of 40-5-231 through 40-5-237. An administrative  
17 hearing held under the provisions of 40-5-231 through  
18 40-5-237 is a contested case within the meaning of 2-4-102  
19 and is subject to the provisions of Title 2, chapter 4,  
20 except as otherwise provided in 40-5-231 through 40-5-237.

21 (2) It is presumed to be in the best interest of a  
22 child to legally determine and establish ~~his~~ paternity. A  
23 presumption under this subsection may be rebutted by a  
24 preponderance of the evidence.

25 (3) In any proceeding under 40-5-231 through 40-5-237,

1 if a man acknowledges ~~his~~ paternity of a child in writing  
2 and ~~such~~ the acknowledgment is filed with the department,  
3 the department may enter an order establishing legal  
4 paternity. An acknowledgment is binding on a parent who  
5 executes it, whether or not ~~he~~ the parent is a minor.

6 (4) The department shall commence proceedings to  
7 establish paternity by serving on an alleged father a notice  
8 of paternity determination. The department may not serve  
9 ~~such~~ the notice unless it has:

10 (a) a sworn statement from the child's mother claiming  
11 that the alleged father is the child's natural father;

12 (b) evidence of the existence of a presumption of  
13 paternity under 40-6-105; or

14 (c) any other reasonable cause to believe that the  
15 alleged father is the child's natural father.

16 (5) Service on the alleged father of the notice of  
17 paternity determination ~~shall~~ must be made as provided in  
18 40-5-231(2). The notice must include:

19 (a) an allegation that the alleged father is the  
20 natural father of the child involved;

21 (b) the child's name and place and date of birth;

22 (c) the name of the child's mother and the name of the  
23 person or agency having custody of the child, if other than  
24 the mother;

25 (d) the probable time or period of time during which

1 conception took place;

2 (e) a statement that if the alleged father fails to  
3 timely deny the allegation of paternity, the question of  
4 paternity may be resolved against him the alleged father  
5 without further notice;

6 (f) a statement that if the alleged father timely  
7 denies the allegation of paternity:

8 (i) he the alleged father is subject to compulsory  
9 blood testing;

10 (ii) a blood test may result in a presumption of  
11 paternity; and

12 (iii) ~~he may request a trial in district court to~~  
13 ~~determine paternity before the final administrative decision~~  
14 ~~is made upon receipt of the blood test results, if the~~  
15 ~~alleged father continues to deny paternity, the alleged~~  
16 ~~father may request the department to refer the matter to~~  
17 ~~district court for a determination of paternity.~~

18 (6) The alleged father may file a written denial of  
19 paternity with the department within 20 days after service  
20 of the notice of paternity determination.

21 (7) When there is more than one alleged father of a  
22 child, the department may serve a notice of paternity  
23 determination on each alleged father in the same  
24 consolidated proceeding or in separate proceedings. Failure  
25 to serve notice on an alleged father does not prevent the

1 department from serving notice on any other alleged father  
2 of the same child."

3 **Section 19.** Section 40-5-242, MCA, is amended to read:

4 "40-5-242. Civil Notice of support lien -- civil  
5 liability upon failure to honor support lien or to comply  
6 with warrant or-to-honor-assignment-of-wages for distraint.

7 (1) The department may, at any time after asserting a  
8 support lien, serve a notice of the lien on any person,  
9 firm, corporation, association, or political subdivision or  
10 department of the state in possession of any real or  
11 personal property that is due, owing, or belonging to an  
12 obligor. For this purpose, personal property includes the  
13 obligor's share of a decedent's estate, workers'  
14 compensation benefits, and any proceeds or potential  
15 proceeds from suits at law.

16 (2) Except as provided in subsection (3), A a person,  
17 firm, corporation, association, political subdivision, or  
18 department of the state or entity is liable to the  
19 department in an amount equal to 100% of the value of the a  
20 support debt that is the basis of the distraint or  
21 assignment of wages lien or warrant for distraint or the  
22 value of the-distrainted real or personal property subject to  
23 a support lien or distrainted by a warrant for distraint,  
24 whichever is less, together with costs, interest, and  
25 reasonable attorney fees, if the person or entity:

1 ~~{1} fails or refuses to deliver property pursuant to~~  
2 ~~the order;~~

3 ~~{2}(a)~~ pays over, releases, sells, transfers, or  
4 conveys real or personal property subject to a support lien,  
5 to or for the benefit of the obligor, after the person or  
6 entity receives actual notice of filing of the support lien;  
7 ~~or~~

8 ~~{3}(b)~~ fails or refuses to surrender upon demand  
9 property ~~distrained under 40-5-241~~ of an obligor when  
10 ~~presented with a warrant for distraint by a sheriff or~~  
11 ~~levying officer under the provisions of 40-5-247; or.~~

12 ~~{4} fails or refuses to honor an assignment of wages~~  
13 ~~presented by the department;~~

14 (3) A person or entity is not liable to the department  
15 under this section when:

16 (a) a written release or waiver of the support lien or  
17 warrant for distraint issued by the department has been  
18 delivered to the person or entity;

19 (b) a determination has been made in an adjudicative  
20 proceeding, either administrative or judicial, that a  
21 support lien does not exist or that the lien has been  
22 satisfied; or

23 (c) the property subject to a support lien has been  
24 transferred to, paid over to, or repossessed by a person or  
25 entity holding;

1 (i) a prior perfected lien;

2 (ii) a mortgage, the proceeds of which were used by the  
3 obligor to purchase real property; or

4 (iii) a perfected purchase money security interest, as  
5 defined by 30-9-107."

6 **Section 20.** Section 40-5-247, MCA, is amended to read:

7 ~~"40-5-247. Filing warrant with district court --- effect~~  
8 ~~of filing ----- release Warrant for distraint -- effect --~~  
9 ~~satisfaction of support lien -- redemption. {1} After~~  
10 ~~issuing a warrant, the department may file the warrant with~~  
11 ~~the clerk of a district court. The clerk shall file the~~  
12 ~~warrant in the judgment docket, with the name of the~~  
13 ~~delinquent obligor listed as the judgment debtor.~~

14 ~~{2} Upon filing the warrant, there is a lien against~~  
15 ~~all real and personal property of the delinquent obligor~~  
16 ~~located in the county where the warrant is filed. The~~  
17 ~~resulting lien is treated in the same manner as a properly~~  
18 ~~docketed judgment lien, and the department may collect~~  
19 ~~delinquent child support and enforce the lien in the same~~  
20 ~~manner as a judgment is enforced. The lien is for the amount~~  
21 ~~indicated on the warrant plus accrued interest from the date~~  
22 ~~of the warrant.~~

23 (1) The department may issue a warrant for distraint to  
24 execute support liens established by [section 28] or to  
25 enforce and collect any money obligation authorized under



1 this chapter.

2 (a) The warrant must be an order, under official seal  
3 of the department, directed to a sheriff of any county of  
4 the state or to any levying officer authorized by law to  
5 enforce a district court judgment. The order must command  
6 the recipient to levy upon and sell nonexempt real and  
7 personal property to satisfy the support lien upon which the  
8 warrant is based.

9 (b) A warrant must be signed by the director of the  
10 department or the director's designee.

11 (c) The warrant must be for the amount of the support  
12 lien or the amount of any other money obligation determined  
13 under this chapter, including interest and fees, if any.

14 (d) A warrant for distraint has the same effect as a  
15 writ of execution issued by a district court to enforce  
16 money judgments.

17 ~~(3)(2)~~ (a) A ~~copy--of--the--filed~~ warrant for distraint  
18 may be sent by the department to the sheriff or ~~authorized~~  
19 ~~agent~~ levying officer. Upon receipt of ~~a-copy-of~~ the ~~filed~~  
20 warrant, the sheriff or ~~authorized--agent~~ levying officer  
21 shall proceed to execute upon the warrant in the same manner  
22 as prescribed for execution upon a judgment.

23 (b) A sheriff or ~~agent~~ levying officer shall return a  
24 warrant, along with any funds collected, within 90 days of  
25 the receipt of the ~~copy-of-the~~ warrant.

1 (c) Funds resulting from execution upon the warrant  
2 must first be applied to the sheriff's or levying officer's  
3 costs, any superior liens, the support lien, or other money  
4 obligation and to any inferior liens. Any amounts in excess  
5 of this distribution must be paid to the obligor.

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

9 (3) A sheriff's or levying officer's levy against real  
10 and personal property of the obligor is not limited to  
11 property in possession of persons or other entities given  
12 notice of a support lien under 40-5-242.

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

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

25 (5) An obligor or other person or entity having an

interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this

section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(5)(9) 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."

**Section 21.** Section 40-5-255, MCA, is amended to read:

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

(2) At any time after ~~6-years-from-the-date-a-support-debt-was-incurred~~ 10 years from the date of termination of the support obligation, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. ~~No--proceedings A proceeding~~ or action under the provisions of this part may not be begun after expiration of the ~~6-year~~ 10-year period to institute collection of a support debt. ~~Nothing-herein~~ This part may not be construed to render invalid or

1 nonactionable a warrant for distraint ~~filed with the clerk~~  
 2 of court issued by the department prior to the expiration of  
 3 the 6-year 10-year period or an assignment of earnings  
 4 executed prior to the expiration of the 6-year 10-year  
 5 period."

6 **Section 22.** Section 40-5-415, MCA, is amended to read:

7 **"40-5-415. Order to withhold income -- rules.** (1) When  
 8 the requirements of this part have been met, the department  
 9 shall serve an order or modification order to withhold and  
 10 deliver income upon any payor or combination of payors. The  
 11 order must:

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

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

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

20 (d) state the rights and duties of the payor under this  
 21 part; and

22 (e) include a statement that the obligor is required  
 23 under a support order to provide health insurance coverage  
 24 for the obligor's child, if appropriate.

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. Whenever an  
 9 obligor's income is subject to withholding for more than one  
 10 obligee, the department may consolidate the payments  
 11 received each month and distribute the income among the  
 12 obligees according to department rules."

13 **Section 23.** Section 40-6-116, MCA, is amended to read:

14 **"40-6-116. Judgment or order.** (1) The judgment or order  
 15 of the court determining the existence or nonexistence of  
 16 the parent and child relationship is determinative for all  
 17 purposes.

18 (2) If the judgment or order of the court is at  
 19 variance with the child's birth certificate, the court shall  
 20 order that a substitute birth certificate be issued under  
 21 40-6-123.

22 (3) (a) The judgment or order may contain any other  
 23 provision directed against the appropriate party to the  
 24 proceeding concerning the custody and guardianship of the  
 25 child, visitation privileges with the child, the furnishing

1 of bond or other security for the payment of the judgment,  
2 or any other matter in the best interest of the child.

3 (b) Except when the financial responsibility of a  
4 responsible parent is in the process of being determined  
5 pursuant to the administrative procedure provided in  
6 40-5-225, the judgment or order must contain a provision  
7 concerning the duty of child support.

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

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

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

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

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

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

25 (b) the standard of living and circumstances of the

1 parents;

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

3 (d) the earning ability of the parents;

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

6 (f) the age of the child;

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

9 (h) the responsibility of the parents for the support  
10 of others;

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

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

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

16 (6) (a) Whenever a court issues or modifies an order  
17 concerning child support, the court shall determine the  
18 child support obligation by applying the standards in this  
19 section and the uniform child support guidelines adopted by  
20 the department of social and rehabilitation services  
21 pursuant to 40-5-209, unless the court finds by clear and  
22 convincing evidence that the application of the standards  
23 and guidelines is unjust to the child or to any of the  
24 parties or is inappropriate in that particular case.

25 (b) If the court does not apply these standards and

1 guidelines to determine child support, it shall state its  
 2 reasons for finding that the application of such the  
 3 standards and guidelines is unjust to the child or a party  
 4 or is inappropriate in that particular case.

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

9 (7) The judgment or order concerning child support and  
 10 each modification of a judgment or order for child support  
 11 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 or order may contain a provision requiring that coverage for  
 18 the child or children be continued or obtained.

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

25 (c) The parties may by written agreement provide for

1 the health care coverage required by this section, subject  
 2 to the approval of the court.

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

7 (8) (a) Unless an exception is found under 40-5-315 or  
 8 40-5-411 and the exception is included in the support order,  
 9 a support obligation established by judgment, decree, or  
 10 order under this section, whether temporary or final, and  
 11 each modification of an existing support obligation made  
 12 under 40-6-118 must be enforced by immediate or delinquency  
 13 income withholding, or both, under Title 40, chapter 5, part  
 14 3 or 4. A support order that omits the exception or that  
 15 provides for a payment arrangement inconsistent with this  
 16 section is nevertheless subject to withholding for the  
 17 payment of support without need for an amendment to the  
 18 support order or for any further action by the court.

19 (b) After October 1, 1993, if a support order subject  
 20 to income withholding is expressed in terms of a monthly  
 21 obligation, the order may be annualized and withheld on a  
 22 weekly or biweekly basis, corresponding to the obligor's  
 23 regular pay period.

24 (9) For the purposes of income withholding as provided  
 25 in subsection (8), whenever the district court establishes

1 or modifies a child support obligation, the judgment,  
 2 decree, or order must include a provision requiring the  
 3 parent obligated to pay support to inform the court and, if  
 4 the department of social and rehabilitation services is  
 5 providing services under Title IV-D of the Social Security  
 6 Act for the enforcement of the judgment, decree, or order,  
 7 the department, of the following:

8 (a) the name and address of the parent's current  
 9 employer;

10 (b) whether the parent has access to health insurance  
 11 through an employer or other group; and

12 (c) if insurance coverage is available, the health  
 13 insurance policy information.

14 (10) If the department of social and rehabilitation  
 15 services is providing or later provides support enforcement  
 16 services under Title IV-D of the Social Security Act, each  
 17 district court order or modification of an order must  
 18 contain a statement providing that the noncustodial parent,  
 19 without further order of the court, is required to obtain  
 20 and maintain health insurance coverage as provided in  
 21 40-5-208. Failure to include a warning statement in the  
 22 judgment or order does not preclude the imposition of  
 23 sanctions under 40-5-208.

24 (11) Each district court judgment, decree, or order  
 25 establishing a final child support obligation under this

1 part and each modification of a final order for child  
 2 support must contain a statement that the order is subject  
 3 to review and modification by the department of social and  
 4 rehabilitation services upon the request of the department  
 5 or a party under 40-5-271 through 40-5-273 when the  
 6 department is providing services under Title IV-D of the  
 7 Social Security Act for the enforcement of the order."

8 **Section 24.** Section 40-6-117, MCA, is amended to read:

9 **"40-6-117. Enforcement of judgment or order.** (1) If  
 10 existence of the father and child relationship is declared  
 11 or paternity or a duty of support has been acknowledged or  
 12 adjudicated under this part or under prior law, the court  
 13 may order support payments to be made to the mother, the  
 14 clerk of the court, or a person, corporation, or agency  
 15 designated to administer them for the benefit of the child  
 16 under the supervision of the court.

17 (2) Willful failure to obey the judgment or order of  
 18 the court is a civil contempt of the court. All remedies for  
 19 the enforcement of judgments apply.

20 (3) Child support ordered on behalf of a minor child  
 21 must be paid to:

22 (a) the legal custodian of the minor child;

23 (b) (i) any other person, organization, or agency  
 24 having legal physical custody of the minor child or  
 25 collecting child support on behalf of the minor child under

1 a legal assignment of rights; or  
 2 (ii) the court for the benefit of the minor child;  
 3 (c) any other person or agency designated as caretaker  
 4 of the minor child by agreement of the legal custodian; or  
 5 (d) any assignee or other person, organization, or  
 6 agency authorized to receive or collect child support."

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

8 "53-2-613. Application for assistance -- assignment of  
 9 support rights. (1) Applications for public assistance,  
 10 including but not limited to aid to families with dependent  
 11 children and medical assistance, must be made to the county  
 12 department of public welfare in the county in which the  
 13 person is residing. The application ~~shall~~ must be submitted,  
 14 in the manner and form prescribed by the department of  
 15 social and rehabilitation services, and ~~shall~~ must contain  
 16 information required by the department of social and  
 17 rehabilitation services.

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

25 (3) The assignment:

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

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

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

9 (4) Whenever a support obligation is assigned to the  
 10 department of social and rehabilitation services pursuant to  
 11 this section, the following provisions apply:

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

17 (b) No A recipient or former recipient of public  
 18 assistance may not commence or maintain an action to recover  
 19 a delinquent support obligation without notifying the  
 20 department department's child support enforcement division.  
 21 The department may then release or relinquish its assigned  
 22 interest or enter the proceeding. This subsection (4)(b)  
 23 does not limit the right of any person to recover money not  
 24 assigned.

25 (c) If a notice of assigned interest is filed with the

1 district court, the clerk of the court may not pay over or  
 2 release for the benefit of any recipient or former recipient  
 3 of public assistance any amounts received pursuant to a  
 4 judgment or decree or an order of the court until the  
 5 department department's child support enforcement division  
 6 has filed a written notice that:

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

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

11 (d) No A recipient or former recipient of public  
 12 assistance may not take action to modify or make any  
 13 agreement to modify, settle, or release any past, present,  
 14 or future support obligation unless the department  
 15 department's child support enforcement division is given  
 16 written notice and an opportunity to participate. Any  
 17 modifications or agreements entered into without the  
 18 participation of the department are void with respect to the  
 19 state, the department ~~of social and rehabilitation services,~~  
 20 and the county welfare department."

21 NEW SECTION. Section 26. Child support payments to  
 22 follow the child. Child support ordered on behalf of a minor  
 23 child must be paid to:

24 (1) the legal custodian of the minor child;

25 (2) (a) any other person, organization, or agency

1 having legal physical custody of the minor child or  
 2 collecting child support on behalf of the minor child under  
 3 a legal assignment of rights; or

4 (b) the court for the benefit of the minor child;

5 (3) any other person or agency designated as caretaker  
 6 of the minor child by agreement of the legal custodian; or

7 (4) any assignee or other person, organization, or  
 8 agency authorized to receive or collect child support.

9 NEW SECTION. Section 27. Lien against real and  
 10 personal property -- effect of lien -- interest -- warrant  
 11 for distraint. (1) There is a support lien on the real and  
 12 personal property of an obligor:

13 (a) when the department has entered a final decision in  
 14 a contested case under this chapter that finds the obligor  
 15 owes a sum certain debt either to this department or to an  
 16 obligee, or both; or

17 (b) upon registration under 40-5-271 of a support order  
 18 that includes finding that the obligor owes a sum certain  
 19 amount of delinquent support.

20 (2) A support lien is for the amount required to  
 21 satisfy:

22 (a) the sum certain debt shown in a final decision in a  
 23 contested case under this chapter or the sum certain support  
 24 debt included in any support order registered under  
 25 40-5-271;



- 1 (b) interest claimed under this section; and  
 2 (c) any fees that may be due under 40-5-210.
- 3 (3) A support lien has the priority of a secured  
 4 creditor from the date the lien is perfected as provided by  
 5 this section; however, the lien is subordinate to:  
 6 (a) any prior perfected lien or security interest;  
 7 (b) a mortgage, the proceeds of which are used by an  
 8 obligor to purchase real property; or  
 9 (c) any perfected purchase money security interest, as  
 10 defined in 30-9-107.
- 11 (4) Support liens remain in effect until the  
 12 delinquency upon which the lien is based is satisfied or  
 13 until 2 years after the child to whom the support lien is  
 14 related attains the age of majority, whichever occurs first.
- 15 (5) The lien applies to all real and personal property  
 16 owned by the obligor, if it can be located in the state. The  
 17 lien applies to all real and personal property that the  
 18 obligor can afterward acquire.
- 19 (6) The department shall keep a record of support liens  
 20 asserted under this section in the registry of support  
 21 orders established by 40-5-271.
- 22 (a) Except as provided by subsection (7) for motor  
 23 vehicle liens, a support lien is perfected upon filing the  
 24 lien with the department's registry.
- 25 (b) The department shall make information about a

- 1 support lien available to any interested person or entity.
- 2 (c) A support lien filed with the department's registry  
 3 constitutes constructive notice to a purchaser of real  
 4 property from an obligor.
- 5 (d) Except as provided by subsection (7), a lien  
 6 against an obligor's personal property is not effective  
 7 against any person, firm, corporation, association,  
 8 political subdivision, or agency of the state in possession  
 9 of the obligor's personal property until the department  
 10 serves a notice of the lien to the person or entity.
- 11 (7) A support lien may be asserted against any motor  
 12 vehicle, as defined in 61-1-102, as follows:
- 13 (a) When an obligor is the owner of a motor vehicle,  
 14 the department may give notice of the support lien to the  
 15 department of justice as provided in 61-3-103(6). A notice  
 16 of support lien filed with the department of justice  
 17 constitutes constructive notice of the lien to subsequent  
 18 purchasers or encumbrancers of a motor vehicle from the  
 19 obligor, commencing from the date the notice is delivered to  
 20 the department of justice.
- 21 (b) (i) To assert a support lien on motor vehicles of  
 22 which an obligor may later acquire ownership, the department  
 23 may, each month, prepare and submit to the department of  
 24 justice a list of obligors against whom there is a support  
 25 lien. The list must identify each obligor by name,

1 last-known address, amount of lien, social security number,  
2 if known, and any other identifying information needed by  
3 the department of justice to identify the obligor.

4 (ii) The department of justice shall, before issuing a  
5 certificate of ownership for any motor vehicle, determine  
6 whether the name of the person applying for the certificate  
7 is on the most recent monthly support lien list. If the  
8 person's name is on the list, the department of justice  
9 shall enter a lien on the certificate of ownership under the  
10 name of the department as lienholder.

11 (c) The department shall reimburse the department of  
12 justice for reasonable costs incurred by the department of  
13 justice in implementing this subsection (7).

14 (8) (a) The department may charge interest on the  
15 support lien at the rate of 1% per month.

16 (b) Interest accrues at the close of the business day  
17 on the last day of each month and is calculated by  
18 multiplying the unpaid balance of the lien, including prior  
19 accrued interest existing at the end of the day, by the  
20 applicable rate of interest.

21 (c) A provision of this section may not be construed to  
22 require the department to maintain interest balance due  
23 accounts. The department may waive interest if waiver would  
24 facilitate the collection of the debt.

25 (d) Interest under this subsection (8) is in addition

1 to and not in substitution for any other interest accrued or  
2 accruing under any other provision of law.

3 (9) (a) Upon receiving payment in full of the amount of  
4 the lien plus interest and fees, if any, the department  
5 shall take all necessary steps to release the support lien.

6 (b) Upon receiving partial payment of the support lien  
7 or if the department determines that a release or partial  
8 release of the lien will facilitate the collection of  
9 support arrearages, the department may release or partially  
10 release the support lien. The department may release the  
11 support lien if it determines that the lien is  
12 unenforceable.

13 (10) A support lien under this section is in addition to  
14 any other lien created by law.

15 (11) A support lien under this section may not be  
16 discharged in bankruptcy.

17 (12) Support liens provided for by this section may be  
18 enforced or collected through the warrant for distraint  
19 provided for by 40-5-247.

20 **NEW SECTION. Section 28.** Payment of debts to  
21 department. If money is due and owing the department, a  
22 payment due under Title 40, chapter 5, parts 2 or 4, or  
23 under this chapter that is accompanied by or bears any  
24 notation by the debtor that the payment represents payment  
25 in full is not full payment, notwithstanding the

1 department's acceptance of the payment, unless there is  
2 additional written agreement, signed by the department, that  
3 the payment is payment in full.

4 NEW SECTION. Section 29. Repealer. Sections 40-5-241,  
5 40-5-245, and 40-5-246, MCA, are repealed.

6 NEW SECTION. Section 30. Codification instruction. (1)  
7 [Sections 26 and 27] are intended to be codified as an  
8 integral part of Title 40, chapter 5, part 2, and the  
9 provisions of Title 40, chapter 5, part 2, apply to  
10 [sections 26 and 27].

11 (2) [Section 28] is intended to be codified as an  
12 integral part of Title 53, chapter 2, part 1, and the  
13 provisions of Title 53, chapter 2, part 1, apply to [section  
14 28].

15 NEW SECTION. Section 31. Severability. If a part of  
16 [this act] is invalid, all valid parts that are severable  
17 from the invalid part remain in effect. If a part of [this  
18 act] is invalid in one or more of its applications, the part  
19 remains in effect in all valid applications that are  
20 severable from the invalid applications.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1 HOUSE BILL NO. 335  
 2 INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,  
 3 S. RICE, BOHLINGER, YELLOWTAIL,  
 4 WATERMAN, L. NELSON, PETERSON  
 5 BY REQUEST OF THE DEPARTMENT OF  
 6 SOCIAL AND REHABILITATION SERVICES  
 7  
 8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
 9 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND  
 10 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;  
 11 PROVIDING FOR ADDITIONAL FEES; STATUTORILY APPROPRIATING  
 12 FEES AND PENALTIES; REQUIRING NOTICE TO THE CHILD SUPPORT  
 13 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND  
 14 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE  
 15 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE  
 16 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;  
 17 EXTENDING SERVICES TO CHILDREN OVER AGE 18; REQUIRING  
 18 PRIVATE INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE  
 19 CERTAIN INFORMATION; ALLOWING CHILD SUPPORT PAYMENTS TO  
 20 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON  
 21 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE  
 22 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES  
 23 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO  
 24 DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE  
 25 OBLIGEES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

1 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF  
 2 LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY  
 3 PERIODS; AMENDING SECTIONS 17-7-502, 25-9-301, 25-9-302,  
 4 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118,  
 5 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,  
 6 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,  
 7 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND  
 8 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

10 WHEREAS, it is necessary to draft a composite bill  
 11 containing unrelated sections in order to present the  
 12 proposed program improvements in a single, comprehensive  
 13 bill that promotes the needs of legislative energy,  
 14 efficiency, and economy by limiting the number of possible  
 15 bills and by reducing the need for hearings and readings on  
 16 those bills.

17 THEREFORE, the Legislature finds it appropriate to enact  
 18 the following legislation.

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

21 Section 1. Section 17-7-502, MCA, is amended to read:

22 "17-7-502. Statutory appropriations -- definition --  
 23 requisites for validity. (1) A statutory appropriation is an  
 24 appropriation made by permanent law that authorizes spending  
 25 by a state agency without the need for a biennial



1 legislative appropriation or budget amendment.

2 (2) Except as provided in subsection (4), to be  
3 effective, a statutory appropriation must comply with both  
4 of the following provisions:

5 (a) The law containing the statutory authority must be  
6 listed in subsection (3).

7 (b) The law or portion of the law making a statutory  
8 appropriation must specifically state that a statutory  
9 appropriation is made as provided in this section.

10 (3) The following laws are the only laws containing  
11 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
12 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
13 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
14 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
15 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
16 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
17 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
18 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
19 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
20 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
21 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
22 39-71-2504; 40-5-210; 40-5-226; 44-12-206; 44-13-102;  
23 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;  
24 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;  
25 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;

1 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

2 (4) There is a statutory appropriation to pay the  
3 principal, interest, premiums, and costs of issuing, paying,  
4 and securing all bonds, notes, or other obligations, as due,  
5 that have been authorized and issued pursuant to the laws of  
6 Montana. Agencies that have entered into agreements  
7 authorized by the laws of Montana to pay the state  
8 treasurer, for deposit in accordance with 17-2-101 through  
9 17-2-107, as determined by the state treasurer, an amount  
10 sufficient to pay the principal and interest as due on the  
11 bonds or notes have statutory appropriation authority for  
12 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
13 567, L. 1991, the inclusion of 19-6-709 terminates upon  
14 death of last recipient eligible for supplemental benefit;  
15 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
16 22-3-811 terminates June 30, 1993.)"

17 **Section 2.** Section 25-9-301, MCA, is amended to read:

18 **"25-9-301. Docketing of judgment -- lien -- expiration.**  
19 (1) Immediately after the entry of the judgment in the  
20 judgment book, the clerk must make the proper entries of the  
21 judgment under appropriate heads in the docket kept by him  
22 the clerk.

23 (2) From the time the judgment is docketed, it becomes  
24 a lien upon all real property of the judgment debtor not  
25 exempt from execution in the county, owned by him the

1 judgment debtor at the time or which he the judgment debtor  
2 may afterward acquire until the lien ceases. ~~The~~ Except as  
3 provided in subsection (3), the lien continues for 6 years  
4 unless the judgment be is previously satisfied.

5 (3) When the judgment is for the payment of child or  
6 spousal support, the lien continues for 10 years from the  
7 termination of the support obligation unless the judgment is  
8 previously satisfied."

9 **Section 3.** Section 25-9-302, MCA, is amended to read:

10 **"25-9-302. Filing of transcript of docket in another**  
11 **county -- lien -- expiration. (1)** A transcript of the  
12 original docket, certified by the clerk, may be filed with  
13 the district court clerk of any other county; and from the  
14 time of the filing, the judgment becomes a lien upon all  
15 real property of the judgment debtor, not exempt from  
16 execution, in such that county, owned by him the judgment  
17 debtor at the time or which he the judgment debtor may  
18 afterward and before the lien expires acquire. ~~The~~ Except as  
19 provided in subsection (2), the lien continues for 6 years  
20 unless the judgment be is previously satisfied.

21 (2) When the judgment is for the payment of child or  
22 spousal support, the lien continues for 10 years from the  
23 termination of the support obligation unless the judgment is  
24 previously satisfied."

25 **Section 4.** Section 25-9-303, MCA, is amended to read:

1 **"25-9-303. Filing of transcript of docket of federal**  
2 **court -- lien -- expiration. (1)** A transcript of the  
3 original docket of any judgment rendered in the circuit or  
4 district court of the United States, ninth circuit, district  
5 of Montana, certified by the clerk of said court, may be  
6 filed with the district court clerk of any county; and from  
7 the time of the filing, the judgment becomes a lien upon all  
8 real property of the judgment debtor, not exempt from  
9 execution, in such the county, owned by him the judgment  
10 debtor at the time or which he the judgment debtor may  
11 afterward and before the lien expires acquire. ~~The~~ Except as  
12 provided in subsection (2), the lien shall---continue  
13 continues for 6 years unless the judgment be is previously  
14 satisfied.

15 (2) When the judgment is for the payment of child or  
16 spousal support, the lien continues for 10 years from the  
17 termination of the support obligation unless the judgment is  
18 previously satisfied."

19 **Section 5.** Section 25-13-101, MCA, is amended to read:

20 **"25-13-101. Time limit for issuing execution. (1)** ~~The~~  
21 Except as provided in subsection (2), the party in whose  
22 favor the judgment is given may, at any time within 6 years  
23 after the entry thereof, have a writ of execution issued for  
24 its enforcement.

25 (2) When the judgment is for the payment of child or

1 spousal support, the party in whose favor the judgment is  
 2 given may, at any time within 10 years after the termination  
 3 of the support obligation, have a writ of execution issued  
 4 for its enforcement."

5 **Section 6.** Section 27-2-201, MCA, is amended to read:

6 "27-2-201. **Actions upon judgments.** (1) The Except as  
 7 provided in subsection (3), the period prescribed for the  
 8 commencement of an action upon a judgment or decree of any  
 9 court of record of the United States or of any state within  
 10 the United States is within 10 years.

11 (2) The period prescribed for the commencement of an  
 12 action upon a judgment or decree rendered in a court not of  
 13 record is within 5 years. The cause of action is deemed  
 14 considered, in such that case, to have accrued when final  
 15 judgment was rendered.

16 (3) The period prescribed for the commencement of an  
 17 action to collect past-due child or spousal support that has  
 18 accrued after October 1, 1993, under an order entered by a  
 19 court of record or administrative authority is within 10  
 20 years of the termination of support obligation."

21 **Section 7.** Section 27-2-211, MCA, is amended to read:

22 "27-2-211. **Actions to enforce penalty or forfeiture or**  
 23 **other statutory liability.** (1) Within 2 years is the period  
 24 prescribed for the commencement of an action upon:

25 (a) a statute for a penalty or forfeiture when the

1 action is given to an individual or to an individual and the  
 2 state, except when the statute imposing it prescribes a  
 3 different limitation;

4 (b) a statute or an undertaking in a criminal action  
 5 for a forfeiture or penalty to the state;

6 (c) a liability created by statute other than:

7 (i) a penalty or forfeiture; or

8 (ii) a statutory debt created by the payment of public  
 9 assistance.

10 (2) The period prescribed for the commencement of an  
 11 action by a municipal corporation for the violation of any  
 12 city or town ordinance is within 1 year.

13 (3) Notwithstanding any other provision of this  
 14 chapter, actions against directors or stockholders of a  
 15 corporation to recover a penalty or forfeiture imposed or to  
 16 enforce a liability created by law must be brought within 3  
 17 years after the discovery by the aggrieved party of the  
 18 facts upon which the penalty of forfeiture attached or the  
 19 liability was created.

20 (4) Unless fraud is involved or unless a support  
 21 obligation has been entered, an action to enforce a  
 22 statutory debt created by the payment of public assistance  
 23 must be brought within 5 years from the date the debt  
 24 arises. If fraud is involved, an action must be brought  
 25 within 5 years of the discovery of the fraud. If a support

1 obligation has been entered, an action must be brought  
 2 within 10 years of the termination of support obligation."

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

4 **"40-4-204.** Child support -- orders to address health  
 5 insurance -- withholding of child support. (1) In a  
 6 proceeding for dissolution of marriage, legal separation,  
 7 maintenance, or child support, the court shall order either  
 8 or both parents owing a duty of support to a child to pay an  
 9 amount reasonable or necessary for his the child's support,  
 10 without regard to marital misconduct.

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

13 (a) the financial resources of the child;

14 (b) the financial resources of the custodial parent;

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

17 (d) the physical and emotional condition of the child  
 18 and his the child's educational and medical needs;

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

21 (f) the age of the child;

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

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

25 (i) the needs of any person, other than the child, whom

1 either parent is legally obligated to support.

2 (3) (a) Whenever a court issues or modifies an order  
 3 concerning child support, the court shall determine the  
 4 child support obligation by applying the standards in this  
 5 section and the uniform child support guidelines adopted by  
 6 the department of social and rehabilitation services  
 7 pursuant to 40-5-209, unless the court finds by clear and  
 8 convincing evidence that the application of the standards  
 9 and guidelines is unjust to the child or to any of the  
 10 parties or is inappropriate in that particular case.

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

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

20 (4) Each district court judgment, decree, or order  
 21 establishing a final child support obligation under this  
 22 title and each modification of a final order for child  
 23 support 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 decree, or order may contain a provision requiring that  
5 coverage for the child or children be continued or obtained.

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

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

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

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

24 (5) (a) Unless the court makes a written exception  
25 under 40-5-315 or 40-5-411 and the exception is included in

1 the support order, a support obligation established by  
2 judgment, decree, or order under this section, whether  
3 temporary or final, and each modification of an existing  
4 support obligation under 40-4-208 must be enforced by  
5 immediate or delinquency income withholding, or both, under  
6 Title 40, chapter 5, part 3 or 4. A support order that omits  
7 the written exceptions provided in 40-5-315 or 40-5-411 or  
8 that provides for a payment arrangement inconsistent with  
9 this section is nevertheless subject to withholding for the  
10 payment of support without need for an amendment to the  
11 support order or for any further action by the court.

12 (b) If an obligor is exempt from immediate income  
13 withholding, the district court judgment or order must  
14 include a warning statement that if the obligor is  
15 delinquent in the payment of support, the obligor's income  
16 may be subject to income withholding procedures under Title  
17 40, chapter 5, part 3 or 4. Failure to include a warning  
18 statement in a judgment or order does not preclude the use  
19 of withholding procedures.

20 (c) After October 1, 1993, if a support order subject  
21 to income withholding is expressed in terms of a monthly  
22 obligation, the order may be annualized and withheld on a  
23 weekly or biweekly basis, corresponding to the obligor's  
24 regular pay period.

25 (6) For the purposes of income withholding under

1 subsection (5), every district court judgment, decree, or  
 2 order that establishes or modifies a child support  
 3 obligation must include a provision requiring the parent  
 4 obligated to pay support to inform the court and, if the  
 5 department of social and rehabilitation services is  
 6 providing services under Title IV-D of the Social Security  
 7 Act for the enforcement of the judgment, decree, or order,  
 8 the department, of the following:

9 (a) the name and address of the parent's current  
 10 employer;

11 (b) whether the parent has access to health insurance  
 12 through an employer or other group; and

13 (c) if insurance coverage is available, the health  
 14 insurance policy information.

15 (7) If the department of social and rehabilitation  
 16 services is providing or later provides support enforcement  
 17 services under Title IV-D of the Social Security Act, each  
 18 district court order or modification of an order must  
 19 contain a statement providing that the noncustodial parent,  
 20 without further order of the court, is required to obtain  
 21 and maintain health insurance coverage as provided in  
 22 40-5-208. Failure to include a warning statement in the  
 23 judgment or order does not preclude the imposition of  
 24 sanctions under 40-5-208.

25 (8) Each district court judgment, decree, or order

1 establishing a final child support obligation under this  
 2 part and each modification of a final order for child  
 3 support must contain a statement that the order is subject  
 4 to review and modification by the department of social and  
 5 rehabilitation services upon the request of the department  
 6 or a party under 40-5-271 through 40-5-273 when the  
 7 department is providing services under Title IV-D of the  
 8 Social Security Act for the enforcement of the order.

9 (9) Child support ordered on behalf of a minor child  
 10 must be paid to:

11 (a) the legal custodian of the minor child;

12 (b) (i) any other person, organization, or agency  
 13 having legal physical custody of the minor child under a  
 14 legal assignment of rights; or

15 (ii) the court for the benefit of the minor child;

16 (c) any other person or agency designated as caretaker  
 17 of the minor child by agreement of the legal custodian; or

18 (d) any assignee or other person, organization, or  
 19 agency authorized to receive or collect child support."

20 **Section 9.** Section 40-5-118, MCA, is amended to read:

21 "40-5-118. State information agency. (1) The state  
 22 department of social and rehabilitation services is  
 23 designated as the state information agency under this part.

24 (2) It shall:

25 (a) compile a list of the courts and their addresses in

1 this state having jurisdiction under this part and transmit  
 2 it to the state information agency of every other state  
 3 which that has adopted this or a substantially similar law;  
 4 and Upon the adjournment of each session of the legislature  
 5 the agency shall distribute copies of any amendments to this  
 6 part and a statement of their effective date to all other  
 7 state information agencies.

8 (b) maintain a register of lists of courts received  
 9 from other states and transmit furnish, upon request, copies  
 10 thereof of the list promptly to every court in this state  
 11 having jurisdiction under this part; and.

12 (c) forward to the court in this state which has  
 13 jurisdiction over the obligor or his property petitions,  
 14 certificates, and copies of the reciprocal enforcement of  
 15 support act it receives from courts or information agencies  
 16 of other states.

17 (3) If the state information agency does not know the  
 18 location of the obligor or his property in the state and no  
 19 state location service is available, it shall use all means  
 20 at its disposal to obtain this information, including the  
 21 examination of official records in the state and other  
 22 sources such as telephone directories, real property  
 23 records, vital statistics records, police records, requests  
 24 for the name and address from employers who are able or  
 25 willing to cooperate, records of motor vehicle license

1 offices, requests made to the tax offices both state and  
 2 federal where such offices are able to cooperate, and  
 3 requests made to the social security administration as  
 4 permitted by the Social Security Act, as amended.

5 (4) After the deposit of three copies of the petition  
 6 and certificate and one copy of the reciprocal enforcement  
 7 of support act of the initiating state with the clerk of the  
 8 appropriate court, if the state information agency knows or  
 9 believes that the prosecuting attorney is not prosecuting  
 10 the case diligently, it shall inform the attorney general  
 11 who may undertake the representation."

12 **Section 10.** Section 40-5-201, MCA, is amended to read:

13 "40-5-201. Definitions. As used in this part, the  
 14 following definitions apply:

15 (1) "Alleged father" means a man who is alleged to have  
 16 engaged in sexual intercourse with a child's mother during a  
 17 possible time of conception of the child or a man who is  
 18 presumed to be a child's father under the provisions of  
 19 40-6-105.

20 (2) (a) "Child" means any person under 18 years of age  
 21 who is not otherwise emancipated, self-supporting, married,  
 22 or a member of the armed forces of the United States, any  
 23 person under 19 years of age and still in high school, or  
 24 any person who is mentally or physically incapacitated if  
 25 the incapacity began prior to the person's 18th birthday and

1 for whom:

2 ~~(a)~~(i) support rights are assigned under 53-2-613;  
3 ~~(b)~~(ii) a public assistance payment has been made;  
4 ~~(c)~~(iii) the department is providing support enforcement  
5 services under 40-5-203; or

6 ~~(d)~~(iv) the department has received a referral for  
7 interstate services from an agency of another state under  
8 the provisions of the Uniform Reciprocal Enforcement of  
9 Support Act or under Title IV-D of the Social Security Act.

10 (b) Child may not be construed to limit the ability of  
11 the department to enforce a support order according to its  
12 terms when the order provides for support to extend beyond  
13 the child's 18th birthday.

14 (3) "Department" means the department of social and  
15 rehabilitation services.

16 (4) "Director" means the director of the department of  
17 social and rehabilitation services or his the director's  
18 authorized representative.

19 (5) "Guidelines" means the child support guidelines  
20 adopted pursuant to 40-5-209.

21 (6) "Hearing officer" or "hearing examiner" means the  
22 hearing officer appointed by the department for the purposes  
23 of this chapter.

24 (7) "Need" means the necessary costs of food, clothing,  
25 shelter, and medical care for the support of a child or

1 children.

2 (8) "Obligee" means:

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

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

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

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

12 (11) "Paternity blood test" means a test that  
13 demonstrates through examination of genetic markers either  
14 that an alleged father is not the natural father of a child  
15 or that there is a probability that an alleged father is the  
16 natural father of a child. Paternity blood tests may include  
17 but are not limited to the human leukocyte antigen test and  
18 DNA probe technology.

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

25 (13) "Support debt" or "support obligation" means the

1 amount created by:

2 (a) the failure to provide support to a child under the  
3 laws of this or any other state or a support order; or

4 (b) a support order for spousal maintenance if the  
5 judgment or order requiring payment of maintenance also  
6 contains a judgment or order requiring payment of child  
7 support for a child of whom the person awarded maintenance  
8 is the custodial parent.

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

12 (a) a district court of this state;

13 (b) a court of appropriate jurisdiction of another  
14 state, Indian tribe, or foreign country;

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

17 (d) an administrative agency of another state, Indian  
18 tribe, or foreign country with a hearing function and  
19 process similar to those of the department under this part.

20 (15) "IV-D" means the provisions of Title IV-D of the  
21 Social Security Act and the regulations promulgated  
22 thereunder."

23 **Section 11.** Section 40-5-202, MCA, is amended to read:

24 "40-5-202. Department of social and rehabilitation  
25 services -- powers and duties regarding collection of

1 support debt. (1) The department may take action under the  
2 provisions of this part, the abandonment or nonsupport  
3 statutes, the Uniform Parentage Act established in Title 40,  
4 chapter 6, part 1, and other appropriate state and federal  
5 statutes to ensure--that--the--parent--or--other--person  
6 responsible--pays-for-the-care,-support,-or-maintenance-of--a  
7 child provide IV-D services if the department:

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

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

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

16 (2) ~~If--the--department--is--providing--child--support~~  
17 ~~enforcement--services--for--a--child--under--this--party--the~~  
18 ~~department--becomes--trustee--of--any--cause--of--action--of--the~~  
19 ~~child--or--the--obligee--to--recover--support--due--to--the--child--or~~  
20 ~~obligee--from--the--obligor.--The--department--may--bring--and~~  
21 ~~maintain--the--action--in--its--own--name--or--in--the--name--of--the~~  
22 ~~obligee: A verified statement, filed by the department, that~~  
23 ~~it is providing services is prima facie evidence of its~~  
24 ~~authority to act. The department may initiate, participate~~  
25 ~~in, or exercise any remedy available in a judicial or an~~

1 administrative action on the same basis as any other party.

2 (3) The department has the power of attorney to act in  
3 the name of any obligee to endorse and cash any and all  
4 drafts, checks, money orders, or other negotiable  
5 instruments received by the department on behalf of a child.

6 ~~(4) For purposes of prosecuting any civil action, the~~  
7 ~~department is a real party in interest if it is providing~~  
8 ~~child support enforcement services under this part. The~~  
9 department is a party to and must be afforded notice and an  
10 opportunity to participate in any proceeding relating to  
11 paternity or to the establishment, enforcement, or  
12 modification of a support obligation, whether initiated by  
13 the obligee, the obligor, or the child. No obligee A  
14 recipient of services may not act to prejudice the rights of  
15 the department while such the services are being provided.

16 (5) If child support enforcement services are being or  
17 have been provided under this part, no an agreement between  
18 any obligee and any obligor either relieving an obligor of  
19 any duty of support or purporting to settle past, present,  
20 or future support obligations either as settlement or  
21 prepayment may not act to reduce or terminate any rights of  
22 the department to recover from the obligor for support debt  
23 provided unless the department has consented to the  
24 agreement in writing.

25 (6) The department may petition a court or an

1 administrative agency for modification of any order on the  
2 same basis as a party to that action is entitled to do.

3 (7) The department is subrogated to the right of the  
4 child or obligee to maintain any civil action or execute any  
5 administrative remedy available under the laws of this or  
6 any other state to collect a support debt. This right of  
7 subrogation is in addition to and independent of the  
8 assignment under 53-2-613 and the support debt created by  
9 40-5-221.

10 (8) If public assistance is being or has been paid, the  
11 department is subrogated to the debt created by a support  
12 order and any money judgment is considered to be in favor of  
13 the department. This subrogation is an addition to any  
14 assignment made under 53-2-613 and applies to the lesser of:

- 15 (a) the amount of public assistance paid; or
- 16 (b) the amount due under the support order.

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

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

24 (11) When a person is required to give notice to, serve,  
25 or provide a written response to the department in a

1 proceeding concerning the establishment or enforcement of  
 2 child support, the notice, service, or response must be made  
 3 to the department's child support enforcement division."

4 **Section 12.** Section 40-5-206, MCA, is amended to read:

5 "40-5-206. Central unit for information and  
 6 administration -- cooperation enjoined -- availability of  
 7 records. (1) The department shall establish a central unit  
 8 to serve as a registry for the receipt of information, for  
 9 answering interstate inquiries concerning deserting parents,  
 10 for receiving and answering requests for information made by  
 11 consumer reporting agencies under 40-5-261, to coordinate  
 12 and supervise departmental activities in relation to  
 13 deserting parents, and to assure effective cooperation with  
 14 law enforcement agencies.

15 (2) If services are provided to a child under this  
 16 part, the department may request and, notwithstanding any  
 17 statute making the information confidential, all state,  
 18 county, and city agencies, officers, and employees and,  
 19 EXCEPT AS PROVIDED IN SUBSECTION (6), all corporations,  
 20 partnerships, associations, organizations, or individuals  
 21 doing business in the state must provide on request any  
 22 information, if known, concerning the location, income, and  
 23 assets of an obligor, including:

- 24 (a) name;  
 25 (b) address of obligor's residence;

- 1 (c) date of birth;  
 2 (d) social security number;  
 3 (e) wages or other income;  
 4 (f) number of dependents claimed for state and federal  
 5 income tax withholding purposes;  
 6 (g) name and address of employer;  
 7 (h) name and address of any financial institution  
 8 maintaining an account for the obligor;  
 9 (i) account number, account balances, account type, and  
 10 the name under which the obligor has an interest in an  
 11 account or deposit with a financial institution;  
 12 (j) address of any real property owned by the obligor;  
 13 and  
 14 (k) any other asset in which the obligor may have an  
 15 interest, including the extent, nature, and value of the  
 16 interest.

17 (3) ~~Except--as--provided--in--40-5-261--and--rules--adopted~~  
 18 ~~under--40-5-262,--any--records--established--pursuant--to--the~~  
 19 ~~provisions--of--this--section--are--available--only--to--the~~  
 20 ~~department, A person who knowingly fails or refuses to~~  
 21 ~~provide information or who knowingly provides false or~~  
 22 ~~incorrect information concerning an obligor, in response to~~  
 23 ~~a request by the department, is subject to citation for~~  
 24 ~~contempt under the provisions of this part.~~

25 (4) Any information obtained by the department during

1 the course of a child support investigation that is  
 2 confidential at the source must be treated by the department  
 3 as confidential and must be safeguarded accordingly.

4 (5) Use or disclosure of information obtained by the  
 5 department from confidential sources of and information  
 6 maintained by the department in its records, including the  
 7 names, addresses, and social security numbers of obligors  
 8 and obligees, is limited to:

9 (a) purposes directly related to the provision of  
 10 services under this chapter;

11 (b) county attorneys, and courts having jurisdiction in  
 12 support and abandonment proceedings or actions or agencies  
 13 in other states engaged in the enforcement of support of  
 14 minor children as authorized by the rules of the department  
 15 and by the provisions of the federal Social Security Act;  
 16 and

17 (c) any other use permitted or required by the federal  
 18 Social Security Act.

19 (6) IF A FINANCIAL INSTITUTION DEFINED IN 31-1-111 AS A  
 20 REGULATED LENDER POSSESSES INFORMATION DESCRIBED IN  
 21 SUBSECTION (2)(I), (2)(J), OR (2)(K) THAT RELATES TO A  
 22 PERSON WHO IS THE SUBJECT OF AN INQUIRY BY THE DEPARTMENT,  
 23 THE FINANCIAL INSTITUTION NEED ONLY TELL THE DEPARTMENT THAT  
 24 IT POSSESSES INFORMATION THE DEPARTMENT SEEKS. THE  
 25 DEPARTMENT MAY APPLY FOR AN INVESTIGATIVE SUBPOENA UNDER

1 46-4-301, STATING IN THE PROSECUTOR'S AFFIDAVIT IN SUPPORT  
 2 OF THE SUBPOENA THAT ASSETS OR RESOURCES OF THE OBLIGOR DO  
 3 OR MAY EXIST AND THAT THE ADMINISTRATION OF JUSTICE REQUIRES  
 4 THE FINANCIAL INSTITUTION TO DISCLOSE THE INFORMATION."

5 **Section 13.** Section 40-5-208, MCA, is amended to read:

6 **"40-5-208. Medical support -- obligation enforcement --**  
 7 **sanctions.** (1) (a) In any proceeding initiated pursuant to  
 8 this part to establish a child support order, whether final  
 9 or temporary, and in each modification of an existing order,  
 10 the department shall require the obligor to obtain and  
 11 maintain health insurance coverage for each child if health  
 12 insurance coverage is available through the obligor's  
 13 employment or other group health insurance plan. The order  
 14 or modification of an order must include a statement that  
 15 the insurance must be obtained and maintained whenever the  
 16 department is providing support enforcement services and  
 17 that the failure to do so may result in the imposition of  
 18 sanctions under this section.

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



1 insurance is in addition to:

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

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

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

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

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

21 (3) (a) The department may issue a notice commanding  
22 the obligor to appear at a hearing held by the department  
23 and show cause why a sum of not more than \$100 should not be  
24 assessed for each month health insurance coverage is not  
25 secured or maintained if the department determines an

1 obligor has failed to:

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

4 (ii) provide information required under this section.

5 (b) If the department finds, after hearing or the  
6 obligor's failure to appear, that health insurance coverage  
7 has not been obtained or maintained or that the obligor has  
8 failed to provide the information required, the department  
9 may assess against the obligor not more than \$100 for each  
10 month health insurance coverage has not been obtained or  
11 maintained or for each month information has not been  
12 provided. Such The amounts may be enforced by any  
13 administrative remedy available to the department for the  
14 enforcement of child support obligations, including warrant  
15 for distraint provided for in ~~40-5-241~~ 40-5-247 and income  
16 withholding provided for in Title 40, chapter 5, part 4.

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

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

24 **Section 14.** Section 40-5-210, MCA, is amended to read:  
25 "40-5-210. Standardized fee schedule -- rules. (1) The

1 department shall by rule establish a standardized schedule  
 2 of fees for the recovery of administrative costs and  
 3 expenses of child support enforcement. The fees may be  
 4 recovered from an obligor if the obligor's failure or  
 5 refusal to support a child makes it necessary for the  
 6 department to provide child support enforcement services  
 7 under this part. The fees must be commensurate with costs or  
 8 an average of the expenditures related to specific or  
 9 routine activities may charge an application fee to each  
 10 person applying for services under 40-5-203, except that the  
 11 fee may not be charged to persons who receive continuing  
 12 services under 40-5-203(3). The application fee may be:

13 (a) a flat dollar amount; or

14 (b) an amount based on a sliding fee schedule that is  
 15 based on the applicant's income level.

16 (2) The department may charge a handling fee for each  
 17 payment of support collected on behalf of any obligee who is  
 18 not a recipient of public assistance. The department may  
 19 withhold the fee from the support payment before  
 20 distribution to the obligee.

21 (3) The department may charge an obligor a late payment  
 22 fee for each late payment of support collected on behalf of  
 23 any obligee who is not a recipient of public assistance.

24 (4) The department may establish a fee schedule in  
 25 order to recover costs and expenses in excess of the

1 application, handling, and late fees. The fees must be  
 2 commensurate with costs or an average of the expenditures  
 3 related to specific or routine activities.

4 (a) The department shall develop procedures for  
 5 determining whether it is appropriate for either the obligor  
 6 or the obligee to be responsible for payment of the fee. In  
 7 developing the procedures, the department shall consider  
 8 federal regulations promulgated under Title IV-D of the  
 9 Social Security Act.

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

16 (i) is the prevailing party in the action; or

17 (ii) is not a party but incurs expenses and costs  
 18 related to the action.

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

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

1       ~~{5}--Arrearage-amounts-collected-that-include-a-fee-must~~  
 2       ~~be-allocated-as-follows:~~

3       ~~{a}--if-the-obligee-is-a-recipient-of-public-assistance,~~  
 4       ~~the-amount-must-be-allocated-first-to-satisfy-the-fee-~~

5       ~~{b}--if--the--obligee--is--not--a--recipient--of--public~~  
 6       ~~assistance,--the--first--10%--of--each--amount--collected--must--be~~  
 7       ~~allocated-to-satisfy-the-fee-~~

8       {5} The department may collect the fees awarded under  
 9       this section by one of the following means:

10       {a} if the fee is owed by an obligor, the fee may be:

11       {i} collected through any remedy available to the  
 12       department for the collection of child support arrearages;  
 13       or

14       {ii} deducted from any payments made by the obligor  
 15       before the payment is distributed to the obligee. Credit for  
 16       the payment must be reduced by the amount of the deduction  
 17       for the fee. The deduction for fees may not reduce any  
 18       current support due to the obligee. The deduction for a late  
 19       payment fee may not reduce any current or past-due support  
 20       due to the obligee.

21       {b} if the fee is owed by the obligee, the fee may be  
 22       collected separately through any remedy available to the  
 23       department for the collection of child support or the  
 24       department may withhold the fee amount out of any payment  
 25       collected on behalf of the obligee. The obligor must receive

1       full credit for the payment as if the withholding of fees  
 2       did not occur.

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

5       {7} The department may adopt rules necessary to  
 6       implement fee schedules under this section.

7       {8} The department may retain any fees collected under  
 8       this section to help offset administrative costs and  
 9       expenses of operating the child support enforcement program.  
 10       For this purpose, the fees are statutorily appropriated as  
 11       provided in 17-7-502."

12       **Section 15.** Section 40-5-224, MCA, is amended to read:

13       "**40-5-224. Finding of support liability based upon**  
 14       **payment of public assistance -- warrant for distraint --**  
 15       **bond to release warrant -- action to collect. (1) If the**  
 16       **department reasonably believes that the obligor is not a**  
 17       **resident of this state or is about to move from this state**  
 18       **or has concealed-himself hidden, absconded, absented-himself**  
 19       **or left, or has removed or is about to remove, secrete,**  
 20       **waste, or otherwise dispose of property which that could be**  
 21       **made subject to collection action to satisfy the support**  
 22       **debt, the department may issue a warrant for distraint**  
 23       **pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the**  
 24       **fair hearing or thereafter after the hearing, whether or not**  
 25       **appealed. No-further Further action may not be taken on the**

1 warrant until final determination after fair hearing or  
 2 appeal. The department shall make and file in the record of  
 3 the fair hearing an affidavit stating the reasons upon which  
 4 the belief is founded. The obligor may furnish a bond, not  
 5 to exceed the amount of the support debt, during pendency of  
 6 the hearing or thereafter after the hearing, and in such  
 7 that case warrants issued must be released. If the decision  
 8 resulting from the hearing is in favor of the obligor, all  
 9 warrants issued must be released.

10 (2) The department may commence action under the  
 11 provisions of this part to collect the support debt on the  
 12 date of issuance of the decision resulting from the  
 13 hearing."

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

15 "40-5-226. Administrative hearing -- nature -- place --  
 16 time -- determinations -- failure to appear -- entry of  
 17 final decision and order. (1) The administrative hearing is  
 18 defined as a "contested case".

19 (2) At the discretion of the hearing officer, the  
 20 administrative hearing may be held:

21 (a) in the county of residence or other county  
 22 convenient to the obligor or obligee; or

23 (b) in the county in which the department or any of its  
 24 offices are located.

25 (3) If a hearing is requested, it must be scheduled

1 within 20 days.

2 (4) The hearing officer shall determine the liability  
 3 and responsibility, if any, of the obligor under the notice  
 4 and shall enter a final decision and order in accordance  
 5 with such the determination.

6 (5) If the obligor fails to appear at the hearing or  
 7 fails to timely request a hearing, the hearing officer, upon  
 8 a showing of valid service, shall enter a decision and order  
 9 declaring the amount stated in the notice to be final.

10 (6) In a hearing to determine financial responsibility,  
 11 the monthly support responsibility must be determined in  
 12 accordance with the evidence presented and with reference to  
 13 the scale of suggested minimum contributions under 40-5-214.  
 14 The hearing officer is not limited to the amounts stated in  
 15 the notice.

16 (7) Within 20 days of the hearing, the hearing officer  
 17 shall enter a final decision and order. The determination of  
 18 the hearing officer constitutes a final agency decision,  
 19 subject to judicial review under 40-5-253 and the provisions  
 20 of the Montana Administrative Procedure Act.

21 (8) A support order entered under this part must  
 22 contain a statement that the order is subject to review and  
 23 modification by the department upon the request of the  
 24 department or a party under 40-5-271 through 40-5-273 when  
 25 the department is providing services under IV-D for the

1 enforcement of the order.

2 (9) A support debt determined pursuant to this section  
3 is subject to collection action without further necessity of  
4 action by the hearing officer.

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

12 (11) Unless the hearing officer makes a written  
13 exception under 40-5-315 or 40-5-411 and the exception is  
14 included in the support order, every order establishing a  
15 child support obligation, whether temporary or final, and  
16 each modification of an existing child support order under  
17 this part is enforceable by immediate or delinquency income  
18 withholding, or both, under Title 40, chapter 5, part 4. A  
19 support order that omits that provision or that provides for  
20 a payment arrangement inconsistent with this section is  
21 nevertheless subject to withholding for the payment of  
22 support without need for an amendment of the support order  
23 or for any further action by the hearing officer.

24 (12) For the purposes of income withholding provided for  
25 in subsection (11), whenever the department establishes or

1 modifies a child support obligation, the department's order  
2 must include a provision requiring the obligor, for as long  
3 as the department is providing support enforcement services,  
4 to keep the department informed of the name and address of  
5 the obligor's current employer, whether the obligor has  
6 access to health insurance through an employer or other  
7 group, and, if so, the health insurance policy information.

8 (13) The hearing officer may:

9 (a) compel obedience to the hearing officer's orders,  
10 judgments, and process and to any orders issued by the  
11 department, including income-withholding orders issued  
12 pursuant to 40-5-415;

13 (b) compel the attendance of witnesses at  
14 administrative hearings;

15 (c) compel obedience of subpoenas for paternity blood  
16 tests;

17 (d) compel the production of accounts, books,  
18 documents, and other evidence; and

19 (e) punish for civil contempt. Contempt authority does  
20 not prevent the department from proceeding in accordance  
21 with the provisions of 2-4-104.

22 (14) A contempt occurs whenever:

23 (a) a person acts in disobedience of any lawful order,  
24 judgment, or process of the hearing officer or of the  
25 department;

1 (b) a person compelled by subpoena to appear and  
 2 testify at an administrative hearing or to appear for  
 3 genetic paternity tests fails to do so;

4 (c) a person compelled by subpoena duces tecum to  
 5 produce evidence at an administrative hearing fails to do  
 6 so;

7 (d) an obligor or obligee subject to a discovery order  
 8 issued by the hearing officer fails to comply with discovery  
 9 requests; or

10 (e) a payor under an order to withhold issued pursuant  
 11 to 40-5-415 fails to comply with the provisions of the  
 12 order. In the case of a payor under an income-withholding  
 13 order, a separate contempt occurs each time income is  
 14 required to be withheld and paid to the department and the  
 15 payor fails to take the required action.

16 (15) An affidavit of the facts constituting a contempt  
 17 must be submitted to the hearing officer, who shall review  
 18 it to determine whether there is cause to believe that a  
 19 contempt has been committed. If cause is found, the hearing  
 20 officer shall issue a citation requiring the alleged  
 21 contemnor to appear and show cause why the alleged contemnor  
 22 should not be determined to be in contempt and required to  
 23 pay a penalty of not more than \$500 for each count of  
 24 contempt. The citation, along with a copy of the affidavit,  
 25 must be served upon the alleged contemnor either by personal

1 service or by certified mail. All other interested persons  
 2 may be served a copy of the citation by first-class mail.

3 (16) At the time and date set for hearing, the hearing  
 4 officer shall proceed to hear witnesses and take evidence  
 5 regarding the alleged contempt and any defenses to the  
 6 contempt. If the alleged contemnor fails to appear for the  
 7 hearing, the hearing may proceed in the alleged contemnor's  
 8 absence. If the hearing officer finds the alleged contemnor  
 9 in contempt, the hearing officer may impose a penalty of not  
 10 more than \$500 for each count found. The hearing officer's  
 11 decision constitutes a final agency decision, subject to  
 12 judicial review under 40-5-253 and subject to the provisions  
 13 of Title 2, chapter 4.

14 (17) An amount imposed as a penalty may be collected by  
 15 any remedy available to the department for the enforcement  
 16 of child support obligations, including warrant for  
 17 distrainment pursuant to 40-5-247, income withholding pursuant  
 18 to Title 40, chapter 5, part 4, and state debt offset,  
 19 pursuant to Title 17, chapter 4, part 1. The department may  
 20 retain any penalties collected under this section to offset  
 21 the costs of administrative hearings conducted under this  
 22 chapter.

23 (18) The money collected as a penalty under this section  
 24 is statutorily appropriated, as provided in 17-7-502, to the  
 25 department to help offset expenditures for administrative

1 hearings conducted under this chapter."

2 **Section 17.** Section 40-5-227, MCA, is amended to read:

3 **"40-5-227. Filing and docketing of final orders --**  
 4 **orders effective as district court decrees.** (1) An abstract  
 5 of any final administrative order under this chapter may be  
 6 filed in the office of the clerk of the district court of  
 7 any county of Montana. The order, if approved, must be  
 8 docketed in the judgment docket of the district court. The  
 9 properly filed and docketed order has all the force, effect,  
 10 and attributes of a docketed order or decree of the district  
 11 court, including but not limited to lien effect and  
 12 enforceability by supplemental proceedings, writs of  
 13 execution, and contempt of court proceedings.

14 (2) A final administrative order that determines and  
 15 sets periodic support payments in the absence of a district  
 16 court order, when filed and docketed under this section, may  
 17 be modified by a district court order only as to  
 18 installments accruing after actual notice to the parties of  
 19 any motion for modification. The standard for any--such a  
 20 modification is that set forth in 40-4-208.

21 (3) The department may issue a warrant for distraint  
 22 based upon a properly filed and docketed order pursuant to  
 23 ~~40-5-241~~ 40-5-247."

24 **Section 18.** Section 40-5-232, MCA, is amended to read:

25 **"40-5-232. Establishment of paternity -- notice of**

1 **paternity determination -- contents.** (1) When the paternity  
 2 of a child has not been legally established under the  
 3 provisions of Title 40, chapter 6, part 1, or otherwise, the  
 4 department may proceed to establish paternity under the  
 5 provisions of 40-5-231 through 40-5-237. An administrative  
 6 hearing held under the provisions of 40-5-231 through  
 7 40-5-237 is a contested case within the meaning of 2-4-102  
 8 and is subject to the provisions of Title 2, chapter 4,  
 9 except as otherwise provided in 40-5-231 through 40-5-237.

10 (2) It is presumed to be in the best interest of a  
 11 child to legally determine and establish his paternity. A  
 12 presumption under this subsection may be rebutted by a  
 13 preponderance of the evidence.

14 (3) In any proceeding under 40-5-231 through 40-5-237,  
 15 if a man acknowledges his paternity of a child in writing  
 16 and such the acknowledgment is filed with the department,  
 17 the department may enter an order establishing legal  
 18 paternity. An acknowledgment is binding on a parent who  
 19 executes it, whether or not he the parent is a minor.

20 (4) The department shall commence proceedings to  
 21 establish paternity by serving on an alleged father a notice  
 22 of paternity determination. The department may not serve  
 23 such the notice unless it has:

24 (a) a sworn statement from the child's mother claiming  
 25 that the alleged father is the child's natural father;

1 (b) evidence of the existence of a presumption of  
2 paternity under 40-6-105; or

3 (c) any other reasonable cause to believe that the  
4 alleged father is the child's natural father.

5 (5) Service on the alleged father of the notice of  
6 paternity determination ~~shall~~ must be made as provided in  
7 40-5-231(2). The notice must include:

8 (a) an allegation that the alleged father is the  
9 natural father of the child involved;

10 (b) the child's name and place and date of birth;

11 (c) the name of the child's mother and the name of the  
12 person or agency having custody of the child, if other than  
13 the mother;

14 (d) the probable time or period of time during which  
15 conception took place;

16 (e) a statement that if the alleged father fails to  
17 timely deny the allegation of paternity, the question of  
18 paternity may be resolved against him the alleged father  
19 without further notice;

20 (f) a statement that if the alleged father timely  
21 denies the allegation of paternity:

22 (i) he the alleged father is subject to compulsory  
23 blood testing;

24 (ii) a blood test may result in a presumption of  
25 paternity; and

1 (iii) ~~he may request a trial in district court to~~  
2 ~~determine paternity before the final administrative decision~~  
3 ~~is made upon receipt of the blood test results, if the~~  
4 ~~alleged father continues to deny paternity, the alleged~~  
5 ~~father may request the department to refer the matter to~~  
6 ~~district court for a determination of paternity.~~

7 (6) The alleged father may file a written denial of  
8 paternity with the department within 20 days after service  
9 of the notice of paternity determination.

10 (7) When there is more than one alleged father of a  
11 child, the department may serve a notice of paternity  
12 determination on each alleged father in the same  
13 consolidated proceeding or in separate proceedings. Failure  
14 to serve notice on an alleged father does not prevent the  
15 department from serving notice on any other alleged father  
16 of the same child."

17 **Section 19.** Section 40-5-242, MCA, is amended to read:

18 "40-5-242. Civil Notice of support lien -- civil  
19 liability upon failure to honor support lien or to comply  
20 with warrant or to honor assignment of wages for distraint.  
21 (1) The department may, at any time after asserting a  
22 support lien, serve a notice of the lien on any person,  
23 firm, corporation, association, or political subdivision or  
24 department of the state in possession of any real or  
25 personal property that is due, owing, or belonging to an



1 obligor. For this purpose, personal property includes the  
2 obligor's share of a decedent's estate, workers'  
3 compensation benefits, and any proceeds or potential  
4 proceeds from suits at law.

5 (2) Except as provided in subsection (3), A a person,  
6 firm,--corporation,--association,--political-subdivision,--or  
7 department--of--the--state or entity is liable to the  
8 department in an amount equal to 100% of the value of the a  
9 support debt--that--is--the--basis--of--the--distrain--or  
10 assignment--of--wages lien or warrant for distraint or the  
11 value of the--distrained real or personal property subject to  
12 a support lien or distrained by a warrant for distraint,  
13 whichever is less, together with costs, interest, and  
14 reasonable attorney fees, if the person or entity:

15 {1}--fails--or--refuses--to-deliver-property-pursuant-to  
16 the-order;

17 {2}(a) pays over, releases, sells, transfers, or  
18 conveys real or personal property subject to a support lien,  
19 to or for the benefit of the obligor, after the person or  
20 entity receives actual notice of filing of the support lien;  
21 or

22 {3}(b) fails or refuses to surrender upon demand  
23 property distrained--under--40-5-241 of an obligor when  
24 presented with a warrant for distraint by a sheriff or  
25 levying officer under the provisions of 40-5-247,--or.

1 {4}--fails-or-refuses-to-honor-an--assignment--of--wages  
2 presented-by-the-department;

3 (3) A person or entity is not liable to the department  
4 under this section when:

5 (a) a written release or waiver of the support lien or  
6 warrant for distraint issued by the department has been  
7 delivered to the person or entity;

8 (b) a determination has been made in an adjudicative  
9 proceeding, either administrative or judicial, that a  
10 support lien does not exist or that the lien has been  
11 satisfied; or

12 (c) the property subject to a support lien has been  
13 transferred to, paid over to, or repossessed by a person or  
14 entity holding;

15 (i) a prior perfected lien;

16 (ii) a mortgage, the proceeds of which were used by the  
17 obligor to purchase real property; or

18 (iii) a perfected purchase money security interest, as  
19 defined by 30-9-107."

20 **Section 20.** Section 40-5-247, MCA, is amended to read:

21 "40-5-247. Filing-warrant-with-district-court---effect  
22 of--filing-----release Warrant for distraint -- effect --  
23 satisfaction of support lien -- redemption. {1}--After  
24 issuing-a-warrant,--the-department-may-file-the-warrant--with  
25 the--clerk--of--a--district--court. The-clerk-shall-file-the

1 warrant in the judgment docket, with the name of the  
2 delinquent obligor listed as the judgment debtor.

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

12 (1) The department may issue a warrant for distraint to  
13 execute support liens established by [section 28 27] or to  
14 enforce and collect any money obligation authorized under  
15 this chapter.

16 (a) The warrant must be an order, under official seal  
17 of the department, directed to a sheriff of any county of  
18 the state or to any levying officer authorized by law to  
19 enforce a district court judgment. The order must command  
20 the recipient to levy upon and sell nonexempt real and  
21 personal property to satisfy the support lien upon which the  
22 warrant is based.

23 (b) A warrant must be signed by the director of the  
24 department or the director's designee.

25 (c) The warrant must be for the amount of the support

1 lien or the amount of any other money obligation determined  
2 under this chapter, including interest and fees, if any.

3 (d) A warrant for distraint has the same effect as a  
4 writ of execution issued by a district court to enforce  
5 money judgments.

6 (3)(2) (a) A copy of the filed warrant for distraint  
7 may be sent by the department to the sheriff or authorized  
8 agent levying officer. Upon receipt of a copy of the filed  
9 warrant, the sheriff or authorized agent levying officer  
10 shall proceed to execute upon the warrant in the same manner  
11 as prescribed for execution upon a judgment.

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

15 (c) Funds resulting from execution upon the warrant  
16 must first be applied to the sheriff's or levying officer's  
17 costs, any superior liens, the support lien, or other money  
18 obligation and to any inferior liens. Any amounts in excess  
19 of this distribution must be paid to the obligor.

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

23 (3) A sheriff's or levying officer's levy against real  
24 and personal property of the obligor is not limited to  
25 property in possession of persons or other entities given

1 notice of a support lien under 40-5-242.

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

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

14 (5) An obligor or other person or entity having an  
15 interest in real or personal property levied upon by a  
16 warrant for distraint at any time prior to sale of the  
17 property may pay the amount of the support lien or other  
18 money obligation and any costs incurred by the sheriff or  
19 levying officer serving the warrant. Upon payment in full,  
20 the property must be restored to the obligor or other person  
21 and all proceedings on the warrant must cease.

22 (6) An obligor or other person or entity having an  
23 interest in real property levied upon and sold by a sheriff  
24 or levying officer pursuant to a warrant for distraint may,  
25 within 240 days after sale of the property, redeem the

1 property by making payment to the purchaser in the amount  
2 paid by the purchaser plus interest at the statutory  
3 interest rate payable on judgments recovered in the district  
4 court.

5 (7) At any time after distraint of property under a  
6 warrant for distraint, the department may release all or  
7 part of the seized property without liability if payment of  
8 the support lien or other money obligation is assured or if  
9 the action will facilitate collection of the support lien or  
10 other money obligation. The release or return does not  
11 operate to prevent future action to collect the warrant  
12 amount from the same or other property.

13 (8) The department may issue a warrant for distraint to  
14 collect a support lien or other money obligation under this  
15 section at any time within the statutory limitation period  
16 for enforcing and collecting delinquent child support.

17 (9) The use of the warrant for distraint is not  
18 exclusive, and the department may use any other remedy  
19 provided by law for the collection of child support  
20 amounts."

21 **Section 21.** Section 40-5-255, MCA, is amended to read:

22 "40-5-255. Charging off child support debts as  
23 uncollectible. (1) Any support debt due the department from  
24 an obligor, which debt the department determines  
25 uncollectible, may be transferred from accounts receivable

1 to a suspense account and cease to be accounted as an asset.  
 2 If a warrant for distraint has been filed and the support  
 3 debt has subsequently been charged off as uncollectible, the  
 4 department shall issue a release of lien.

5 (2) At any time after ~~6-years-from-the-date-a-support~~  
 6 ~~debt-was-incurred~~ 10 years from the date of termination of  
 7 the support obligation, the department may charge off as  
 8 uncollectible any support debt upon which the department  
 9 finds there is no available, practical, or lawful means by  
 10 which the support debt may be collected. ~~No--proceedings A~~  
 11 ~~proceeding~~ or action under the provisions of this part may  
 12 not be begun after expiration of the ~~6-year~~ 10-year period  
 13 to institute collection of a support debt. ~~Nothing-herein~~  
 14 This part may not be construed to render invalid or  
 15 nonactionable a warrant for distraint ~~filed-with--the--clerk~~  
 16 ~~of-court~~ issued by the department prior to the expiration of  
 17 the ~~6-year~~ 10-year period or an assignment of earnings  
 18 executed prior to the expiration of the ~~6-year~~ 10-year  
 19 period."

20 **Section 22.** Section 40-5-415, MCA, is amended to read:

21 **\*40-5-415. Order to withhold income -- rules.** (1) When  
 22 the requirements of this part have been met, the department  
 23 shall serve an order or modification order to withhold and  
 24 deliver income upon any payor or combination of payors. The  
 25 order must:

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

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

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

9 (d) state the rights and duties of the payor under this  
 10 part; and

11 (e) include a statement that the obligor is required  
 12 under a support order to provide health insurance coverage  
 13 for the obligor's child, if appropriate.

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

20 (3) Whenever there is more than one payor, the  
 21 department may, in its discretion, apportion the total  
 22 amount to be withheld each month among payors. Whenever an  
 23 obligor's income is subject to withholding for more than one  
 24 obligee, the department may consolidate the payments  
 25 received each month and distribute the income among the

1 obligees according to department rules."

2 **Section 23.** Section 40-6-116, MCA, is amended to read:

3 **"40-6-116. Judgment or order.** (1) The judgment or order  
4 of the court determining the existence or nonexistence of  
5 the parent and child relationship is determinative for all  
6 purposes.

7 (2) If the judgment or order of the court is at  
8 variance with the child's birth certificate, the court shall  
9 order that a substitute birth certificate be issued under  
10 40-6-123.

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

17 (b) Except when the financial responsibility of a  
18 responsible parent is in the process of being determined  
19 pursuant to the administrative procedure provided in  
20 40-5-225, the judgment or order must contain a provision  
21 concerning the duty of child support.

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

25 (4) (a) Support judgments or orders ordinarily shall

1 must be for periodic payments which may vary in amount.

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

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

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

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

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

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

17 (d) the earning ability of the parents;

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

20 (f) the age of the child;

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

23 (h) the responsibility of the parents for the support  
24 of others;

25 (i) the value of services contributed by the custodial

1 parent;

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

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

5 (6) (a) Whenever a court issues or modifies an order  
6 concerning child support, the court shall determine the  
7 child support obligation by applying the standards in this  
8 section and the uniform child support guidelines adopted by  
9 the department of social and rehabilitation services  
10 pursuant to 40-5-209, unless the court finds by clear and  
11 convincing evidence that the application of the standards  
12 and guidelines is unjust to the child or to any of the  
13 parties or is inappropriate in that particular case.

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

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

23 (7) The judgment or order concerning child support and  
24 each modification of a judgment or order for child support  
25 must include a provision addressing health insurance

1 coverage in the following cases:

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

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

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

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

21 (8) (a) Unless an exception is found under 40-5-315 or  
22 40-5-411 and the exception is included in the support order,  
23 a support obligation established by judgment, decree, or  
24 order under this section, whether temporary or final, and  
25 each modification of an existing support obligation made

1 under 40-6-118 must be enforced by immediate or delinquency  
2 income withholding, or both, under Title 40, chapter 5, part  
3 3 or 4. A support order that omits the exception or that  
4 provides for a payment arrangement inconsistent with this  
5 section is nevertheless subject to withholding for the  
6 payment of support without need for an amendment to the  
7 support order or for any further action by the court.

8 (b) After October 1, 1993, if a support order subject  
9 to income withholding is expressed in terms of a monthly  
10 obligation, the order may be annualized and withheld on a  
11 weekly or biweekly basis, corresponding to the obligor's  
12 regular pay period.

13 (9) For the purposes of income withholding as provided  
14 in subsection (8), whenever the district court establishes  
15 or modifies a child support obligation, the judgment,  
16 decree, or order must include a provision requiring the  
17 parent obligated to pay support to inform the court and, if  
18 the department of social and rehabilitation services is  
19 providing services under Title IV-D of the Social Security  
20 Act for the enforcement of the judgment, decree, or order,  
21 the department, of the following:

22 (a) the name and address of the parent's current  
23 employer;

24 (b) whether the parent has access to health insurance  
25 through an employer or other group; and

1 (c) if insurance coverage is available, the health  
2 insurance policy information.

3 (10) If the department of social and rehabilitation  
4 services is providing or later provides support enforcement  
5 services under Title IV-D of the Social Security Act, each  
6 district court order or modification of an order must  
7 contain a statement providing that the noncustodial parent,  
8 without further order of the court, is required to obtain  
9 and maintain health insurance coverage as provided in  
10 40-5-208. Failure to include a warning statement in the  
11 judgment or order does not preclude the imposition of  
12 sanctions under 40-5-208.

13 (11) Each district court judgment, decree, or order  
14 establishing a final child support obligation under this  
15 part and each modification of a final order for child  
16 support must contain a statement that the order is subject  
17 to review and modification by the department of social and  
18 rehabilitation services upon the request of the department  
19 or a party under 40-5-271 through 40-5-273 when the  
20 department is providing services under Title IV-D of the  
21 Social Security Act for the enforcement of the order."

22 **Section 24.** Section 40-6-117, MCA, is amended to read:

23 "40-6-117. Enforcement of judgment or order. (1) If  
24 existence of the father and child relationship is declared  
25 or paternity or a duty of support has been acknowledged or

1 adjudicated under this part or under prior law, the court  
2 may order support payments to be made to the mother, the  
3 clerk of the court, or a person, corporation, or agency  
4 designated to administer them for the benefit of the child  
5 under the supervision of the court.

6 (2) Willful failure to obey the judgment or order of  
7 the court is a civil contempt of the court. All remedies for  
8 the enforcement of judgments apply.

9 (3) Child support ordered on behalf of a minor child  
10 must be paid to:

- 11 (a) the legal custodian of the minor child;  
12 (b) (i) any other person, organization, or agency  
13 having legal physical custody of the minor child or  
14 collecting child support on behalf of the minor child under  
15 a legal assignment of rights; or  
16 (ii) the court for the benefit of the minor child;  
17 (c) any other person or agency designated as caretaker  
18 of the minor child by agreement of the legal custodian; or  
19 (d) any assignee or other person, organization, or  
20 agency authorized to receive or collect child support."

21 **Section 25.** Section 53-2-613, MCA, is amended to read:  
22 "53-2-613. Application for assistance -- assignment of  
23 support rights. (1) Applications for public assistance,  
24 including but not limited to aid to families with dependent  
25 children and medical assistance, must be made to the county

1 department of public welfare in the county in which the  
2 person is residing. The application shall must be submitted,  
3 in the manner and form prescribed by the department of  
4 social and rehabilitation services, and shall must contain  
5 information required by the department of social and  
6 rehabilitation services.

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

14 (3) The assignment:

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

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

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

23 (4) Whenever a support obligation is assigned to the  
24 department of social and rehabilitation services pursuant to  
25 this section, the following provisions apply:



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

6 (b) No A recipient or former recipient of public  
 7 assistance may not commence or maintain an action to recover  
 8 a delinquent support obligation without notifying the  
 9 department department's child support enforcement division.  
 10 The department may then release or relinquish its assigned  
 11 interest or enter the proceeding. This subsection (4)(b)  
 12 does not limit the right of any person to recover money not  
 13 assigned.

14 (c) If a notice of assigned interest is filed with the  
 15 district court, the clerk of the court may not pay over or  
 16 release for the benefit of any recipient or former recipient  
 17 of public assistance any amounts received pursuant to a  
 18 judgment or decree or an order of the court until the  
 19 department department's child support enforcement division  
 20 has filed a written notice that:

- 21 (i) the assignment of current support amounts has been
- 22 terminated; and
- 23 (ii) all assigned support delinquencies, if any, are
- 24 satisfied or released.

25 (d) No A recipient or former recipient of public

1 assistance may not take action to modify or make any  
 2 agreement to modify, settle, or release any past, present,  
 3 or future support obligation unless the department  
 4 department's child support enforcement division is given  
 5 written notice and an opportunity to participate. Any  
 6 modifications or agreements entered into without the  
 7 participation of the department are void with respect to the  
 8 state, the ~~department of social and rehabilitation services,~~  
 9 and the county welfare department."

10 NEW SECTION. Section 26. Child support payments to  
 11 follow the child. Child support ordered on behalf of a minor  
 12 child must be paid to:

- 13 (1) the legal custodian of the minor child;
- 14 (2) (a) any other person, organization, or agency
- 15 having legal physical custody of the minor child or
- 16 collecting child support on behalf of the minor child under
- 17 a legal assignment of rights; or
- 18 (b) the court for the benefit of the minor child;
- 19 (3) any other person or agency designated as caretaker
- 20 of the minor child by agreement of the legal custodian; or
- 21 (4) any assignee or other person, organization, or
- 22 agency authorized to receive or collect child support.

23 NEW SECTION. Section 27. Lien against real and  
 24 personal property -- effect of lien -- interest -- warrant  
 25 for distraint. (1) There is a support lien on the real and

1 personal property of an obligor:

2 (a) when the department has entered a final decision in  
3 a contested case under this chapter that finds the obligor  
4 owes a sum certain debt either to this department or to an  
5 obligee, or both; or

6 (b) upon registration under 40-5-271 of a support order  
7 that includes finding that the obligor owes a sum certain  
8 amount of delinquent support.

9 (2) A support lien is for the amount required to  
10 satisfy:

11 (a) the sum certain debt shown in a final decision in a  
12 contested case under this chapter or the sum certain support  
13 debt included in any support order registered under  
14 40-5-271;

15 (b) interest claimed under this section; and

16 (c) any fees that may be due under 40-5-210.

17 (3) A support lien has the priority of a secured  
18 creditor from the date the lien is perfected as provided by  
19 this section; however, the lien is subordinate to:

20 (a) any prior perfected lien or security interest;

21 (b) a mortgage, the proceeds of which are used by an  
22 obligor to purchase real property; or

23 (c) any perfected purchase money security interest, as  
24 defined in 30-9-107.

25 (4) Support liens remain in effect until the

1 delinquency upon which the lien is based is satisfied or  
2 until 2 years after the child to whom the support lien is  
3 related attains the age of majority, whichever occurs first.

4 (5) The lien applies to all real and personal property  
5 owned by the obligor, if it can be located in the state. The  
6 lien applies to all real and personal property that the  
7 obligor can afterward acquire.

8 (6) The department shall keep a record of support liens  
9 asserted under this section in the registry of support  
10 orders established by 40-5-271.

11 (a) Except as provided by subsection (7) for motor  
12 vehicle liens, a support lien is perfected upon filing the  
13 lien with the department's registry.

14 (b) The department shall make information about a  
15 support lien available to any interested person or entity  
16 AND TO THE CLERK AND RECORDER OF EACH COUNTY IN WHICH REAL  
17 ESTATE IS LOCATED IN WHICH THE OBLIGOR HAS AN INTEREST.

18 (c) A support lien filed with the department's registry  
19 constitutes constructive notice to a purchaser of real  
20 property from an obligor.

21 (d) Except as provided by subsection (7), a lien  
22 against an obligor's personal property is not effective  
23 against any person, firm, corporation, association,  
24 political subdivision, or agency of the state in possession  
25 of the obligor's personal property until the department

1 serves a notice of the lien to the person or entity.

2 (E) EXCEPT AS PROVIDED IN SUBSECTION (7), A BUYER FOR  
 3 VALUE OF AN OBLIGOR'S PERSONAL PROPERTY WHO BUYS IN GOOD  
 4 FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE  
 5 PROPERTY FREE OF THE SUPPORT LIEN.

6 (7) A support lien may be asserted against any motor  
 7 vehicle, as defined in 61-1-102, as follows:

8 (a) When an obligor is the owner of a motor vehicle,  
 9 the department may SHALL give notice of the support lien to  
 10 the department of justice as provided in 61-3-103(6). A  
 11 notice of support lien filed with the department of justice  
 12 constitutes constructive notice of the lien to subsequent  
 13 purchasers or encumbrancers of a motor vehicle from the  
 14 obligor, commencing from the date the notice is delivered to  
 15 the department of justice.

16 (b) (i) To assert a support lien on motor vehicles of  
 17 which an obligor may later acquire ownership, the department  
 18 may, each month, prepare and submit to the department of  
 19 justice a list of obligors against whom there is a support  
 20 lien. The list must identify each obligor by name,  
 21 last-known address, amount of lien, social security number,  
 22 if known, and any other identifying information needed by  
 23 the department of justice to identify the obligor.

24 (ii) The department of justice shall, before issuing a  
 25 certificate of ownership for any motor vehicle, determine

1 whether the name of the person applying for the certificate  
 2 is on the most recent monthly support lien list. If the  
 3 person's name is on the list, the department of justice  
 4 shall enter a lien on the certificate of ownership under the  
 5 name of the department as lienholder.

6 (c) The department shall reimburse the department of  
 7 justice for reasonable costs incurred by the department of  
 8 justice in implementing this subsection (7).

9 (8) (a) The department may charge interest on the  
 10 support lien at the rate of 1% per month.

11 (b) Interest accrues at the close of the business day  
 12 on the last day of each month and is calculated by  
 13 multiplying the unpaid balance of the lien, including prior  
 14 accrued interest existing at the end of the day, by the  
 15 applicable rate of interest.

16 (c) A provision of this section may not be construed to  
 17 require the department to maintain interest balance due  
 18 accounts. The department may waive interest if waiver would  
 19 facilitate the collection of the debt.

20 (d) Interest under this subsection (8) is in addition  
 21 to and not in substitution for any other interest accrued or  
 22 accruing under any other provision of law.

23 (9) (a) Upon receiving payment in full of the amount of  
 24 the lien plus interest and fees, if any, the department  
 25 shall take all necessary steps to release the support lien.

1 (b) Upon receiving partial payment of the support lien  
 2 or if the department determines that a release or partial  
 3 release of the lien will facilitate the collection of  
 4 support arrearages, the department may release or partially  
 5 release the support lien. The department may release the  
 6 support lien if it determines that the lien is  
 7 unenforceable.

8 (10) A support lien under this section is in addition to  
 9 any other lien created by law.

10 (11) A support lien under this section may not be  
 11 discharged in bankruptcy.

12 (12) Support liens provided for by this section may be  
 13 enforced or collected through the warrant for distraint  
 14 provided for by 40-5-247.

15 **NEW SECTION. Section 28.** Payment of debts to  
 16 department. If money is due and owing the department, a  
 17 payment due under Title 40, chapter 5, parts 2 or 4, or  
 18 under this chapter that is accompanied by or bears any  
 19 notation by the debtor that the payment represents payment  
 20 in full is not full payment, notwithstanding the  
 21 department's acceptance of the payment, unless there is  
 22 additional written agreement, signed by the department, that  
 23 the payment is payment in full.

24 **NEW SECTION. Section 29.** Repealer. Sections 40-5-241,  
 25 40-5-245, and 40-5-246, MCA, are repealed.

1 **NEW SECTION. Section 30.** Codification instruction. (1)  
 2 [Sections 26 and 27] are intended to be codified as an  
 3 integral part of Title 40, chapter 5, part 2, and the  
 4 provisions of Title 40, chapter 5, part 2, apply to  
 5 [sections 26 and 27].

6 (2) [Section 28] is intended to be codified as an  
 7 integral part of Title 53, chapter 2, part 1, and the  
 8 provisions of Title 53, chapter 2, part 1, apply to [section  
 9 28].

10 **NEW SECTION. Section 31.** Severability. If a part of  
 11 [this act] is invalid, all valid parts that are severable  
 12 from the invalid part remain in effect. If a part of [this  
 13 act] is invalid in one or more of its applications, the part  
 14 remains in effect in all valid applications that are  
 15 severable from the invalid applications.

-End-

## 1 HOUSE BILL NO. 335

2 INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,

3 S. RICE, BOHLINGER, YELLOWTAIL,

4 WATERMAN, L. NELSON, PETERSON

5 BY REQUEST OF THE DEPARTMENT OF

6 SOCIAL AND REHABILITATION SERVICES

7

8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING

9 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND

10 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;

11 PROVIDING FOR ADDITIONAL FEES; STATUTORILY APPROPRIATING

12 FEES AND PENALTIES; REQUIRING NOTICE TO THE CHILD SUPPORT

13 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND

14 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE

15 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE

16 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;

17 EXTENDING SERVICES TO CHILDREN OVER AGE 18; REQUIRING

18 PRIVATE INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE

19 CERTAIN INFORMATION; ALLOWING CHILD SUPPORT PAYMENTS TO

20 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON

21 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE

22 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES

23 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO

24 DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE

25 OBLIGES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

1 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF

2 LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY

3 PERIODS; AMENDING SECTIONS 17-7-502, 25-9-301, 25-9-302,

4 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118,

5 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,

6 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,

7 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND

8 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

9

10 WHEREAS, it is necessary to draft a composite bill

11 containing unrelated sections in order to present the

12 proposed program improvements in a single, comprehensive

13 bill that promotes the needs of legislative energy,

14 efficiency, and economy by limiting the number of possible

15 bills and by reducing the need for hearings and readings on

16 those bills.

17 THEREFORE, the Legislature finds it appropriate to enact

18 the following legislation.

THERE ARE NO CHANGES IN THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO YELLOW COPY FOR COMPLETE TEXT.

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 30, 1993 10:18 pm

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed: Sue Bartlett  
Senator Sue Bartlett

That such amendments read:

1. Title, lines 11 and 12.  
Following: "FEES;" on line 11  
Strike: remainder of line 11 through "PENALTIES;" on line 12
2. Page 2, line 3.  
Strike: "17-7-502,"
3. Page 2, line 21.  
Strike: section 1 in its entirety  
Renumber: subsequent sections
4. Page 32, lines 7 through 11.  
Following: "(8)"  
Strike: remainder of line 8 through "17-7-502" on line 11  
Insert: "The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected"
5. Page 38, line 23 through page 39, line 1.  
Following: "(18)"  
Strike: remainder of line 18 through "chapter" on page 39, line 1  
Insert: "The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected"
6. Page 45, line 13.  
Strike: "27"  
Insert: "26"
7. Page 66, lines 2 and 5.  
Strike: "26 and 27"  
Insert: "25 and 26"
8. Page 66, lines 6 and 9.  
Strike: "28"  
Insert: "27"

-END-

SENATE

HB 335

r712218CW.Sma

M - Amd. Coord.

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 8:00 am

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed: Thomas E. Towe  
Senator Thomas "Tom" Towe

That such amendments read:

1. Page 14, lines 9 and 10.  
Strike: "Child" on line 9 through "must" on line 10  
Insert: "(a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to"
2. Page 14, line 11.  
Strike: "(a)"  
Insert: "(1)"
3. Page 14, line 12.  
Strike: "(b) (i)"  
Insert: "(ii) (A)"
4. Page 14, line 15.  
Strike: "(ii)"  
Insert: "(B)"
5. Page 14, line 16.  
Strike: "(c)"  
Insert: "(3)"
6. Page 14, line 18.  
Strike: "(d)"  
Insert: "(4)"
7. Page 14, line 20.  
Following: line 19  
Insert: "(b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

SENATE

HB 335

r720759CW.Sma

M - Amd. Coord.

8. Page 57, lines 9 and 10.  
Strike: "Child" on line 9 through "must" on line 10  
Insert: "(a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to"
9. Page 57, line 11.  
Strike: "(a)"  
Insert: "(1)"
10. Page 57, line 12.  
Strike: "(b) (i)"  
Insert: "(ii) (A)"
11. Page 57, line 16.  
Strike: "(ii)"  
Insert: "(B)"
12. Page 57, line 17.  
Strike: "(c)"  
Insert: "(3)"
13. Page 57, line 19.  
Strike: "(d)"  
Insert: "(4)"
14. Page 57, line 21.  
Following: line 20  
Insert: "(b) A judgment, decree, or order that omits the provision required by subsection (3)(a) is subject to the requirements of subsection (3)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."
15. Page 60, lines 11 and 12.  
Strike: "Child" on line 11 through "must" on line 12  
Insert: "(1) A support order issued or modified under this part must contain a provision requiring the child support to"
16. Page 60, line 13.  
Strike: "(1)"  
Insert: "(a)"
17. Page 60, line 14.  
Strike: "(2) (a)"  
Insert: "(b) (i)"
18. Page 60, line 18.  
Strike: "(b)"

- Insert: "(ii)"
19. Page 60, line 19.  
Strike: "(3)"  
Insert: "(c)"
20. Page 60, line 21.  
Strike: "(4)"  
Insert: "(d)"
21. Page 60, line 23.  
Following: line 22  
Insert: "(2) An order that omits the provision required by subsection (1) is subject to the requirements of subsection (1) without need for an amendment to the order or for any further action by the department."

-END-

3

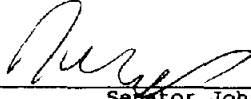
SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 11:15 am

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed:   
Senator John Harp

That such amendments read:

- 1. Page 23, lines 18 through 21.  
Following: "employees"  
Strike: "and," on line 18 through "state" on line 21
- 2. Page 24, lines 7 through 11.  
Strike: subsections (h) and (i) in their entirety  
Renumber: subsequent subsections
- 3. Page 24, lines 17 through 24.  
Strike: subsectioning (3) in its entirety  
Renumber: subsequent subsections
- 4. Page 25, lines 19 through page 26, line 4.  
Strike: subsection (6) in its entirety

-END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 30, 1993 10:28 pm

Mr. Chairman: I move to amend House Bill No. 335 (third reading copy -- blue).

ADOPT

REJECT

Signed:   
Senator Thomas "Tom" Towe

That such amendments read:

- 1. Page 5, lines 5 and 6.  
Page 5, lines 21 and 22.  
Page 6, lines 15 and 16.  
Page 6, line 25 through page 7, line 1.  
Page 7, line 17.  
Following: "child"  
Strike: "or spousal"

-END-

SENATE

HB 335

r721115CW.Sma

Amd. Coord.

SENATE

HB 335

r712228CW.Sma

M- Amd. Coord.



TABLED BILL  
SENATE STANDING COMMITTEE REPORT

Page 2 of 2  
March 30, 1993

Page 1 of 2  
March 30, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 335 (third reading copy -- blue), respectfully report that House Bill No. 335 be amended as follows and as so amended be tabled.

Signed: William Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 25, line 24 through page 26, line 4.

Following: "SEEKS." on line 24

Strike: remainder of line 24 through "INFORMATION." on page 26,  
line 4

2. Page 29, line 23.

Following: "obligee"

Strike: remainder of line 23 through "assistance"

3. Page 62, line 11 through page 64, line 8.

Strike: subsections (6)(a) through (7)(c) in their entirety

Insert: "(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Renumber: subsequent subsections

4. Page 64, line 20.

Strike: "(8)"

Insert: "(9)"

5. Page 66, line 10.

Following: line 9

Insert: "NEW SECTION. Section 31. Coordination instruction. If House Bill No. 228 is passed and approved and if it includes a section that amends 40-5-118, then [section 9 of this act], amending 40-5-118, is void."

Renumber: subsequent section

-END-

M- Amd. Coord.  
A- Sec. of Senate

Bartlett  
Senator Carrying Bill

711607SC.Sma

HB 335  
SENATE

1 HOUSE BILL NO. 335  
 2 INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,  
 3 S. RICE, BOHLINGER, YELLOWTAIL,  
 4 WATERMAN, L. NELSON, PETERSON  
 5 BY REQUEST OF THE DEPARTMENT OF  
 6 SOCIAL AND REHABILITATION SERVICES  
 7  
 8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
 9 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND  
 10 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;  
 11 PROVIDING FOR ADDITIONAL FEES; ~~STATUTORILY-APPROPRIATING~~  
 12 ~~FEES-AND-PENALTIES;~~ REQUIRING NOTICE TO THE CHILD SUPPORT  
 13 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND  
 14 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE  
 15 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE  
 16 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;  
 17 EXTENDING SERVICES TO CHILDREN OVER AGE 18; ~~REQUIRING~~  
 18 ~~PRIVATE-INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE~~  
 19 ~~CERTAIN--INFORMATION;~~ ALLOWING CHILD SUPPORT PAYMENTS TO  
 20 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON  
 21 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE  
 22 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES  
 23 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO  
 24 DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE  
 25 OBLIGEEES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

1 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF  
 2 LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY  
 3 PERIODS; AMENDING SECTIONS ~~17-7-502,~~ 25-9-301, 25-9-302,  
 4 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-118,  
 5 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,  
 6 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,  
 7 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND  
 8 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."  
 9

10 WHEREAS, it is necessary to draft a composite bill  
 11 containing unrelated sections in order to present the  
 12 proposed program improvements in a single, comprehensive  
 13 bill that promotes the needs of legislative energy,  
 14 efficiency, and economy by limiting the number of possible  
 15 bills and by reducing the need for hearings and readings on  
 16 those bills.

17 THEREFORE, the Legislature finds it appropriate to enact  
 18 the following legislation.

19  
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 21 ~~Section 1. Section 17-7-502, MCA, is amended to read:--~~  
 22 ~~"17-7-502. Statutory appropriations-----definition---~~  
 23 ~~requisites-for-validity--(1)-A-statutory-appropriation-is-an~~  
 24 ~~appropriation-made-by-permanent-law-that-authorizes-spending~~  
 25 ~~by-a--state--agency--without--the--need--for---a---biennial~~



1 legislative appropriation or budget amendment;

2 (2) Except as provided in subsection (4), to be

3 effective, a statutory appropriation must comply with both

4 of the following provisions:

5 (a) The law containing the statutory authority must be

6 listed in subsection (3);

7 (b) The law or portion of the law making a statutory

8 appropriation must specifically state that a statutory

9 appropriation is made as provided in this section;

10 (3) The following laws are the only laws containing

11 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;

12 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;

13 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;

14 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;

15 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;

16 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;

17 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;

18 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;

19 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-011;

20 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;

21 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;

22 39-71-2504; 40-5-210; 40-5-226; 44-12-206; 44-13-102;

23 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;

24 75-5-507; 75-5-1100; 75-11-313; 76-12-123; 77-1-800;

25 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;

1 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306;

2 (4) There is a statutory appropriation to pay the

3 principal, interest, premiums, and costs of issuing, paying,

4 and securing all bonds, notes, or other obligations, as due,

5 that have been authorized and issued pursuant to the laws of

6 Montana, Agencies that have entered into agreements

7 authorized by the laws of Montana to pay the state

8 treasurer, for deposit in accordance with 17-2-101 through

9 17-2-107, as determined by the state treasurer, an amount

10 sufficient to pay the principal and interest as due on the

11 bonds or notes have statutory appropriation authority for

12 the payments: (in subsection (3)) pursuant to sec. 7, Ch.

13 567, b, 1991, the inclusion of 19-6-709 terminates upon

14 death of last recipient eligible for supplemental benefit;

15 and pursuant to sec. 18, Ch. 748, b, 1991, the inclusion of

16 22-3-011 terminates June 30, 1993.)"

17 **Section 1.** Section 25-9-301, MCA, is amended to read:

18 "25-9-301. Docketing of judgment -- lien -- expiration.

19 (1) Immediately after the entry of the judgment in the

20 judgment book, the clerk must make the proper entries of the

21 judgment under appropriate heads in the docket kept by him

22 the clerk.

23 (2) From the time the judgment is docketed, it becomes

24 a lien upon all real property of the judgment debtor not

25 exempt from execution in the county, owned by him the

1 judgment debtor at the time or which he the judgment debtor  
 2 may afterward acquire until the lien ceases. ~~The~~ Except as  
 3 provided in subsection (3), the lien continues for 6 years  
 4 unless the judgment be is previously satisfied.

5 (3) When the judgment is for the payment of child or  
 6 spousal support, the lien continues for 10 years from the  
 7 termination of the support obligation unless the judgment is  
 8 previously satisfied."

9 **Section 2.** Section 25-9-302, MCA, is amended to read:

10 **"25-9-302. Filing of transcript of docket in another**  
 11 **county -- lien -- expiration.** (1) A transcript of the  
 12 original docket, certified by the clerk, may be filed with  
 13 the district court clerk of any other county; and from the  
 14 time of the filing, the judgment becomes a lien upon all  
 15 real property of the judgment debtor, not exempt from  
 16 execution, in such that county, owned by him the judgment  
 17 debtor at the time or which he the judgment debtor may  
 18 afterward and before the lien expires acquire. ~~The~~ Except as  
 19 provided in subsection (2), the lien continues for 6 years  
 20 unless the judgment be is previously satisfied.

21 (2) When the judgment is for the payment of child or  
 22 spousal support, the lien continues for 10 years from the  
 23 termination of the support obligation unless the judgment is  
 24 previously satisfied."

25 **Section 3.** Section 25-9-303, MCA, is amended to read:

1 **"25-9-303. Filing of transcript of docket of federal**  
 2 **court -- lien -- expiration.** (1) A transcript of the  
 3 original docket of any judgment rendered in the circuit or  
 4 district court of the United States, ninth circuit, district  
 5 of Montana, certified by the clerk of said court, may be  
 6 filed with the district court clerk of any county; and from  
 7 the time of the filing, the judgment becomes a lien upon all  
 8 real property of the judgment debtor, not exempt from  
 9 execution, in such the county, owned by him the judgment  
 10 debtor at the time or which he the judgment debtor may  
 11 afterward and before the lien expires acquire. ~~The~~ Except as  
 12 provided in subsection (2), the lien ~~shall~~ continue  
 13 continues for 6 years unless the judgment be is previously  
 14 satisfied.

15 (2) When the judgment is for the payment of child or  
 16 spousal support, the lien continues for 10 years from the  
 17 termination of the support obligation unless the judgment is  
 18 previously satisfied."

19 **Section 4.** Section 25-13-101, MCA, is amended to read:

20 **"25-13-101. Time limit for issuing execution.** (1) ~~The~~  
 21 Except as provided in subsection (2), the party in whose  
 22 favor the judgment is given may, at any time within 6 years  
 23 after the entry thereof, have a writ of execution issued for  
 24 its enforcement.

25 (2) When the judgment is for the payment of child or

1 spousal support, the party in whose favor the judgment is  
2 given may, at any time within 10 years after the termination  
3 of the support obligation, have a writ of execution issued  
4 for its enforcement."

5 **Section 5.** Section 27-2-201, MCA, is amended to read:

6 "27-2-201. Actions upon judgments. (1) The Except as  
7 provided in subsection (3), the period prescribed for the  
8 commencement of an action upon a judgment or decree of any  
9 court of record of the United States or of any state within  
10 the United States is within 10 years.

11 (2) The period prescribed for the commencement of an  
12 action upon a judgment or decree rendered in a court not of  
13 record is within 5 years. The cause of action is deemed  
14 considered, in such that case, to have accrued when final  
15 judgment was rendered.

16 (3) The period prescribed for the commencement of an  
17 action to collect past-due child or-spousal support that has  
18 accrued after October 1, 1993, under an order entered by a  
19 court of record or administrative authority is within 10  
20 years of the termination of support obligation."

21 **Section 6.** Section 27-2-211, MCA, is amended to read:

22 "27-2-211. Actions to enforce penalty or forfeiture or  
23 other statutory liability. (1) Within 2 years is the period  
24 prescribed for the commencement of an action upon:

25 (a) a statute for a penalty or forfeiture when the

1 action is given to an individual or to an individual and the  
2 state, except when the statute imposing it prescribes a  
3 different limitation;

4 (b) a statute or an undertaking in a criminal action  
5 for a forfeiture or penalty to the state;

6 (c) a liability created by statute other than:

7 (i) a penalty or forfeiture; or

8 (ii) a statutory debt created by the payment of public  
9 assistance.

10 (2) The period prescribed for the commencement of an  
11 action by a municipal corporation for the violation of any  
12 city or town ordinance is within 1 year.

13 (3) Notwithstanding any other provision of this  
14 chapter, actions against directors or stockholders of a  
15 corporation to recover a penalty or forfeiture imposed or to  
16 enforce a liability created by law must be brought within 3  
17 years after the discovery by the aggrieved party of the  
18 facts upon which the penalty of forfeiture attached or the  
19 liability was created.

20 (4) Unless fraud is involved or unless a support  
21 obligation has been entered, an action to enforce a  
22 statutory debt created by the payment of public assistance  
23 must be brought within 5 years from the date the debt  
24 arises. If fraud is involved, an action must be brought  
25 within 5 years of the discovery of the fraud. If a support

1 obligation has been entered, an action must be brought  
 2 within 10 years of the termination of support obligation."

3 **Section 7.** Section 40-4-204, MCA, is amended to read:

4 "40-4-204. Child support -- orders to address health  
 5 insurance -- withholding of child support. (1) In a  
 6 proceeding for dissolution of marriage, legal separation,  
 7 maintenance, or child support, the court shall order either  
 8 or both parents owing a duty of support to a child to pay an  
 9 amount reasonable or necessary for his the child's support,  
 10 without regard to marital misconduct.

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

13 (a) the financial resources of the child;

14 (b) the financial resources of the custodial parent;

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

17 (d) the physical and emotional condition of the child  
 18 and his the child's educational and medical needs;

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

21 (f) the age of the child;

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

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

25 (i) the needs of any person, other than the child, whom

1 either parent is legally obligated to support.

2 (3) (a) Whenever a court issues or modifies an order  
 3 concerning child support, the court shall determine the  
 4 child support obligation by applying the standards in this  
 5 section and the uniform child support guidelines adopted by  
 6 the department of social and rehabilitation services  
 7 pursuant to 40-5-209, unless the court finds by clear and  
 8 convincing evidence that the application of the standards  
 9 and guidelines is unjust to the child or to any of the  
 10 parties or is inappropriate in that particular case.

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

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

20 (4) Each district court judgment, decree, or order  
 21 establishing a final child support obligation under this  
 22 title and each modification of a final order for child  
 23 support 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 decree, or order may contain a provision requiring that  
 5 coverage for the child or children be continued or obtained.

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

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

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

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

24 (5) (a) Unless the court makes a written exception  
 25 under 40-5-315 or 40-5-411 and the exception is included in

1 the support order, a support obligation established by  
 2 judgment, decree, or order under this section, whether  
 3 temporary or final, and each modification of an existing  
 4 support obligation under 40-4-208 must be enforced by  
 5 immediate or delinquency income withholding, or both, under  
 6 Title 40, chapter 5, part 3 or 4. A support order that omits  
 7 the written exceptions provided in 40-5-315 or 40-5-411 or  
 8 that provides for a payment arrangement inconsistent with  
 9 this section is nevertheless subject to withholding for the  
 10 payment of support without need for an amendment to the  
 11 support order or for any further action by the court.

12 (b) If an obligor is exempt from immediate income  
 13 withholding, the district court judgment or order must  
 14 include a warning statement that if the obligor is  
 15 delinquent in the payment of support, the obligor's income  
 16 may be subject to income withholding procedures under Title  
 17 40, chapter 5, part 3 or 4. Failure to include a warning  
 18 statement in a judgment or order does not preclude the use  
 19 of withholding procedures.

20 (c) After October 1, 1993, if a support order subject  
 21 to income withholding is expressed in terms of a monthly  
 22 obligation, the order may be annualized and withheld on a  
 23 weekly or biweekly basis, corresponding to the obligor's  
 24 regular pay period.

25 (6) For the purposes of income withholding under

1 subsection (5), every district court judgment, decree, or  
 2 order that establishes or modifies a child support  
 3 obligation must include a provision requiring the parent  
 4 obligated to pay support to inform the court and, if the  
 5 department of social and rehabilitation services is  
 6 providing services under Title IV-D of the Social Security  
 7 Act for the enforcement of the judgment, decree, or order,  
 8 the department, of the following:

9 (a) the name and address of the parent's current  
 10 employer;

11 (b) whether the parent has access to health insurance  
 12 through an employer or other group; and

13 (c) if insurance coverage is available, the health  
 14 insurance policy information.

15 (7) If the department of social and rehabilitation  
 16 services is providing or later provides support enforcement  
 17 services under Title IV-D of the Social Security Act, each  
 18 district court order or modification of an order must  
 19 contain a statement providing that the noncustodial parent,  
 20 without further order of the court, is required to obtain  
 21 and maintain health insurance coverage as provided in  
 22 40-5-208. Failure to include a warning statement in the  
 23 judgment or order does not preclude the imposition of  
 24 sanctions under 40-5-208.

25 (8) Each district court judgment, decree, or order

1 establishing a final child support obligation under this  
 2 part and each modification of a final order for child  
 3 support must contain a statement that the order is subject  
 4 to review and modification by the department of social and  
 5 rehabilitation services upon the request of the department  
 6 or a party under 40-5-271 through 40-5-273 when the  
 7 department is providing services under Title IV-D of the  
 8 Social Security Act for the enforcement of the order.

9 ~~(9) Child support ordered on behalf of a minor child~~  
 10 must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT  
 11 ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST  
 12 INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid  
 13 to:

14 ~~(a)(I)~~ the legal custodian of the minor child;

15 ~~(b)--(i)(II)~~ (A) any other person, organization, or  
 16 agency having legal physical custody of the minor child  
 17 under a legal assignment of rights; or

18 ~~(ii)(B)~~ the court for the benefit of the minor child;

19 ~~(c)(III)~~ any other person or agency designated as  
 20 caretaker of the minor child by agreement of the legal  
 21 custodian; or

22 ~~(d)(IV)~~ any assignee or other person, organization, or  
 23 agency authorized to receive or collect child support.

24 (B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE  
 25 PROVISION REQUIRED BY SUBSECTION (9)(A) IS SUBJECT TO THE



1 REQUIREMENTS OF SUBSECTION (9)(A) WITHOUT NEED FOR AN  
 2 AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY  
 3 FURTHER ACTION BY THE COURT."

4 **Section 8.** Section 40-5-118, MCA, is amended to read:

5 "40-5-118. State information agency. (1) The state  
 6 department of social and rehabilitation services is  
 7 designated as the state information agency under this part.

8 (2) It shall:

9 (a) compile a list of the courts and their addresses in  
 10 this state having jurisdiction under this part and transmit  
 11 it to the state information agency of every other state  
 12 which that has adopted this or a substantially similar law;  
 13 and Upon the adjournment of each session of the legislature  
 14 the agency shall distribute copies of any amendments to this  
 15 part and a statement of their effective date to all other  
 16 state information agencies;

17 (b) maintain a register of lists of courts received  
 18 from other states and transmit furnish, upon request, copies  
 19 thereof of the list promptly to every court in this state  
 20 having jurisdiction under this part; and.

21 ~~(c) forward to the court in this state which has~~  
 22 ~~jurisdiction over the obligor or his property petitions,~~  
 23 ~~certificates, and copies of the reciprocal enforcement of~~  
 24 ~~support act it receives from courts or information agencies~~  
 25 ~~of other states;~~

1 ~~(3) if the state information agency does not know the~~  
 2 ~~location of the obligor or his property in the state and no~~  
 3 ~~state location service is available, it shall use all means~~  
 4 ~~at its disposal to obtain this information, including the~~  
 5 ~~examination of official records in the state and other~~  
 6 ~~sources such as telephone directories, real property~~  
 7 ~~records, vital statistics records, police records, requests~~  
 8 ~~for the name and address from employers who are able or~~  
 9 ~~willing to cooperate, records of motor vehicle license~~  
 10 ~~offices, requests made to the tax offices both state and~~  
 11 ~~federal where such offices are able to cooperate, and~~  
 12 ~~requests made to the social security administration as~~  
 13 ~~permitted by the Social Security Act, as amended;~~

14 ~~(4) After the deposit of three copies of the petition~~  
 15 ~~and certificate and one copy of the reciprocal enforcement~~  
 16 ~~of support act of the initiating state with the clerk of the~~  
 17 ~~appropriate court, if the state information agency knows or~~  
 18 ~~believes that the prosecuting attorney is not prosecuting~~  
 19 ~~the case diligently, it shall inform the attorney general~~  
 20 ~~who may undertake the representation."~~

21 **Section 9.** Section 40-5-201, MCA, is amended to read:

22 "40-5-201. Definitions. As used in this part, the  
 23 following definitions apply:

24 (1) "Alleged father" means a man who is alleged to have  
 25 engaged in sexual intercourse with a child's mother during a

1 possible time of conception of the child or a man who is  
 2 presumed to be a child's father under the provisions of  
 3 40-6-105.

4 (2) (a) "Child" means any person under 18 years of age  
 5 who is not otherwise emancipated, self-supporting, married,  
 6 or a member of the armed forces of the United States, any  
 7 person under 19 years of age and still in high school, or  
 8 any person who is mentally or physically incapacitated if  
 9 the incapacity began prior to the person's 18th birthday and  
 10 for whom:

- 11 (a)(i) support rights are assigned under 53-2-613;
- 12 (b)(ii) a public assistance payment has been made;
- 13 (c)(iii) the department is providing support enforcement  
 14 services under 40-5-203; or
- 15 (d)(iv) the department has received a referral for  
 16 interstate services from an agency of another state under  
 17 the provisions of the Uniform Reciprocal Enforcement of  
 18 Support Act or under Title IV-D of the Social Security Act.

19 (b) Child may not be construed to limit the ability of  
 20 the department to enforce a support order according to its  
 21 terms when the order provides for support to extend beyond  
 22 the child's 18th birthday.

23 (3) "Department" means the department of social and  
 24 rehabilitation services.

25 (4) "Director" means the director of the department of

1 social and rehabilitation services or his the director's  
 2 authorized representative.

3 (5) "Guidelines" means the child support guidelines  
 4 adopted pursuant to 40-5-209.

5 (6) "Hearing officer" or "hearing examiner" means the  
 6 hearing officer appointed by the department for the purposes  
 7 of this chapter.

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

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

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

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

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

21 (11) "Paternity blood test" means a test that  
 22 demonstrates through examination of genetic markers either  
 23 that an alleged father is not the natural father of a child  
 24 or that there is a probability that an alleged father is the  
 25 natural father of a child. Paternity blood tests may include

1 but are not limited to the human leukocyte antigen test and  
 2 DNA probe technology.

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

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

11 (a) the failure to provide support to a child under the  
 12 laws of this or any other state or a support order; or

13 (b) a support order for spousal maintenance if the  
 14 judgment or order requiring payment of maintenance also  
 15 contains a judgment or order requiring payment of child  
 16 support for a child of whom the person awarded maintenance  
 17 is the custodial parent.

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

21 (a) a district court of this state;

22 (b) a court of appropriate jurisdiction of another  
 23 state, Indian tribe, or foreign country;

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

1 (d) an administrative agency of another state, Indian  
 2 tribe, or foreign country with a hearing function and  
 3 process similar to those of the department under this part.

4 (15) "IV-D" means the provisions of Title IV-D of the  
 5 Social Security Act and the regulations promulgated  
 6 thereunder."

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

8 **"40-5-202. Department of social and rehabilitation**  
 9 **services -- powers and duties regarding collection of**  
 10 **support debt.** (1) The department may take action under the  
 11 provisions of this part, the abandonment or nonsupport  
 12 statutes, the Uniform Parentage Act established in Title 40,  
 13 chapter 6, part 1, and other appropriate state and federal  
 14 statutes to ~~ensure--that--the--parent--or--other--person~~  
 15 ~~responsible--pays-for-the-care,-support,-or-maintenance-of-a~~  
 16 ~~child~~ provide IV-D services if the department:

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

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

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

25 (2) ~~if---the--department--is--providing--child--support~~

1 enforcement-services--for--a--child--under--this--part;--the  
 2 department--becomes--trustee--of--any--cause--of--action--of--the  
 3 child--or--the--obligee--to--recover--support--due--to--the--child--or  
 4 obligee--from--the--obligor;--The--department--may--bring--and  
 5 maintain--the--action--in--its--own--name--or--in--the--name--of--the  
 6 obligee. A verified statement, filed by the department, that  
 7 it is providing services is prima facie evidence of its  
 8 authority to act. The department may initiate, participate  
 9 in, or exercise any remedy available in a judicial or an  
 10 administrative action on the same basis as any other party.

11 (3) The department has the power of attorney to act in  
 12 the name of any obligee to endorse and cash any and all  
 13 drafts, checks, money orders, or other negotiable  
 14 instruments received by the department on behalf of a child.

15 (4) ~~For--purposes--of--prosecuting--any--civil--action,--the~~  
 16 ~~department--is--a--real--party--in--interest--if--it--is--providing~~  
 17 ~~child--support--enforcement--services--under--this--part. The~~  
 18 ~~department is a party to and must be afforded notice and an~~  
 19 ~~opportunity to participate in any proceeding relating to~~  
 20 ~~paternity or to the establishment, enforcement, or~~  
 21 ~~modification of a support obligation, whether initiated by~~  
 22 ~~the obligee, the obligor, or the child. No--obligee A~~  
 23 ~~recipient of services may not act to prejudice the rights of~~  
 24 the department while such the services are being provided.

25 (5) If child support enforcement services are being or

1 have been provided under this part, no an agreement between  
 2 any obligee and any obligor either relieving an obligor of  
 3 any duty of support or purporting to settle past, present,  
 4 or future support obligations either as settlement or  
 5 prepayment may not act to reduce or terminate any rights of  
 6 the department to recover from the obligor for support debt  
 7 provided unless the department has consented to the  
 8 agreement in writing.

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

12 (7) The department is subrogated to the right of the  
 13 child or obligee to maintain any civil action or execute any  
 14 administrative remedy available under the laws of this or  
 15 any other state to collect a support debt. This right of  
 16 subrogation is in addition to and independent of the  
 17 assignment under 53-2-613 and the support debt created by  
 18 40-5-221.

19 (8) If public assistance is being or has been paid, the  
 20 department is subrogated to the debt created by a support  
 21 order and any money judgment is considered to be in favor of  
 22 the department. This subrogation is an addition to any  
 23 assignment made under 53-2-613 and applies to the lesser of:

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

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

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

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

8 (11) When a person is required to give notice to, serve,  
9 or provide a written response to the department in a  
10 proceeding concerning the establishment or enforcement of  
11 child support, the notice, service, or response must be made  
12 to the department's child support enforcement division."

13 **Section 11.** Section 40-5-206, MCA, is amended to read:

14 "40-5-206. Central unit for information and  
15 administration -- cooperation enjoined -- availability of  
16 records. (1) The department shall establish a central unit  
17 to serve as a registry for the receipt of information, for  
18 answering interstate inquiries concerning deserting parents,  
19 for receiving and answering requests for information made by  
20 consumer reporting agencies under 40-5-261, to coordinate  
21 and supervise departmental activities in relation to  
22 deserting parents, and to assure effective cooperation with  
23 law enforcement agencies.

24 (2) If services are provided to a child under this  
25 part, the department may request and, notwithstanding any

1 statute making the information confidential, all state,  
2 county, and city agencies, officers, and employees and,  
3 ~~EXCEPT AS PROVIDED IN SUBSECTION (6), all corporations,~~  
4 ~~partnerships, associations, organizations, or individuals~~  
5 ~~doing business in the state~~ must provide on request any  
6 information, if known, concerning the ~~location,~~ income, ~~and~~  
7 ~~assets of an obligor, including:~~

- 8 (a) name;
- 9 (b) address of obligor's residence;
- 10 (c) date of birth;
- 11 (d) social security number;
- 12 (e) wages or other income;
- 13 (f) number of dependents claimed for state and federal
- 14 income tax withholding purposes;
- 15 (g) name and address of employer;
- 16 ~~(h) name and address of any financial institution~~
- 17 ~~maintaining an account for the obligor;~~
- 18 ~~(i) account number, account balances, account type, and~~
- 19 ~~the name under which the obligor has an interest in an~~
- 20 ~~account or deposit with a financial institution;~~
- 21 ~~(j)(H) address of any real property owned by the~~
- 22 ~~obligor; and~~
- 23 ~~(k)(I) any other asset in which the obligor may have an~~
- 24 ~~interest, including the extent, nature, and value of the~~
- 25 ~~interest.~~

1 ~~{3}--Except as provided in 40-5-261 and rules adopted~~  
 2 ~~under 40-5-262, any records established pursuant to the~~  
 3 ~~provisions of this section are available only to the~~  
 4 ~~department; A person who knowingly fails or refuses to~~  
 5 ~~provide information or who knowingly provides false or~~  
 6 ~~incorrect information concerning an obligor, in response to~~  
 7 ~~a request by the department, is subject to citation for~~  
 8 ~~contempt under the provisions of this part.~~

9 {4}(3) Any information obtained by the department  
 10 during the course of a child support investigation that is  
 11 confidential at the source must be treated by the department  
 12 as confidential and must be safeguarded accordingly.

13 {5}(4) Use or disclosure of information obtained by the  
 14 department from confidential sources of and information  
 15 maintained by the department in its records, including the  
 16 names, addresses, and social security numbers of obligors  
 17 and obligees, is limited to:

18 (a) purposes directly related to the provision of  
 19 services under this chapter;

20 (b) county attorneys, and courts having jurisdiction in  
 21 support and abandonment proceedings or actions or agencies  
 22 in other states engaged in the enforcement of support of  
 23 minor children as authorized by the rules of the department  
 24 and by the provisions of the federal Social Security Act;  
 25 and

1 (c) any other use permitted or required by the federal  
 2 Social Security Act.

3 ~~{6}--IF A FINANCIAL INSTITUTION DEFINED IN 31-1-111 AS A~~  
 4 ~~REGULATED LENDER POSSESSES INFORMATION DESCRIBED IN~~  
 5 ~~SUBSECTION (2)(I), (2)(J), OR (2)(K) THAT RELATES TO A~~  
 6 ~~PERSON WHO IS THE SUBJECT OF AN INQUIRY BY THE DEPARTMENT,~~  
 7 ~~THE FINANCIAL INSTITUTION NEED ONLY TELL THE DEPARTMENT THAT~~  
 8 ~~IT POSSESSES THE INFORMATION THE DEPARTMENT SEEKS. THE~~  
 9 ~~DEPARTMENT MAY APPLY FOR AN INVESTIGATIVE SUBPOENA UNDER~~  
 10 ~~46-4-301, STATING IN THE PROSECUTOR'S AFFIDAVIT IN SUPPORT~~  
 11 ~~OF THE SUBPOENA THAT ASSETS OR RESOURCES OF THE OBLIGOR DO~~  
 12 ~~OR MAY EXIST AND THAT THE ADMINISTRATION OF JUSTICE REQUIRES~~  
 13 ~~THE FINANCIAL INSTITUTION TO DISCLOSE THE INFORMATION."~~

14 **Section 12.** Section 40-5-208, MCA, is amended to read:

15 **"40-5-208. Medical support -- obligation enforcement --**  
 16 **sanctions. (1) (a)** In any proceeding initiated pursuant to  
 17 this part to establish a child support order, whether final  
 18 or temporary, and in each modification of an existing order,  
 19 the department shall require the obligor to obtain and  
 20 maintain health insurance coverage for each child if health  
 21 insurance coverage is available through the obligor's  
 22 employment or other group health insurance plan. The order  
 23 or modification of an order must include a statement that  
 24 the insurance must be obtained and maintained whenever the  
 25 department is providing support enforcement services and

1 that the failure to do so may result in the imposition of  
2 sanctions under this section.

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 (3) (a) The department may issue a notice commanding  
6 the obligor to appear at a hearing held by the department  
7 and show cause why a sum of not more than \$100 should not be  
8 assessed for each month health insurance coverage is not  
9 secured or maintained if the department determines an  
10 obligor has failed to:

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

13 (ii) provide information required under this section.

14 (b) If the department finds, after hearing or the  
15 obligor's failure to appear, that health insurance coverage  
16 has not been obtained or maintained or that the obligor has  
17 failed to provide the information required, the department  
18 may assess against the obligor not more than \$100 for each  
19 month health insurance coverage has not been obtained or  
20 maintained or for each month information has not been  
21 provided. Such ~~The~~ amounts may be enforced by any  
22 administrative remedy available to the department for the  
23 enforcement of child support obligations, including warrant  
24 for distraint provided for in ~~40-5-241~~ 40-5-247 and income  
25 withholding provided for in Title 40, chapter 5, part 4.

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

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

8 **Section 13.** Section 40-5-210, MCA, is amended to read:

9 "40-5-210. Standardized fee schedule -- rules. (1) The  
 10 department ~~shall by rule establish a standardized schedule~~  
 11 ~~of fees for the recovery of administrative costs and~~  
 12 ~~expenses of child support enforcement. The fees may be~~  
 13 ~~recovered from an obligor if the obligor's failure or~~  
 14 ~~refusal to support a child makes it necessary for the~~  
 15 ~~department to provide child support enforcement services~~  
 16 ~~under this part. The fees must be commensurate with costs or~~  
 17 ~~an average of the expenditures related to specific or~~  
 18 ~~routine activities~~ may charge an application fee to each  
 19 person applying for services under 40-5-203, except that the  
 20 fee may not be charged to persons who receive continuing  
 21 services under 40-5-203(3). The application fee may be:

- 22 (a) a flat dollar amount; or  
 23 (b) an amount based on a sliding fee schedule that is  
 24 based on the applicant's income level.

25 (2) The department may charge a handling fee for each

1 payment of support collected on behalf of any obligee who is  
 2 not a recipient of public assistance. The department may  
 3 withhold the fee from the support payment before  
 4 distribution to the obligee.

5 (3) The department may charge an obligor a late payment  
 6 fee for each late payment of support collected on behalf of  
 7 any obligee who is not a recipient of public assistance.

8 (4) The department may establish a fee schedule in  
 9 order to recover costs and expenses in excess of the  
 10 application, handling, and late fees. The fees must be  
 11 commensurate with costs or an average of the expenditures  
 12 related to specific or routine activities.

13 (a) The department shall develop procedures for  
 14 determining whether it is appropriate for either the obligor  
 15 or the obligee to be responsible for payment of the fee. In  
 16 developing the procedures, the department shall consider  
 17 federal regulations promulgated under Title IV-D of the  
 18 Social Security Act.

19 (b)(2) In an action to establish paternity or to  
 20 establish or enforce a child support obligation, whether in  
 21 district court or by administrative process, the department  
 22 must be awarded costs in the amount established in the fee  
 23 schedule as part of any judgment, decree, or order in which  
 24 whenever the department:

25 (i) is the a prevailing party in the action; or



1 (ii) is not a party but incurs expenses and costs  
2 related to the action.

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

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

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

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

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

17 (5) The department may collect the fees awarded under  
18 this section by one of the following means:

19 (a) if the fee is owed by an obligor, the fee may be:

20 (i) collected through any remedy available to the  
21 department for the collection of child support arrearages;  
22 or

23 (ii) deducted from any payments made by the obligor  
24 before the payment is distributed to the obligee. Credit for  
25 the payment must be reduced by the amount of the deduction

1 for the fee. The deduction for fees may not reduce any  
2 current support due to the obligee. The deduction for a late  
3 payment fee may not reduce any current or past-due support  
4 due to the obligee.

5 (b) if the fee is owed by the obligee, the fee may be  
6 collected separately through any remedy available to the  
7 department for the collection of child support or the  
8 department may withhold the fee amount out of any payment  
9 collected on behalf of the obligee. The obligor must receive  
10 full credit for the payment as if the withholding of fees  
11 did not occur.

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

14 (7) The department may adopt rules necessary to  
15 implement fee schedules under this section.

16 ~~(8) The department may retain any fees collected under~~  
17 ~~this section to help offset administrative costs and~~  
18 ~~expenses of operating the child support enforcement program.~~  
19 ~~For this purpose, the fees are statutorily appropriated as~~  
20 ~~provided in 17-7-502 THE FEES AND COSTS CHARGED AND~~  
21 ~~COLLECTED UNDER THIS SECTION MUST BE PAID MONTHLY INTO THE~~  
22 ~~STATE TREASURY TO THE CREDIT OF THE CHILD SUPPORT~~  
23 ~~ENFORCEMENT DIVISION SPECIAL REVENUE FUND AND MUST BE~~  
24 ~~ACCOMPANIED BY A DETAILED STATEMENT OF THE AMOUNTS~~  
25 ~~COLLECTED."~~

1       **Section 14.** Section 40-5-224, MCA, is amended to read:  
 2       "40-5-224. Finding of support liability based upon  
 3 payment of public assistance -- warrant for distraint --  
 4 bond to release warrant -- action to collect. (1) If the  
 5 department reasonably believes that the obligor is not a  
 6 resident of this state or is about to move from this state  
 7 or has ~~concealed-himself~~ hidden, absconded, ~~absented-himself~~  
 8 or left, or has removed or is about to remove, secrete,  
 9 waste, or otherwise dispose of property which that could be  
 10 made subject to collection action to satisfy the support  
 11 debt, the department may issue a warrant for distraint  
 12 pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the  
 13 fair hearing or ~~thereafter~~ after the hearing, whether or not  
 14 appealed. ~~No-further~~ Further action may not be taken on the  
 15 warrant until final determination after fair hearing or  
 16 appeal. The department shall make and file in the record of  
 17 the fair hearing an affidavit stating the reasons upon which  
 18 the belief is founded. The obligor may furnish a bond, not  
 19 to exceed the amount of the support debt, during pendency of  
 20 the hearing or ~~thereafter~~ after the hearing, and in such  
 21 that case warrants issued must be released. If the decision  
 22 resulting from the hearing is in favor of the obligor, all  
 23 warrants issued must be released.  
 24       (2) The department may commence action under the  
 25 provisions of this part to collect the support debt on the

1       date of issuance of the decision resulting from the  
 2 hearing."  
 3       **Section 15.** Section 40-5-226, MCA, is amended to read:  
 4       "40-5-226. Administrative hearing -- nature -- place --  
 5 time -- determinations -- failure to appear -- entry of  
 6 final decision and order. (1) The administrative hearing is  
 7 defined as a "contested case".  
 8       (2) At the discretion of the hearing officer, the  
 9 administrative hearing may be held:  
 10       (a) in the county of residence or other county  
 11 convenient to the obligor or obligee; or  
 12       (b) in the county in which the department or any of its  
 13 offices are located.  
 14       (3) If a hearing is requested, it must be scheduled  
 15 within 20 days.  
 16       (4) The hearing officer shall determine the liability  
 17 and responsibility, if any, of the obligor under the notice  
 18 and shall enter a final decision and order in accordance  
 19 with such the determination.  
 20       (5) If the obligor fails to appear at the hearing or  
 21 fails to timely request a hearing, the hearing officer, upon  
 22 a showing of valid service, shall enter a decision and order  
 23 declaring the amount stated in the notice to be final.  
 24       (6) In a hearing to determine financial responsibility,  
 25 the monthly support responsibility must be determined in

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

5 (7) Within 20 days of the hearing, the hearing officer  
6 shall enter a final decision and order. The determination of  
7 the hearing officer constitutes a final agency decision,  
8 subject to judicial review under 40-5-253 and the provisions  
9 of the Montana Administrative Procedure Act.

10 (8) A support order entered under this part must  
11 contain a statement that the order is subject to review and  
12 modification by the department upon the request of the  
13 department or a party under 40-5-271 through 40-5-273 when  
14 the department is providing services under IV-D for the  
15 enforcement of the order.

16 (9) A support debt determined pursuant to this section  
17 is subject to collection action without further necessity of  
18 action by the hearing officer.

19 (10) A support debt or a support responsibility  
20 determined under this part by reason of the obligor's  
21 failure to request a hearing under this part or failure to  
22 appear at a scheduled hearing may be vacated, upon the  
23 motion of an obligor, by the hearing officer within the time  
24 provided and upon a showing of any of the grounds enumerated  
25 in the Montana Rules of Civil Procedure.

1 (11) Unless the hearing officer makes a written  
2 exception under 40-5-315 or 40-5-411 and the exception is  
3 included in the support order, every order establishing a  
4 child support obligation, whether temporary or final, and  
5 each modification of an existing child support order under  
6 this part is enforceable by immediate or delinquency income  
7 withholding, or both, under Title 40, chapter 5, part 4. A  
8 support order that omits that provision or that provides for  
9 a payment arrangement inconsistent with this section is  
10 nevertheless subject to withholding for the payment of  
11 support without need for an amendment of the support order  
12 or for any further action by the hearing officer.

13 (12) For the purposes of income withholding provided for  
14 in subsection (11), whenever the department establishes or  
15 modifies a child support obligation, the department's order  
16 must include a provision requiring the obligor, for as long  
17 as the department is providing support enforcement services,  
18 to keep the department informed of the name and address of  
19 the obligor's current employer, whether the obligor has  
20 access to health insurance through an employer or other  
21 group, and, if so, the health insurance policy information.

22 (13) The hearing officer may:

23 (a) compel obedience to the hearing officer's orders,  
24 judgments, and process and to any orders issued by the  
25 department, including income-withholding orders issued

1 pursuant to 40-5-415;  
 2 (b) compel the attendance of witnesses at  
 3 administrative hearings;  
 4 (c) compel obedience of subpoenas for paternity blood  
 5 tests;  
 6 (d) compel the production of accounts, books,  
 7 documents, and other evidence; and  
 8 (e) punish for civil contempt. Contempt authority does  
 9 not prevent the department from proceeding in accordance  
 10 with the provisions of 2-4-104.  
 11 (14) A contempt occurs whenever:  
 12 (a) a person acts in disobedience of any lawful order,  
 13 judgment, or process of the hearing officer or of the  
 14 department;  
 15 (b) a person compelled by subpoena to appear and  
 16 testify at an administrative hearing or to appear for  
 17 genetic paternity tests fails to do so;  
 18 (c) a person compelled by subpoena duces tecum to  
 19 produce evidence at an administrative hearing fails to do  
 20 so;  
 21 (d) an obligor or obligee subject to a discovery order  
 22 issued by the hearing officer fails to comply with discovery  
 23 requests; or  
 24 (e) a payor under an order to withhold issued pursuant  
 25 to 40-5-415 fails to comply with the provisions of the

1 order. In the case of a payor under an income-withholding  
 2 order, a separate contempt occurs each time income is  
 3 required to be withheld and paid to the department and the  
 4 payor fails to take the required action.  
 5 (15) An affidavit of the facts constituting a contempt  
 6 must be submitted to the hearing officer, who shall review  
 7 it to determine whether there is cause to believe that a  
 8 contempt has been committed. If cause is found, the hearing  
 9 officer shall issue a citation requiring the alleged  
 10 contemnor to appear and show cause why the alleged contemnor  
 11 should not be determined to be in contempt and required to  
 12 pay a penalty of not more than \$500 for each count of  
 13 contempt. The citation, along with a copy of the affidavit,  
 14 must be served upon the alleged contemnor either by personal  
 15 service or by certified mail. All other interested persons  
 16 may be served a copy of the citation by first-class mail.  
 17 (16) At the time and date set for hearing, the hearing  
 18 officer shall proceed to hear witnesses and take evidence  
 19 regarding the alleged contempt and any defenses to the  
 20 contempt. If the alleged contemnor fails to appear for the  
 21 hearing, the hearing may proceed in the alleged contemnor's  
 22 absence. If the hearing officer finds the alleged contemnor  
 23 in contempt, the hearing officer may impose a penalty of not  
 24 more than \$500 for each count found. The hearing officer's  
 25 decision constitutes a final agency decision, subject to

1 judicial review under 40-5-253 and subject to the provisions  
 2 of Title 2, chapter 4.

3 (17) An amount imposed as a penalty may be collected by  
 4 any remedy available to the department for the enforcement  
 5 of child support obligations, including warrant for  
 6 distrainment pursuant to 40-5-247, income withholding pursuant  
 7 to Title 40, chapter 5, part 4, and state debt offset,  
 8 pursuant to Title 17, chapter 4, part 1. The department may  
 9 retain any penalties collected under this section to offset  
 10 the costs of administrative hearings conducted under this  
 11 chapter.

12 ~~(18) The money collected as a penalty under this section~~  
 13 ~~is statutorily appropriated, as provided in 17-7-502, to the~~  
 14 ~~department to help offset expenditures for administrative~~  
 15 ~~hearings conducted under this chapter~~ THE PENALTIES CHARGED  
 16 AND COLLECTED UNDER THIS SECTION MUST BE PAID INTO THE STATE  
 17 TREASURY TO THE CREDIT OF THE CHILD SUPPORT ENFORCEMENT  
 18 DIVISION SPECIAL REVENUE FUND AND MUST BE ACCOMPANIED BY A  
 19 DETAILED STATEMENT OF THE AMOUNTS COLLECTED."

20 **Section 16.** Section 40-5-227, MCA, is amended to read:

21 **"40-5-227. Filing and docketing of final orders --**  
 22 **orders effective as district court decrees. (1) An abstract**  
 23 **of any final administrative order under this chapter may be**  
 24 **filed in the office of the clerk of the district court of**  
 25 **any county of Montana. The order, if approved, must be**

1 docketed in the judgment docket of the district court. The  
 2 properly filed and docketed order has all the force, effect,  
 3 and attributes of a docketed order or decree of the district  
 4 court, including but not limited to lien effect and  
 5 enforceability by supplemental proceedings, writs of  
 6 execution, and contempt of court proceedings.

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

14 (3) The department may issue a warrant for distrainment  
 15 based upon a properly filed and docketed order pursuant to  
 16 ~~40-5-241~~ 40-5-247."

17 **Section 17.** Section 40-5-232, MCA, is amended to read:

18 **"40-5-232. Establishment of paternity -- notice of**  
 19 **paternity determination -- contents. (1) When the paternity**  
 20 **of a child has not been legally established under the**  
 21 **provisions of Title 40, chapter 6, part 1, or otherwise, the**  
 22 **department may proceed to establish paternity under the**  
 23 **provisions of 40-5-231 through 40-5-237. An administrative**  
 24 **hearing held under the provisions of 40-5-231 through**  
 25 **40-5-237 is a contested case within the meaning of 2-4-102**

1 and is subject to the provisions of Title 2, chapter 4,  
2 except as otherwise provided in 40-5-231 through 40-5-237.

3 (2) It is presumed to be in the best interest of a  
4 child to legally determine and establish his paternity. A  
5 presumption under this subsection may be rebutted by a  
6 preponderance of the evidence.

7 (3) In any proceeding under 40-5-231 through 40-5-237,  
8 if a man acknowledges his paternity of a child in writing  
9 and such the acknowledgment is filed with the department,  
10 the department may enter an order establishing legal  
11 paternity. An acknowledgment is binding on a parent who  
12 executes it, whether or not he the parent is a minor.

13 (4) The department shall commence proceedings to  
14 establish paternity by serving on an alleged father a notice  
15 of paternity determination. The department may not serve  
16 such the notice unless it has:

17 (a) a sworn statement from the child's mother claiming  
18 that the alleged father is the child's natural father;

19 (b) evidence of the existence of a presumption of  
20 paternity under 40-6-105; or

21 (c) any other reasonable cause to believe that the  
22 alleged father is the child's natural father.

23 (5) Service on the alleged father of the notice of  
24 paternity determination shall must be made as provided in  
25 40-5-231(2). The notice must include:

1 (a) an allegation that the alleged father is the  
2 natural father of the child involved;

3 (b) the child's name and place and date of birth;

4 (c) the name of the child's mother and the name of the  
5 person or agency having custody of the child, if other than  
6 the mother;

7 (d) the probable time or period of time during which  
8 conception took place;

9 (e) a statement that if the alleged father fails to  
10 timely deny the allegation of paternity, the question of  
11 paternity may be resolved against him the alleged father  
12 without further notice;

13 (f) a statement that if the alleged father timely  
14 denies the allegation of paternity:

15 (i) he the alleged father is subject to compulsory  
16 blood testing;

17 (ii) a blood test may result in a presumption of  
18 paternity; and

19 (iii) he--may--request--a--trial--in--district--court--to  
20 determine-paternity-before-the-final-administrative-decision  
21 is-made upon receipt of the blood test results, if the  
22 alleged father continues to deny paternity, the alleged  
23 father may request the department to refer the matter to  
24 district court for a determination of paternity.

25 (6) The alleged father may file a written denial of

1 paternity with the department within 20 days after service  
2 of the notice of paternity determination.

3 (7) When there is more than one alleged father of a  
4 child, the department may serve a notice of paternity  
5 determination on each alleged father in the same  
6 consolidated proceeding or in separate proceedings. Failure  
7 to serve notice on an alleged father does not prevent the  
8 department from serving notice on any other alleged father  
9 of the same child."

10 **Section 18.** Section 40-5-242, MCA, is amended to read:

11 "40-5-242. Civil Notice of support lien -- civil  
12 liability upon failure to honor support lien or to comply  
13 with warrant or-to-honor-assignment-of-wages for distraint.  
14 (1) The department may, at any time after asserting a  
15 support lien, serve a notice of the lien on any person,  
16 firm, corporation, association, or political subdivision or  
17 department of the state in possession of any real or  
18 personal property that is due, owing, or belonging to an  
19 obligor. For this purpose, personal property includes the  
20 obligor's share of a decedent's estate, workers'  
21 compensation benefits, and any proceeds or potential  
22 proceeds from suits at law.

23 (2) Except as provided in subsection (3), A a person,  
24 firm, corporation, association, --political--subdivision, --or  
25 department---of--the--state or entity is liable to the

1 department in an amount equal to 100% of the value of the a  
2 support ~~debt--that--is--the--basis--of--the--distraint--or~~  
3 ~~assignment-of-wages~~ lien or warrant for distraint or the  
4 value of the ~~distrainted~~ real or personal property subject to  
5 a support lien or distrainted by a warrant for distraint,  
6 whichever is less, together with costs, interest, and  
7 reasonable attorney fees, if the person or entity:

8 ~~(1)--fails-or-refuses-to-deliver--property--pursuant--to~~  
9 ~~the-order;~~

10 ~~(2)(a)~~ (a) pays over, releases, sells, transfers, or  
11 conveys real or personal property subject to a support lien,  
12 to or for the benefit of the obligor, after the person or  
13 entity receives actual notice of filing of the support lien;  
14 or

15 ~~(3)(b)~~ (b) fails or refuses to surrender upon demand  
16 property ~~distrainted--under--40-5-242~~ of an obligor when  
17 presented with a warrant for distraint by a sheriff or  
18 levying officer under the provisions of 40-5-242,--or.

19 ~~(4)--fails--or--refuses--to-honor-an-assignment-of-wages~~  
20 ~~presented-by-the-department;~~

21 (3) A person or entity is not liable to the department  
22 under this section when:

23 (a) a written release or waiver of the support lien or  
24 warrant for distraint issued by the department has been  
25 delivered to the person or entity;

1 (b) a determination has been made in an adjudicative  
 2 proceeding, either administrative or judicial, that a  
 3 support lien does not exist or that the lien has been  
 4 satisfied; or

5 (c) the property subject to a support lien has been  
 6 transferred to, paid over to, or repossessed by a person or  
 7 entity holding:

- 8 (i) a prior perfected lien;
- 9 (ii) a mortgage, the proceeds of which were used by the  
 10 obligor to purchase real property; or
- 11 (iii) a perfected purchase money security interest, as  
 12 defined by 30-9-107."

13 **Section 19.** Section 40-5-247, MCA, is amended to read:

14 ~~"40-5-247. Filing warrant with district court --- effect~~  
 15 ~~of filing --- release Warrant for distraint -- effect --~~  
 16 ~~satisfaction of support lien -- redemption. (1) -- After~~  
 17 ~~issuing -- a warrant, the department may file the warrant with~~  
 18 ~~the clerk of a district court. -- The clerk shall file the~~  
 19 ~~warrant in the judgment docket, with the name of the~~  
 20 ~~delinquent obligor listed as the judgment debtor.~~

21 ~~(2) -- Upon filing the warrant, there is a lien against~~  
 22 ~~all real and personal property of the delinquent obligor~~  
 23 ~~located in the county where the warrant is filed. -- The~~  
 24 ~~resulting lien is treated in the same manner as a properly~~  
 25 ~~docketed judgment lien, and the department may collect~~

1 ~~delinquent -- child -- support -- and enforce the lien in the same~~  
 2 ~~manner as a judgment is enforced. -- The lien is for the amount~~  
 3 ~~indicated on the warrant plus accrued interest from the date~~  
 4 ~~of the warrant.~~

5 (1) The department may issue a warrant for distraint to  
 6 execute support liens established by [section 20 27 26] or  
 7 to enforce and collect any money obligation authorized under  
 8 this chapter.

9 (a) The warrant must be an order, under official seal  
 10 of the department, directed to a sheriff of any county of  
 11 the state or to any levying officer authorized by law to  
 12 enforce a district court judgment. The order must command  
 13 the recipient to levy upon and sell nonexempt real and  
 14 personal property to satisfy the support lien upon which the  
 15 warrant is based.

16 (b) A warrant must be signed by the director of the  
 17 department or the director's designee.

18 (c) The warrant must be for the amount of the support  
 19 lien or the amount of any other money obligation determined  
 20 under this chapter, including interest and fees, if any.

21 (d) A warrant for distraint has the same effect as a  
 22 writ of execution issued by a district court to enforce  
 23 money judgments.

24 ~~(3)(2)~~ (a) A ~~copy -- of -- the filed~~ warrant for distraint  
 25 may be sent by the department to the sheriff or authorized



1 agent levying officer. Upon receipt of a copy of the filed  
 2 warrant, the sheriff or authorized agent levying officer  
 3 shall proceed to execute upon the warrant in the same manner  
 4 as prescribed for execution upon a judgment.

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

8 (c) Funds resulting from execution upon the warrant  
 9 must first be applied to the sheriff's or levying officer's  
 10 costs, any superior liens, the support lien, or other money  
 11 obligation and to any inferior liens. Any amounts in excess  
 12 of this distribution must be paid to the obligor.

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

16 (3) A sheriff's or levying officer's levy against real  
 17 and personal property of the obligor is not limited to  
 18 property in possession of persons or other entities given  
 19 notice of a support lien under 40-5-242.

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

24 (b) Upon receiving partial payment of the unpaid child  
 25 support warrant amount or if the department determines that

1 a release or partial release of the lien warrant will  
 2 facilitate the collection of the unpaid amount, penalty, and  
 3 interest, the department may release or may partially  
 4 release the lien acquired by filing the warrant for  
 5 distraint. The department may release the lien warrant if it  
 6 determines that the lien warrant is unenforceable.

7 (5) An obligor or other person or entity having an  
 8 interest in real or personal property levied upon by a  
 9 warrant for distraint at any time prior to sale of the  
 10 property may pay the amount of the support lien or other  
 11 money obligation and any costs incurred by the sheriff or  
 12 levying officer serving the warrant. Upon payment in full,  
 13 the property must be restored to the obligor or other person  
 14 and all proceedings on the warrant must cease.

15 (6) An obligor or other person or entity having an  
 16 interest in real property levied upon and sold by a sheriff  
 17 or levying officer pursuant to a warrant for distraint may,  
 18 within 240 days after sale of the property, redeem the  
 19 property by making payment to the purchaser in the amount  
 20 paid by the purchaser plus interest at the statutory  
 21 interest rate payable on judgments recovered in the district  
 22 court.

23 (7) At any time after distraint of property under a  
 24 warrant for distraint, the department may release all or  
 25 part of the seized property without liability if payment of

1 the support lien or other money obligation is assured or if  
 2 the action will facilitate collection of the support lien or  
 3 other money obligation. The release or return does not  
 4 operate to prevent future action to collect the warrant  
 5 amount from the same or other property.

6 (8) The department may issue a warrant for distraint to  
 7 collect a support lien or other money obligation under this  
 8 section at any time within the statutory limitation period  
 9 for enforcing and collecting delinquent child support.

10 ~~(5)~~(9) The use of the warrant for distraint is not  
 11 exclusive, and the department may use any other remedy  
 12 provided by law for the collection of child support  
 13 amounts."

14 **Section 20.** Section 40-5-255, MCA, is amended to read:

15 "40-5-255. Charging off child support debts as  
 16 uncollectible. (1) Any support debt due the department from  
 17 an obligor, which debt the department determines  
 18 uncollectible, may be transferred from accounts receivable  
 19 to a suspense account and cease to be accounted as an asset.  
 20 If a warrant for distraint has been filed and the support  
 21 debt has subsequently been charged off as uncollectible, the  
 22 department shall issue a release of lien.

23 (2) ~~At any time after 6-years-from-the-date-a-support~~  
 24 ~~debt-was-incurred 10 years from the date of termination of~~  
 25 the support obligation, the department may charge off as

1 uncollectible any support debt upon which the department  
 2 finds there is no available, practical, or lawful means by  
 3 which the support debt may be collected. ~~No--proceedings A~~  
 4 proceeding or action under the provisions of this part may  
 5 not be begun after expiration of the 6-year 10-year period  
 6 to institute collection of a support debt. ~~Nothing-herein~~  
 7 This part may not be construed to render invalid or  
 8 nonactionable a warrant for distraint ~~filed-with--the--clerk~~  
 9 of-court issued by the department prior to the expiration of  
 10 the 6-year 10-year period or an assignment of earnings  
 11 executed prior to the expiration of the 6-year 10-year  
 12 period."

13 **Section 21.** Section 40-5-415, MCA, is amended to read:

14 "40-5-415. Order to withhold income -- rules. (1) When  
 15 the requirements of this part have been met, the department  
 16 shall serve an order or modification order to withhold and  
 17 deliver income upon any payor or combination of payors. The  
 18 order must:

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

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

25 (c) state that the order is binding on the payor until

1 further notice by the department;

2 (d) state the rights and duties of the payor under this  
3 part; and

4 (e) include a statement that the obligor is required  
5 under a support order to provide health insurance coverage  
6 for the obligor's child, if appropriate.

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. Whenever an  
16 obligor's income is subject to withholding for more than one  
17 obligee, the department may consolidate the payments  
18 received each month and distribute the income among the  
19 obligees according to department rules."

20 **Section 22.** Section 40-6-116, MCA, is amended to read:

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

25 (2) If the judgment or order of the court is at

1 variance with the child's birth certificate, the court shall  
2 order that a substitute birth certificate be issued under  
3 40-6-123.

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

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

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

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

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

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

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

- 5 (a) the needs of the child, including his medical  
6 needs;
- 7 (b) the standard of living and circumstances of the  
8 parents;
- 9 (c) the relative financial means of the parents;
- 10 (d) the earning ability of the parents;
- 11 (e) the need and capacity of the child for education,  
12 including higher education;
- 13 (f) the age of the child;
- 14 (g) the financial resources and the earning ability of  
15 the child;
- 16 (h) the responsibility of the parents for the support  
17 of others;
- 18 (i) the value of services contributed by the custodial  
19 parent;
- 20 (j) the cost of day care for the child; and
- 21 (k) any custody arrangement that is ordered or decided  
22 upon.

23 (6) (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

1 section and the uniform child support guidelines adopted by  
2 the department of social and rehabilitation services  
3 pursuant to 40-5-209, unless the court finds by clear and  
4 convincing evidence that the application of the standards  
5 and guidelines is unjust to the child or to any of the  
6 parties or is inappropriate in that particular case.

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

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

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

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

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

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

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

14 (8) (a) Unless an exception is found under 40-5-315 or  
 15 40-5-411 and the exception is included in the support order,  
 16 a support obligation established by judgment, decree, or  
 17 order under this section, whether temporary or final, and  
 18 each modification of an existing support obligation made  
 19 under 40-6-118 must be enforced by immediate or delinquency  
 20 income withholding, or both, under Title 40, chapter 5, part  
 21 3 or 4. A support order that omits the exception or that  
 22 provides for a payment arrangement inconsistent with this  
 23 section is nevertheless subject to withholding for the  
 24 payment of support without need for an amendment to the  
 25 support order or for any further action by the court.

1 (b) After October 1, 1993, if a support order subject  
 2 to income withholding is expressed in terms of a monthly  
 3 obligation, the order may be annualized and withheld on a  
 4 weekly or biweekly basis, corresponding to the obligor's  
 5 regular pay period.

6 (9) For the purposes of income withholding as provided  
 7 in subsection (8), whenever the district court establishes  
 8 or modifies a child support obligation, the judgment,  
 9 decree, or order must include a provision requiring the  
 10 parent obligated to pay support to inform the court and, if  
 11 the department of social and rehabilitation services is  
 12 providing services under Title IV-D of the Social Security  
 13 Act for the enforcement of the judgment, decree, or order,  
 14 the department, of the following:

15 (a) the name and address of the parent's current  
 16 employer;

17 (b) whether the parent has access to health insurance  
 18 through an employer or other group; and

19 (c) if insurance coverage is available, the health  
 20 insurance policy information.

21 (10) If the department of social and rehabilitation  
 22 services is providing or later provides support enforcement  
 23 services under Title IV-D of the Social Security Act, each  
 24 district court order or modification of an order must  
 25 contain a statement providing that the noncustodial parent,

1 without further order of the court, is required to obtain  
 2 and maintain health insurance coverage as provided in  
 3 40-5-208. Failure to include a warning statement in the  
 4 judgment or order does not preclude the imposition of  
 5 sanctions under 40-5-208.

6 (1) Each district court judgment, decree, or order  
 7 establishing a final child support obligation under this  
 8 part and each modification of a final order for child  
 9 support must contain a statement that the order is subject  
 10 to review and modification by the department of social and  
 11 rehabilitation services upon the request of the department  
 12 or a party under 40-5-271 through 40-5-273 when the  
 13 department is providing services under Title IV-D of the  
 14 Social Security Act for the enforcement of the order."

15 **Section 23.** Section 40-6-117, MCA, is amended to read:

16 "40-6-117. Enforcement of judgment or order. (1) If  
 17 existence of the father and child relationship is declared  
 18 or paternity or a duty of support has been acknowledged or  
 19 adjudicated under this part or under prior law, the court  
 20 may order support payments to be made to the mother, the  
 21 clerk of the court, or a person, corporation, or agency  
 22 designated to administer them for the benefit of the child  
 23 under the supervision of the court.

24 (2) Willful failure to obey the judgment or order of  
 25 the court is a civil contempt of the court. All remedies for

1 the enforcement of judgments apply.

2 (3) Child-support-ordered-on-behalf-of--a--minor--child  
 3 must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT  
 4 ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST  
 5 INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid  
 6 to:

- 7 (a)(I) the legal custodian of the minor child;
- 8 (b)--(i)(II) (A) any other person, organization, or  
 9 agency having legal physical custody of the minor child or  
 10 collecting child support on behalf of the minor child under  
 11 a legal assignment of rights; or
- 12 (ii)(B) the court for the benefit of the minor child;
- 13 (c)(III) any other person or agency designated as  
 14 caretaker of the minor child by agreement of the legal  
 15 custodian; or

16 (d)(IV) any assignee or other person, organization, or  
 17 agency authorized to receive or collect child support.

18 (B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE  
 19 PROVISION REQUIRED BY SUBSECTION (3)(A) IS SUBJECT TO THE  
 20 REQUIREMENTS OF SUBSECTION (3)(A) WITHOUT NEED FOR AN  
 21 AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY  
 22 FURTHER ACTION BY THE COURT."

23 **Section 24.** Section 53-2-613, MCA, is amended to read:

24 "53-2-613. Application for assistance -- assignment of  
 25 support rights. (1) Applications for public assistance,

1 including but not limited to aid to families with dependent  
 2 children and medical assistance, must be made to the county  
 3 department of public welfare in the county in which the  
 4 person is residing. The application shall must be submitted,  
 5 in the manner and form prescribed by the department of  
 6 social and rehabilitation services, and shall must contain  
 7 information required by the department of social and  
 8 rehabilitation services.

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

16 (3) The assignment:

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

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

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

25 (4) Whenever a support obligation is assigned to the

1 department of social and rehabilitation services pursuant to  
 2 this section, the following provisions apply:

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

8 (b) No A recipient or former recipient of public  
 9 assistance may not commence or maintain an action to recover  
 10 a delinquent support obligation without notifying the  
 11 department department's child support enforcement division.  
 12 The department may then release or relinquish its assigned  
 13 interest or enter the proceeding. This subsection (4)(b)  
 14 does not limit the right of any person to recover money not  
 15 assigned.

16 (c) If a notice of assigned interest is filed with the  
 17 district court, the clerk of the court may not pay over or  
 18 release for the benefit of any recipient or former recipient  
 19 of public assistance any amounts received pursuant to a  
 20 judgment or decree or an order of the court until the  
 21 department department's child support enforcement division  
 22 has filed a written notice that:

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

25 (ii) all assigned support delinquencies, if any, are

1 satisfied or released.

2 (d) No A recipient or former recipient of public  
 3 assistance may not take action to modify or make any  
 4 agreement to modify, settle, or release any past, present,  
 5 or future support obligation unless the department  
 6 department's child support enforcement division is given  
 7 written notice and an opportunity to participate. Any  
 8 modifications or agreements entered into without the  
 9 participation of the department are void with respect to the  
 10 state, the department of ~~social and rehabilitation services~~,  
 11 and the county welfare department."

12 NEW SECTION. Section 25. Child support payments to  
 13 follow the child. Child-support-ordered-on-behalf-of-a-minor  
 14 child-must (1) A SUPPORT ORDER ISSUED OR MODIFIED UNDER THIS  
 15 PART MUST CONTAIN A PROVISION REQUIRING THE CHILD SUPPORT TO  
 16 be paid to:

17 ~~{1}~~(A) the legal custodian of the minor child;

18 ~~{2}~~--~~{a}~~(B) (I) any other person, organization, or  
 19 agency having legal physical custody of the minor child or  
 20 collecting child support on behalf of the minor child under  
 21 a legal assignment of rights; or

22 {b}(II) the court for the benefit of the minor child;

23 ~~{3}~~(C) any other person or agency designated as  
 24 caretaker of the minor child by agreement of the legal  
 25 custodian; or

1 ~~{4}~~(D) any assignee or other person, organization, or  
 2 agency authorized to receive or collect child support.

3 (2) AN ORDER THAT OMITTS THE PROVISION REQUIRED BY  
 4 SUBSECTION (1) IS SUBJECT TO THE REQUIREMENTS OF SUBSECTION  
 5 (1) WITHOUT NEED FOR AN AMENDMENT TO THE ORDER OR FOR ANY  
 6 FURTHER ACTION BY THE DEPARTMENT.

7 NEW SECTION. Section 26. Lien against real and  
 8 personal property -- effect of lien -- interest -- warrant  
 9 for distraint. (1) There is a support lien on the real and  
 10 personal property of an obligor:

11 (a) when the department has entered a final decision in  
 12 a contested case under this chapter that finds the obligor  
 13 owes a sum certain debt either to this department or to an  
 14 obligee, or both; or

15 (b) upon registration under 40-5-271 of a support order  
 16 that includes finding that the obligor owes a sum certain  
 17 amount of delinquent support.

18 (2) A support lien is for the amount required to  
 19 satisfy:

20 (a) the sum certain debt shown in a final decision in a  
 21 contested case under this chapter or the sum certain support  
 22 debt included in any support order registered under  
 23 40-5-271;

24 (b) interest claimed under this section; and

25 (c) any fees that may be due under 40-5-210.



1 (3) A support lien has the priority of a secured  
 2 creditor from the date the lien is perfected as provided by  
 3 this section; however, the lien is subordinate to:

4 (a) any prior perfected lien or security interest;

5 (b) a mortgage, the proceeds of which are used by an  
 6 obligor to purchase real property; or

7 (c) any perfected purchase money security interest, as  
 8 defined in 30-9-107.

9 (4) Support liens remain in effect until the  
 10 delinquency upon which the lien is based is satisfied or  
 11 until 2 years after the child to whom the support lien is  
 12 related attains the age of majority, whichever occurs first.

13 (5) The lien applies to all real and personal property  
 14 owned by the obligor, if it can be located in the state. The  
 15 lien applies to all real and personal property that the  
 16 obligor can afterward acquire.

17 (6) The department shall keep a record of support liens  
 18 asserted under this section in the registry of support  
 19 orders established by 40-5-271.

20 (a) Except as provided by subsection (7) for motor  
 21 vehicle liens, a support lien is perfected upon filing the  
 22 lien with the department's registry.

23 (b) The department shall make information about a  
 24 support lien available to any interested person or entity  
 25 AND TO THE CLERK AND RECORDER OF EACH COUNTY IN WHICH REAL

1 ESTATE IS LOCATED IN WHICH THE OBLIGOR HAS AN INTEREST.

2 (c) A support lien filed with the department's registry  
 3 constitutes constructive notice to a purchaser of real  
 4 property from an obligor.

5 (d) Except as provided by subsection (7), a lien  
 6 against an obligor's personal property is not effective  
 7 against any person, firm, corporation, association,  
 8 political subdivision, or agency of the state in possession  
 9 of the obligor's personal property until the department  
 10 serves a notice of the lien to the person or entity.

11 (E) EXCEPT AS PROVIDED IN SUBSECTION (7), A BUYER FOR  
 12 VALUE OF AN OBLIGOR'S PERSONAL PROPERTY WHO BUYS IN GOOD  
 13 FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE  
 14 PROPERTY FREE OF THE SUPPORT LIEN.

15 (7) A support lien may be asserted against any motor  
 16 vehicle, as defined in 61-1-102, as follows:

17 (a) When an obligor is the owner of a motor vehicle,  
 18 the department may SHALL give notice of the support lien to  
 19 the department of justice as provided in 61-3-103(6). A  
 20 notice of support lien filed with the department of justice  
 21 constitutes constructive notice of the lien to subsequent  
 22 purchasers or encumbrancers of a motor vehicle from the  
 23 obligor, commencing from the date the notice is delivered to  
 24 the department of justice.

25 (b) (i) To assert a support lien on motor vehicles of .

1 which an obligor may later acquire ownership, the department  
 2 may, each month, prepare and submit to the department of  
 3 justice a list of obligors against whom there is a support  
 4 lien. The list must identify each obligor by name,  
 5 last-known address, amount of lien, social security number,  
 6 if known, and any other identifying information needed by  
 7 the department of justice to identify the obligor.

8 (ii) The department of justice shall, before issuing a  
 9 certificate of ownership for any motor vehicle, determine  
 10 whether the name of the person applying for the certificate  
 11 is on the most recent monthly support lien list. If the  
 12 person's name is on the list, the department of justice  
 13 shall enter a lien on the certificate of ownership under the  
 14 name of the department as lienholder.

15 (c) The department shall reimburse the department of  
 16 justice for reasonable costs incurred by the department of  
 17 justice in implementing this subsection (7).

18 (8) (a) The department may charge interest on the  
 19 support lien at the rate of 1% per month.

20 (b) Interest accrues at the close of the business day  
 21 on the last day of each month and is calculated by  
 22 multiplying the unpaid balance of the lien, including prior  
 23 accrued interest existing at the end of the day, by the  
 24 applicable rate of interest.

25 (c) A provision of this section may not be construed to

1 require the department to maintain interest balance due  
 2 accounts. The department may waive interest if waiver would  
 3 facilitate the collection of the debt.

4 (d) Interest under this subsection (8) is in addition  
 5 to and not in substitution for any other interest accrued or  
 6 accruing under any other provision of law.

7 (9) (a) Upon receiving payment in full of the amount of  
 8 the lien plus interest and fees, if any, the department  
 9 shall take all necessary steps to release the support lien.

10 (b) Upon receiving partial payment of the support lien  
 11 or if the department determines that a release or partial  
 12 release of the lien will facilitate the collection of  
 13 support arrearages, the department may release or partially  
 14 release the support lien. The department may release the  
 15 support lien if it determines that the lien is  
 16 unenforceable.

17 (10) A support lien under this section is in addition to  
 18 any other lien created by law.

19 (11) A support lien under this section may not be  
 20 discharged in bankruptcy.

21 (12) Support liens provided for by this section may be  
 22 enforced or collected through the warrant for distraint  
 23 provided for by 40-5-247.

24 NEW SECTION. **Section 27.** Payment of debts to  
 25 department. If money is due and owing the department, a

1 payment due under Title 40, chapter 5, parts 2 or 4, or  
2 under this chapter that is accompanied by or bears any  
3 notation by the debtor that the payment represents payment  
4 in full is not full payment, notwithstanding the  
5 department's acceptance of the payment, unless there is  
6 additional written agreement, signed by the department, that  
7 the payment is payment in full.

8 **NEW SECTION. Section 28. Repealer.** Sections 40-5-241,  
9 40-5-245, and 40-5-246, MCA, are repealed.

10 **NEW SECTION. Section 29. Codification instruction.** (1)  
11 [Sections ~~26-and-27~~ 25 AND 26] are intended to be codified  
12 as an integral part of Title 40, chapter 5, part 2, and the  
13 provisions of Title 40, chapter 5, part 2, apply to  
14 [sections ~~26-and-27~~ 25 AND 26].

15 (2) [Section ~~28~~ 27] is intended to be codified as an  
16 integral part of Title 53, chapter 2, part 1, and the  
17 provisions of Title 53, chapter 2, part 1, apply to [section  
18 ~~28~~ 27].

19 **NEW SECTION. Section 30. Severability.** If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.

-End-

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 335 and recommend as follows:

1. Title, page 2, line 4.  
Strike: "40-5-118,"
2. Page 15, line 4 through page 16, line 20.  
Strike: section 8 in its entirety  
Renumber: subsequent sections
3. Page 30, line 7.  
Following: "obligee"  
Strike: remainder of line 7 through "assistance"
4. Page 46, line 6.  
Strike: "25"  
Insert: "25"
5. Page 63, line 20 through page 65, line 17.  
Strike: subsections (6)(a) through (7)(c) in their entirety  
Insert: "(7) A support lien is perfected:  
(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;  
(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;  
(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.  
(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien."

Renumber: subsequent subsections

ADOPT

REJECT

6. Page 66, line 4.  
Strike: "(8)"  
Insert: "(9)"

7. Page 67, lines 11 and 14.  
Strike: "25 AND 26"  
Insert: "24 and 25"

8. Page 67, lines 15 and 18.  
Strike: "27"  
Insert: "26"

And this Free Conference Committee report be adopted.

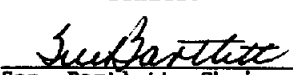
For the House:

  
Rep. Liz Smith, Chair

  
Rep. Bohlinger

  
Rep. Toole

For the Senate:

  
Sen. Bartlett, Chair

  
Sen. Doherty

  
Sen. Harp

## HOUSE BILL NO. 335

INTRODUCED BY TOOLE, BOHARSKI, KASTEN, J. RICE,

S. RICE, BOHLINGER, YELLOWTAIL,

WATERMAN, L. NELSON, PETERSON

BY REQUEST OF THE DEPARTMENT OF

SOCIAL AND REHABILITATION SERVICES

1 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
 2 CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND  
 3 EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;  
 4 PROVIDING FOR ADDITIONAL FEES; ~~STATUTORIBY-APPROPRIATING~~  
 5 ~~FEES-AND-PENALTIES~~; REQUIRING NOTICE TO THE CHILD SUPPORT  
 6 ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND  
 7 REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE  
 8 DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE  
 9 AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY;  
 10 EXTENDING SERVICES TO CHILDREN OVER AGE 18; ~~REQUIRING~~  
 11 ~~PRIVATE-INDIVIDUALS, ORGANIZATIONS, AND BUSINESSES TO SHARE~~  
 12 ~~CERTAIN--INFORMATION~~; ALLOWING CHILD SUPPORT PAYMENTS TO  
 13 FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON  
 14 REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE  
 15 CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES  
 16 OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO  
 17 DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE  
 18 OBLIGEEES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE

1 PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF  
 2 LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY  
 3 PERIODS; AMENDING SECTIONS ~~17-7-502~~, 25-9-301, 25-9-302,  
 4 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, ~~40-5-110~~  
 5 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224,  
 6 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255,  
 7 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND  
 8 REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA."

9  
 10 WHEREAS, it is necessary to draft a composite bill  
 11 containing unrelated sections in order to present the  
 12 proposed program improvements in a single, comprehensive  
 13 bill that promotes the needs of legislative energy,  
 14 efficiency, and economy by limiting the number of possible  
 15 bills and by reducing the need for hearings and readings on  
 16 those bills.

17 THEREFORE, the Legislature finds it appropriate to enact  
 18 the following legislation.

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

21 ~~Section 1. Section 17-7-502, MCA, is amended to read:--~~  
 22 ~~"17-7-502. Statutory appropriations-----definition---~~  
 23 ~~requisites-for-validity. (1) A statutory appropriation is an~~  
 24 ~~appropriation made by permanent law that authorizes spending~~  
 25 ~~by a state agency without the need for a biennial~~

legislative appropriation or budget amendment;

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3);

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section;

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-10-012; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-004; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-011; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 40-5-210; 40-5-226; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-110; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-000; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;

90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306;

(4) There is a statutory appropriation to pay the principal interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana, Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments; (in subsection (3) pursuant to sec. 7-2-567; by 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 107-2-740; by 1991, the inclusion of 22-3-011 terminates June 30, 1993.)"

Section 1. Section 25-9-301, MCA, is amended to read:

"25-9-301. Docketing of judgment -- lien -- expiration.

(1) Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by him the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him the

1 judgment debtor at the time or which he the judgment debtor  
 2 may afterward acquire until the lien ceases. The Except as  
 3 provided in subsection (3), the lien continues for 6 years  
 4 unless the judgment be is previously satisfied.

5 (3) When the judgment is for the payment of child or  
 6 spousal support, the lien continues for 10 years from the  
 7 termination of the support obligation unless the judgment is  
 8 previously satisfied."

9 **Section 2.** Section 25-9-302, MCA, is amended to read:

10 **"25-9-302. Filing of transcript of docket in another**  
 11 **county -- lien -- expiration. (1) A transcript of the**  
 12 **original docket, certified by the clerk, may be filed with**  
 13 **the district court clerk of any other county; and from the**  
 14 **time of the filing, the judgment becomes a lien upon all**  
 15 **real property of the judgment debtor, not exempt from**  
 16 **execution, in such that county, owned by him the judgment**  
 17 **debtor at the time or which he the judgment debtor may**  
 18 **afterward and before the lien expires acquire. The Except as**  
 19 **provided in subsection (2), the lien continues for 6 years**  
 20 **unless the judgment be is previously satisfied.**

21 (2) When the judgment is for the payment of child or  
 22 spousal support, the lien continues for 10 years from the  
 23 termination of the support obligation unless the judgment is  
 24 previously satisfied."

25 **Section 3.** Section 25-9-303, MCA, is amended to read:

1 **"25-9-303. Filing of transcript of docket of federal**  
 2 **court -- lien -- expiration. (1) A transcript of the**  
 3 **original docket of any judgment rendered in the circuit or**  
 4 **district court of the United States, ninth circuit, district**  
 5 **of Montana, certified by the clerk of said court, may be**  
 6 **filed with the district court clerk of any county; and from**  
 7 **the time of the filing, the judgment becomes a lien upon all**  
 8 **real property of the judgment debtor, not exempt from**  
 9 **execution, in such the county, owned by him the judgment**  
 10 **debtor at the time or which he the judgment debtor may**  
 11 **afterward and before the lien expires acquire. The Except as**  
 12 **provided in subsection (2), the lien shall---continue**  
 13 **continues for 6 years unless the judgment be is previously**  
 14 **satisfied.**

15 (2) When the judgment is for the payment of child or  
 16 spousal support, the lien continues for 10 years from the  
 17 termination of the support obligation unless the judgment is  
 18 previously satisfied."

19 **Section 4.** Section 25-13-101, MCA, is amended to read:

20 **"25-13-101. Time limit for issuing execution. (1) The**  
 21 **Except as provided in subsection (2), the party in whose**  
 22 **favor the judgment is given may, at any time within 6 years**  
 23 **after the entry thereof, have a writ of execution issued for**  
 24 **its enforcement.**

25 (2) When the judgment is for the payment of child or

1 spousal support, the party in whose favor the judgment is  
 2 given may, at any time within 10 years after the termination  
 3 of the support obligation, have a writ of execution issued  
 4 for its enforcement."

5 **Section 5.** Section 27-2-201, MCA, is amended to read:

6 "27-2-201. **Actions upon judgments.** (1) The Except as  
 7 provided in subsection (3), the period prescribed for the  
 8 commencement of an action upon a judgment or decree of any  
 9 court of record of the United States or of any state within  
 10 the United States is within 10 years.

11 (2) The period prescribed for the commencement of an  
 12 action upon a judgment or decree rendered in a court not of  
 13 record is within 5 years. The cause of action is deemed  
 14 considered, in such that case, to have accrued when final  
 15 judgment was rendered.

16 (3) The period prescribed for the commencement of an  
 17 action to collect past-due child or-spousal support that has  
 18 accrued after October 1, 1993, under an order entered by a  
 19 court of record or administrative authority is within 10  
 20 years of the termination of support obligation."

21 **Section 6.** Section 27-2-211, MCA, is amended to read:

22 "27-2-211. **Actions to enforce penalty or forfeiture or**  
 23 **other statutory liability.** (1) Within 2 years is the period  
 24 prescribed for the commencement of an action upon:

25 (a) a statute for a penalty or forfeiture when the

1 action is given to an individual or to an individual and the  
 2 state, except when the statute imposing it prescribes a  
 3 different limitation;

4 (b) a statute or an undertaking in a criminal action  
 5 for a forfeiture or penalty to the state;

6 (c) a liability created by statute other than:

7 (i) a penalty or forfeiture; or

8 (ii) a statutory debt created by the payment of public  
 9 assistance.

10 (2) The period prescribed for the commencement of an  
 11 action by a municipal corporation for the violation of any  
 12 city or town ordinance is within 1 year.

13 (3) Notwithstanding any other provision of this  
 14 chapter, actions against directors or stockholders of a  
 15 corporation to recover a penalty or forfeiture imposed or to  
 16 enforce a liability created by law must be brought within 3  
 17 years after the discovery by the aggrieved party of the  
 18 facts upon which the penalty of forfeiture attached or the  
 19 liability was created.

20 (4) Unless fraud is involved or unless a support  
 21 obligation has been entered, an action to enforce a  
 22 statutory debt created by the payment of public assistance  
 23 must be brought within 5 years from the date the debt  
 24 arises. If fraud is involved, an action must be brought  
 25 within 5 years of the discovery of the fraud. If a support



1 obligation has been entered, an action must be brought  
 2 within 10 years of the termination of support obligation."

3 **Section 7.** Section 40-4-204, MCA, is amended to read:

4 **"40-4-204.** Child support -- orders to address health  
 5 insurance -- withholding of child support. (1) In a  
 6 proceeding for dissolution of marriage, legal separation,  
 7 maintenance, or child support, the court shall order either  
 8 or both parents owing a duty of support to a child to pay an  
 9 amount reasonable or necessary for ~~his~~ the child's support,  
 10 without regard to marital misconduct.

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

13 (a) the financial resources of the child;

14 (b) the financial resources of the custodial parent;

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

17 (d) the physical and emotional condition of the child  
 18 and ~~his~~ the child's educational and medical needs;

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

21 (f) the age of the child;

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

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

25 (i) the needs of any person, other than the child, whom

1 either parent is legally obligated to support.

2 (3) (a) Whenever a court issues or modifies an order  
 3 concerning child support, the court shall determine the  
 4 child support obligation by applying the standards in this  
 5 section and the uniform child support guidelines adopted by  
 6 the department of social and rehabilitation services  
 7 pursuant to 40-5-209, unless the court finds by clear and  
 8 convincing evidence that the application of the standards  
 9 and guidelines is unjust to the child or to any of the  
 10 parties or is inappropriate in that particular case.

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

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

20 (4) Each district court judgment, decree, or order  
 21 establishing a final child support obligation under this  
 22 title and each modification of a final order for child  
 23 support 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 decree, or order may contain a provision requiring that  
 5 coverage for the child or children be continued or obtained.

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

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

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

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

24 (5) (a) Unless the court makes a written exception  
 25 under 40-5-315 or 40-5-411 and the exception is included in

1 the support order, a support obligation established by  
 2 judgment, decree, or order under this section, whether  
 3 temporary or final, and each modification of an existing  
 4 support obligation under 40-4-208 must be enforced by  
 5 immediate or delinquency income withholding, or both, under  
 6 Title 40, chapter 5, part 3 or 4. A support order that omits  
 7 the written exceptions provided in 40-5-315 or 40-5-411 or  
 8 that provides for a payment arrangement inconsistent with  
 9 this section is nevertheless subject to withholding for the  
 10 payment of support without need for an amendment to the  
 11 support order or for any further action by the court.

12 (b) If an obligor is exempt from immediate income  
 13 withholding, the district court judgment or order must  
 14 include a warning statement that if the obligor is  
 15 delinquent in the payment of support, the obligor's income  
 16 may be subject to income withholding procedures under Title  
 17 40, chapter 5, part 3 or 4. Failure to include a warning  
 18 statement in a judgment or order does not preclude the use  
 19 of withholding procedures.

20 (c) After October 1, 1993, if a support order subject  
 21 to income withholding is expressed in terms of a monthly  
 22 obligation, the order may be annualized and withheld on a  
 23 weekly or biweekly basis, corresponding to the obligor's  
 24 regular pay period.

25 (6) For the purposes of income withholding under

1 subsection (5), every district court judgment, decree, or  
 2 order that establishes or modifies a child support  
 3 obligation must include a provision requiring the parent  
 4 obligated to pay support to inform the court and, if the  
 5 department of social and rehabilitation services is  
 6 providing services under Title IV-D of the Social Security  
 7 Act for the enforcement of the judgment, decree, or order,  
 8 the department, of the following:

9 (a) the name and address of the parent's current  
 10 employer;

11 (b) whether the parent has access to health insurance  
 12 through an employer or other group; and

13 (c) if insurance coverage is available, the health  
 14 insurance policy information.

15 (7) If the department of social and rehabilitation  
 16 services is providing or later provides support enforcement  
 17 services under Title IV-D of the Social Security Act, each  
 18 district court order or modification of an order must  
 19 contain a statement providing that the noncustodial parent,  
 20 without further order of the court, is required to obtain  
 21 and maintain health insurance coverage as provided in  
 22 40-5-208. Failure to include a warning statement in the  
 23 judgment or order does not preclude the imposition of  
 24 sanctions under 40-5-208.

25 (8) Each district court judgment, decree, or order

1 establishing a final child support obligation under this  
 2 part and each modification of a final order for child  
 3 support must contain a statement that the order is subject  
 4 to review and modification by the department of social and  
 5 rehabilitation services upon the request of the department  
 6 or a party under 40-5-271 through 40-5-273 when the  
 7 department is providing services under Title IV-D of the  
 8 Social Security Act for the enforcement of the order.

9 ~~(9) Child support ordered on behalf of a minor child~~  
 10 must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT  
 11 ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST  
 12 INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid  
 13 to:

14 ~~(a)~~(I) the legal custodian of the minor child;

15 ~~(b)~~~~(i)~~(II) (A) any other person, organization, or  
 16 agency having legal physical custody of the minor child  
 17 under a legal assignment of rights; or

18 ~~(ii)~~(B) the court for the benefit of the minor child;

19 ~~(c)~~(III) any other person or agency designated as  
 20 caretaker of the minor child by agreement of the legal  
 21 custodian; or

22 ~~(d)~~(IV) any assignee or other person, organization, or  
 23 agency authorized to receive or collect child support.

24 (B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE  
 25 PROVISION REQUIRED BY SUBSECTION (9)(A) IS SUBJECT TO THE

1 REQUIREMENTS OF SUBSECTION (9)(A) WITHOUT NEED FOR AN  
2 AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY  
3 FURTHER ACTION BY THE COURT."

4 **Section 8.** Section 40-5-118, MCA, is amended to read:

5 "40-5-118. State information agency: (1) The state  
6 department of social and rehabilitation services is  
7 designated as the state information agency under this part.

8 (2) It shall:

9 (a) compile a list of the courts and their addresses in  
10 this state having jurisdiction under this part and transmit  
11 it to the state information agency of every other state  
12 which that has adopted this or a substantially similar law;  
13 and upon the adjournment of each session of the legislature  
14 the agency shall distribute copies of any amendments to this  
15 part and a statement of their effective date to all other  
16 state information agencies;

17 (b) maintain a register of lists of courts received  
18 from other states and transmit furnish, upon request, copies  
19 thereof of the list promptly to every court in this state  
20 having jurisdiction under this part; and

21 (c) forward to the court in this state which has  
22 jurisdiction over the obligor or his property petitions,  
23 certificates, and copies of the reciprocal enforcement of  
24 support act it receives from courts or information agencies  
25 of other states;

1 (3) If the state information agency does not know the  
2 location of the obligor or his property in the state and no  
3 state location service is available, it shall use all means  
4 at its disposal to obtain this information, including the  
5 examination of official records in the state and other  
6 sources such as telephone directories, real property  
7 records, vital statistics records, police records, requests  
8 for the name and address from employers who are able or  
9 willing to cooperate, records of motor vehicle license  
10 offices, requests made to the tax offices both state and  
11 federal where such offices are able to cooperate, and  
12 requests made to the social security administration as  
13 permitted by the Social Security Act, as amended;

14 (4) After the deposit of three copies of the petition  
15 and certificate and one copy of the reciprocal enforcement  
16 of support act of the initiating state with the clerk of the  
17 appropriate court, if the state information agency knows or  
18 believes that the prosecuting attorney is not prosecuting  
19 the case diligently, it shall inform the attorney general  
20 who may undertake the representation."

21 **Section 8.** Section 40-5-201, MCA, is amended to read:

22 "40-5-201. Definitions. As used in this part, the  
23 following definitions apply:

24 (1) "Alleged father" means a man who is alleged to have  
25 engaged in sexual intercourse with a child's mother during a

1 possible time of conception of the child or a man who is  
2 presumed to be a child's father under the provisions of  
3 40-6-105.

4 (2) (a) "Child" means any person under 18 years of age  
5 who is not otherwise emancipated, self-supporting, married,  
6 or a member of the armed forces of the United States, any  
7 person under 19 years of age and still in high school, or  
8 any person who is mentally or physically incapacitated if  
9 the incapacity began prior to the person's 18th birthday and  
10 for whom:

11 (i) support rights are assigned under 53-2-613;  
12 (ii) a public assistance payment has been made;  
13 (iii) the department is providing support enforcement  
14 services under 40-5-203; or  
15 (iv) the department has received a referral for  
16 interstate services from an agency of another state under  
17 the provisions of the Uniform Reciprocal Enforcement of  
18 Support Act or under Title IV-D of the Social Security Act.

19 (b) Child may not be construed to limit the ability of  
20 the department to enforce a support order according to its  
21 terms when the order provides for support to extend beyond  
22 the child's 18th birthday.

23 (3) "Department" means the department of social and  
24 rehabilitation services.

25 (4) "Director" means the director of the department of

1 social and rehabilitation services or his the director's  
2 authorized representative.

3 (5) "Guidelines" means the child support guidelines  
4 adopted pursuant to 40-5-209.

5 (6) "Hearing officer" or "hearing examiner" means the  
6 hearing officer appointed by the department for the purposes  
7 of this chapter.

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

11 (8) "Obligee" means:

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

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

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

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

21 (11) "Paternity blood test" means a test that  
22 demonstrates through examination of genetic markers either  
23 that an alleged father is not the natural father of a child  
24 or that there is a probability that an alleged father is the  
25 natural father of a child. Paternity blood tests may include

1 but are not limited to the human leukocyte antigen test and  
2 DNA probe technology.

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

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

11 (a) the failure to provide support to a child under the  
12 laws of this or any other state or a support order; or

13 (b) a support order for spousal maintenance if the  
14 judgment or order requiring payment of maintenance also  
15 contains a judgment or order requiring payment of child  
16 support for a child of whom the person awarded maintenance  
17 is the custodial parent.

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

21 (a) a district court of this state;

22 (b) a court of appropriate jurisdiction of another  
23 state, Indian tribe, or foreign country;

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

1 (d) an administrative agency of another state, Indian  
2 tribe, or foreign country with a hearing function and  
3 process similar to those of the department under this part.

4 (15) "IV-D" means the provisions of Title IV-D of the  
5 Social Security Act and the regulations promulgated  
6 thereunder."

7 **Section 9.** Section 40-5-202, MCA, is amended to read:

8 **"40-5-202. Department of social and rehabilitation**  
9 **services -- powers and duties regarding collection of**  
10 **support debt. (1) The department may take action under the**  
11 **provisions of this part, the abandonment or nonsupport**  
12 **statutes, the Uniform Parentage Act established in Title 40,**  
13 **chapter 6, part 1, and other appropriate state and federal**  
14 **statutes to ensure--that--the--parent--or---other---person**  
15 **responsible--pays-for-the-care, support, or maintenance-of-a**  
16 **child provide IV-D services if the department:**

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

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

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

25 (2) ~~if---the--department--is--providing--child--support~~

1 ~~enforcement services for a child under this part, the~~  
 2 ~~department becomes trustee of any cause of action of the~~  
 3 ~~child or the obligee to recover support due to the child or~~  
 4 ~~obligee from the obligor. The department may bring and~~  
 5 ~~maintain the action in its own name or in the name of the~~  
 6 ~~obligee. A verified statement, filed by the department, that~~  
 7 ~~it is providing services is prima facie evidence of its~~  
 8 ~~authority to act. The department may initiate, participate~~  
 9 ~~in, or exercise any remedy available in a judicial or an~~  
 10 ~~administrative action on the same basis as any other party.~~

11 (3) The department has the power of attorney to act in  
 12 the name of any obligee to endorse and cash any and all  
 13 drafts, checks, money orders, or other negotiable  
 14 instruments received by the department on behalf of a child.

15 (4) ~~For purposes of prosecuting any civil action, the~~  
 16 ~~department is a real party in interest if it is providing~~  
 17 ~~child support enforcement services under this part. The~~  
 18 ~~department is a party to and must be afforded notice and an~~  
 19 ~~opportunity to participate in any proceeding relating to~~  
 20 ~~paternity or to the establishment, enforcement, or~~  
 21 ~~modification of a support obligation, whether initiated by~~  
 22 ~~the obligee, the obligor, or the child. No obligee a~~  
 23 ~~recipient of services may not act to prejudice the rights of~~  
 24 ~~the department while such the services are being provided.~~

25 (5) If child support enforcement services are being or

1 have been provided under this part, no an agreement between  
 2 any obligee and any obligor either relieving an obligor of  
 3 any duty of support or purporting to settle past, present,  
 4 or future support obligations either as settlement or  
 5 prepayment may not act to reduce or terminate any rights of  
 6 the department to recover from the obligor for support debt  
 7 provided unless the department has consented to the  
 8 agreement in writing.

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

12 (7) The department is subrogated to the right of the  
 13 child or obligee to maintain any civil action or execute any  
 14 administrative remedy available under the laws of this or  
 15 any other state to collect a support debt. This right of  
 16 subrogation is in addition to and independent of the  
 17 assignment under 53-2-613 and the support debt created by  
 18 40-5-221.

19 (8) If public assistance is being or has been paid, the  
 20 department is subrogated to the debt created by a support  
 21 order and any money judgment is considered to be in favor of  
 22 the department. This subrogation is an addition to any  
 23 assignment made under 53-2-613 and applies to the lesser of:

- 24 (a) the amount of public assistance paid; or
- 25 (b) the amount due under the support order.

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

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

(11) When a person is required to give notice to, serve, or provide a written response to the department in a proceeding concerning the establishment or enforcement of child support, the notice, service, or response must be made to the department's child support enforcement division."

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

**\*40-5-206.** Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, notwithstanding any

statute making the information confidential, all state, county, and city agencies, officers, and employees and, EXCEPT AS PROVIDED IN SUBSECTION (6), all corporations, partnerships, associations, organizations, or individuals doing business in the state must provide on request any information, if known, concerning the location, income, and assets of an obligor, including:

(a) name;

(b) address of obligor's residence;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) name and address of any financial institution maintaining an account for the obligor;

(i) account number, account balances, account type, and the name under which the obligor has an interest in an account or deposit with a financial institution;

(j)(H) address of any real property owned by the obligor; and

(k)(I) any other asset in which the obligor may have an interest, including the extent, nature, and value of the interest.



1 ~~{3}--Except-as-provided-in-40-5-261--and--rules--adopted~~  
 2 ~~under--40-5-262,--any--records--established--pursuant-to-the~~  
 3 ~~provisions--of--this--section--are--available--only--to--the~~  
 4 ~~department, A-person--who--knowingly--fails--or--refuses--to~~  
 5 ~~provide--information--or--who--knowingly--provides--false-or~~  
 6 ~~incorrect-information-concerning-an-obligor, in-response--to~~  
 7 ~~a--request--by--the--department,--is-subject-to-citation-for~~  
 8 ~~contempt-under-the-provisions-of-this-part.~~

9 {4}(3) Any information obtained by the department  
 10 during the course of a child support investigation that is  
 11 confidential at the source must be treated by the department  
 12 as confidential and must be safeguarded accordingly.

13 {5}(4) Use or disclosure of information obtained by the  
 14 department from confidential sources of and information  
 15 maintained by the department in its records, including the  
 16 names, addresses, and social security numbers of obligors  
 17 and obligees, is limited to:

18 (a) purposes directly related to the provision of  
 19 services under this chapter;

20 (b) county attorneys, and courts having jurisdiction in  
 21 support and abandonment proceedings or actions or agencies  
 22 in other states engaged in the enforcement of support of  
 23 minor children as authorized by the rules of the department  
 24 and by the provisions of the federal Social Security Act;  
 25 and

1 (c) any other use permitted or required by the federal  
 2 Social Security Act.

3 {6}--IF-A-FINANCIAL-INSTITUTION-DEFINED-IN-31-1-111-AS-A  
 4 REGULATED--LENDER---POSSESSES---INFORMATION---DESCRIBED---IN  
 5 SUBSECTION--(2)(I),--(2)(J),--OR--(2)(K)--THAT--RELATES-TO-A  
 6 PERSON-WHO-IS-THE-SUBJECT-OF-AN-INQUIRY-BY--THE--DEPARTMENT,  
 7 THE-FINANCIAL-INSTITUTION-NEED-ONLY-TELL-THE-DEPARTMENT-THAT  
 8 IT---POSSESSES---INFORMATION---THE---DEPARTMENT--SEEKS,--THE  
 9 DEPARTMENT-MAY-APPLY-FOR--AN--INVESTIGATIVE--SUBPOENA--UNDER  
 10 46-4-301,--STATING--IN-THE-PROSECUTOR'S-APPIDAVIT-IN-SUPPORT  
 11 OF-THE-SUBPOENA-THAT-ASSETS-OR-RESOURCES-OF-THE--OBLIGOR--DO  
 12 OR-MAY-EXIST-AND-THAT-THE-ADMINISTRATION-OF-JUSTICE-REQUIRES  
 13 THE-FINANCIAL-INSTITUTION-TO-DISCLOSE-THE-INFORMATION."

14 **Section 11.** Section 40-5-208, MCA, is amended to read:

15 **"40-5-208. Medical support -- obligation enforcement --**  
 16 **sanctions. (1) (a)** In any proceeding initiated pursuant to  
 17 this part to establish a child support order, whether final  
 18 or temporary, and in each modification of an existing order,  
 19 the department shall require the obligor to obtain and  
 20 maintain health insurance coverage for each child if health  
 21 insurance coverage is available through the obligor's  
 22 employment or other group health insurance plan. The order  
 23 or modification of an order must include a statement that  
 24 the insurance must be obtained and maintained whenever the  
 25 department is providing support enforcement services and

1 that the failure to do so may result in the imposition of  
2 sanctions under this section.

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 (3) (a) The department may issue a notice commanding  
6 the obligor to appear at a hearing held by the department  
7 and show cause why a sum of not more than \$100 should not be  
8 assessed for each month health insurance coverage is not  
9 secured or maintained if the department determines an  
10 obligor has failed to:

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

13 (ii) provide information required under this section.

14 (b) If the department finds, after hearing or the  
15 obligor's failure to appear, that health insurance coverage  
16 has not been obtained or maintained or that the obligor has  
17 failed to provide the information required, the department  
18 may assess against the obligor not more than \$100 for each  
19 month health insurance coverage has not been obtained or  
20 maintained or for each month information has not been  
21 provided. Such The amounts may be enforced by any  
22 administrative remedy available to the department for the  
23 enforcement of child support obligations, including warrant  
24 for distraint provided for in ~~40-5-241~~ 40-5-247 and income  
25 withholding provided for in Title 40, chapter 5, part 4.

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

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

8 **Section 12.** Section 40-5-210, MCA, is amended to read:

9 "40-5-210. Standardized fee schedule -- rules. (1) The  
10 department ~~shall by rule establish a standardized schedule~~  
11 ~~of fees for the recovery of administrative costs and~~  
12 ~~expenses of child support enforcement. The fees may be~~  
13 ~~recovered from an obligor if the obligor's failure or~~  
14 ~~refusal to support a child makes it necessary for the~~  
15 ~~department to provide child support enforcement services~~  
16 ~~under this part. The fees must be commensurate with costs or~~  
17 ~~an average of the expenditures related to specific or~~  
18 ~~routine activities~~ may charge an application fee to each  
19 person applying for services under 40-5-203, except that the  
20 fee may not be charged to persons who receive continuing  
21 services under 40-5-203(3). The application fee may be:

22 (a) a flat dollar amount; or

23 (b) an amount based on a sliding fee schedule that is  
24 based on the applicant's income level.

25 (2) The department may charge a handling fee for each

1 payment of support collected on behalf of any obligee who is  
2 not a recipient of public assistance. The department may  
3 withhold the fee from the support payment before  
4 distribution to the obligee.

5 (3) The department may charge an obligor a late payment  
6 fee for each late payment of support collected on behalf of  
7 any obligee who is not a recipient of public assistance.

8 (4) The department may establish a fee schedule in  
9 order to recover costs and expenses in excess of the  
10 application, handling, and late fees. The fees must be  
11 commensurate with costs or an average of the expenditures  
12 related to specific or routine activities.

13 (a) The department shall develop procedures for  
14 determining whether it is appropriate for either the obligor  
15 or the obligee to be responsible for payment of the fee. In  
16 developing the procedures, the department shall consider  
17 federal regulations promulgated under Title IV-D of the  
18 Social Security Act.

19 (b) ~~(2)~~ In an action to establish paternity or to  
20 establish or enforce a child support obligation, whether in  
21 district court or by administrative process, the department  
22 must be awarded costs in the amount established in the fee  
23 schedule as part of any judgment, decree, or order in which  
24 whenever the department:

25 (i) is the a prevailing party in the action; or

1 (ii) is not a party but incurs expenses and costs  
 2 related to the action.

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

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

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

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

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

17 (5) The department may collect the fees awarded under  
 18 this section by one of the following means:

19 (a) if the fee is owed by an obligor, the fee may be:  
 20 (i) collected through any remedy available to the  
 21 department for the collection of child support arrearages;  
 22 or

23 (ii) deducted from any payments made by the obligor  
 24 before the payment is distributed to the obligee. Credit for  
 25 the payment must be reduced by the amount of the deduction

1 for the fee. The deduction for fees may not reduce any  
 2 current support due to the obligee. The deduction for a late  
 3 payment fee may not reduce any current or past-due support  
 4 due to the obligee.

5 (b) if the fee is owed by the obligee, the fee may be  
 6 collected separately through any remedy available to the  
 7 department for the collection of child support or the  
 8 department may withhold the fee amount out of any payment  
 9 collected on behalf of the obligee. The obligor must receive  
 10 full credit for the payment as if the withholding of fees  
 11 did not occur.

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

14 (7) The department may adopt rules necessary to  
 15 implement fee schedules under this section.

16 ~~(8) The department may retain any fees collected under~~  
 17 ~~this section to help offset administrative costs and~~  
 18 ~~expenses of operating the child support enforcement program.~~  
 19 ~~For this purpose, the fees are statutorily appropriated as~~  
 20 ~~provided in 17-7-502 THE FEES AND COSTS CHARGED AND~~  
 21 ~~COLLECTED UNDER THIS SECTION MUST BE PAID MONTHLY INTO THE~~  
 22 ~~STATE TREASURY TO THE CREDIT OF THE CHILD SUPPORT~~  
 23 ~~ENFORCEMENT DIVISION SPECIAL REVENUE FUND AND MUST BE~~  
 24 ~~ACCOMPANIED BY A DETAILED STATEMENT OF THE AMOUNTS~~  
 25 ~~COLLECTED."~~

1       **Section 13.** Section 40-5-224, MCA, is amended to read:  
 2       "40-5-224. Finding of support liability based upon  
 3 payment of public assistance -- warrant for distraint --  
 4 bond to release warrant -- action to collect. (1) If the  
 5 department reasonably believes that the obligor is not a  
 6 resident of this state or is about to move from this state  
 7 or has ~~concealed-himself~~ hidden, absconded, ~~absented-himself~~  
 8 or left, or has removed or is about to remove, secrete,  
 9 waste, or otherwise dispose of property ~~which~~ that could be  
 10 made subject to collection action to satisfy the support  
 11 debt, the department may issue a warrant for distraint  
 12 pursuant to ~~40-5-241~~ 40-5-247 during the pendency of the  
 13 fair hearing or ~~thereafter~~ after the hearing, whether or not  
 14 appealed. ~~No-further~~ Further action may not be taken on the  
 15 warrant until final determination after fair hearing or  
 16 appeal. The department shall make and file in the record of  
 17 the fair hearing an affidavit stating the reasons upon which  
 18 the belief is founded. The obligor may furnish a bond, not  
 19 to exceed the amount of the support debt, during pendency of  
 20 the hearing or ~~thereafter~~ after the hearing, and in such  
 21 that case warrants issued must be released. If the decision  
 22 resulting from the hearing is in favor of the obligor, all  
 23 warrants issued must be released.  
 24       (2) The department may commence action under the  
 25 provisions of this part to collect the support debt on the

1 date of issuance of the decision resulting from the  
 2 hearing."

3       **Section 14.** Section 40-5-226, MCA, is amended to read:  
 4       "40-5-226. Administrative hearing -- nature -- place --  
 5 time -- determinations -- failure to appear -- entry of  
 6 final decision and order. (1) The administrative hearing is  
 7 defined as a "contested case".  
 8       (2) At the discretion of the hearing officer, the  
 9 administrative hearing may be held:  
 10       (a) in the county of residence or other county  
 11 convenient to the obligor or obligee; or  
 12       (b) in the county in which the department or any of its  
 13 offices are located.  
 14       (3) If a hearing is requested, it must be scheduled  
 15 within 20 days.  
 16       (4) The hearing officer shall determine the liability  
 17 and responsibility, if any, of the obligor under the notice  
 18 and shall enter a final decision and order in accordance  
 19 with such the determination.  
 20       (5) If the obligor fails to appear at the hearing or  
 21 fails to timely request a hearing, the hearing officer, upon  
 22 a showing of valid service, shall enter a decision and order  
 23 declaring the amount stated in the notice to be final.  
 24       (6) In a hearing to determine financial responsibility,  
 25 the monthly support responsibility must be determined in

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

5 (7) Within 20 days of the hearing, the hearing officer  
6 shall enter a final decision and order. The determination of  
7 the hearing officer constitutes a final agency decision,  
8 subject to judicial review under 40-5-253 and the provisions  
9 of the Montana Administrative Procedure Act.

10 (8) A support order entered under this part must  
11 contain a statement that the order is subject to review and  
12 modification by the department upon the request of the  
13 department or a party under 40-5-271 through 40-5-273 when  
14 the department is providing services under IV-D for the  
15 enforcement of the order.

16 (9) A support debt determined pursuant to this section  
17 is subject to collection action without further necessity of  
18 action by the hearing officer.

19 (10) A support debt or a support responsibility  
20 determined under this part by reason of the obligor's  
21 failure to request a hearing under this part or failure to  
22 appear at a scheduled hearing may be vacated, upon the  
23 motion of an obligor, by the hearing officer within the time  
24 provided and upon a showing of any of the grounds enumerated  
25 in the Montana Rules of Civil Procedure.

1 (11) Unless the hearing officer makes a written  
2 exception under 40-5-315 or 40-5-411 and the exception is  
3 included in the support order, every order establishing a  
4 child support obligation, whether temporary or final, and  
5 each modification of an existing child support order under  
6 this part is enforceable by immediate or delinquency income  
7 withholding, or both, under Title 40, chapter 5, part 4. A  
8 support order that omits that provision or that provides for  
9 a payment arrangement inconsistent with this section is  
10 nevertheless subject to withholding for the payment of  
11 support without need for an amendment of the support order  
12 or for any further action by the hearing officer.

13 (12) For the purposes of income withholding provided for  
14 in subsection (11), whenever the department establishes or  
15 modifies a child support obligation, the department's order  
16 must include a provision requiring the obligor, for as long  
17 as the department is providing support enforcement services,  
18 to keep the department informed of the name and address of  
19 the obligor's current employer, whether the obligor has  
20 access to health insurance through an employer or other  
21 group, and, if so, the health insurance policy information.

22 (13) The hearing officer may:

23 (a) compel obedience to the hearing officer's orders,  
24 judgments, and process and to any orders issued by the  
25 department, including income-withholding orders issued

1 pursuant to 40-5-415;

2 (b) compel the attendance of witnesses at  
3 administrative hearings;

4 (c) compel obedience of subpoenas for paternity blood  
5 tests;

6 (d) compel the production of accounts, books,  
7 documents, and other evidence; and

8 (e) punish for civil contempt. Contempt authority does  
9 not prevent the department from proceeding in accordance  
10 with the provisions of 2-4-104.

11 (14) A contempt occurs whenever:

12 (a) a person acts in disobedience of any lawful order,  
13 judgment, or process of the hearing officer or of the  
14 department;

15 (b) a person compelled by subpoena to appear and  
16 testify at an administrative hearing or to appear for  
17 genetic paternity tests fails to do so;

18 (c) a person compelled by subpoena duces tecum to  
19 produce evidence at an administrative hearing fails to do  
20 so;

21 (d) an obligor or obligee subject to a discovery order  
22 issued by the hearing officer fails to comply with discovery  
23 requests; or

24 (e) a payor under an order to withhold issued pursuant  
25 to 40-5-415 fails to comply with the provisions of the

1 order. In the case of a payor under an income-withholding  
2 order, a separate contempt occurs each time income is  
3 required to be withheld and paid to the department and the  
4 payor fails to take the required action.

5 (15) An affidavit of the facts constituting a contempt  
6 must be submitted to the hearing officer, who shall review  
7 it to determine whether there is cause to believe that a  
8 contempt has been committed. If cause is found, the hearing  
9 officer shall issue a citation requiring the alleged  
10 contemnor to appear and show cause why the alleged contemnor  
11 should not be determined to be in contempt and required to  
12 pay a penalty of not more than \$500 for each count of  
13 contempt. The citation, along with a copy of the affidavit,  
14 must be served upon the alleged contemnor either by personal  
15 service or by certified mail. All other interested persons  
16 may be served a copy of the citation by first-class mail.

17 (16) At the time and date set for hearing, the hearing  
18 officer shall proceed to hear witnesses and take evidence  
19 regarding the alleged contempt and any defenses to the  
20 contempt. If the alleged contemnor fails to appear for the  
21 hearing, the hearing may proceed in the alleged contemnor's  
22 absence. If the hearing officer finds the alleged contemnor  
23 in contempt, the hearing officer may impose a penalty of not  
24 more than \$500 for each count found. The hearing officer's  
25 decision constitutes a final agency decision, subject to

1 judicial review under 40-5-253 and subject to the provisions  
2 of Title 2, chapter 4.

3 (17) An amount imposed as a penalty may be collected by  
4 any remedy available to the department for the enforcement  
5 of child support obligations, including warrant for  
6 distrainment pursuant to 40-5-247, income withholding pursuant  
7 to Title 40, chapter 5, part 4, and state debt offset,  
8 pursuant to Title 17, chapter 4, part 1. The department may  
9 retain any penalties collected under this section to offset  
10 the costs of administrative hearings conducted under this  
11 chapter.

12 ~~(18) The money collected as a penalty under this section~~  
13 ~~is statutorily appropriated, as provided in 17-7-502, to the~~  
14 ~~department to help offset expenditures for administrative~~  
15 ~~hearings conducted under this chapter~~ THE PENALTIES CHARGED  
16 AND COLLECTED UNDER THIS SECTION MUST BE PAID INTO THE STATE  
17 TREASURY TO THE CREDIT OF THE CHILD SUPPORT ENFORCEMENT  
18 DIVISION SPECIAL REVENUE FUND AND MUST BE ACCOMPANIED BY A  
19 DETAILED STATEMENT OF THE AMOUNTS COLLECTED."

20 **Section 15.** Section 40-5-227, MCA, is amended to read:

21 **\*40-5-227. Filing and docketing of final orders --**  
22 **orders effective as district court decrees.** (1) An abstract  
23 of any final administrative order under this chapter may be  
24 filed in the office of the clerk of the district court of  
25 any county of Montana. The order, if approved, must be

1 docketed in the judgment docket of the district court. The  
2 properly filed and docketed order has all the force, effect,  
3 and attributes of a docketed order or decree of the district  
4 court, including but not limited to lien effect and  
5 enforceability by supplemental proceedings, writs of  
6 execution, and contempt of court proceedings.

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

14 (3) The department may issue a warrant for distrainment  
15 based upon a properly filed and docketed order pursuant to  
16 ~~40-5-241~~ 40-5-247."

17 **Section 16.** Section 40-5-232, MCA, is amended to read:

18 **\*40-5-232. Establishment of paternity -- notice of**  
19 **paternity determination -- contents.** (1) When the paternity  
20 of a child has not been legally established under the  
21 provisions of Title 40, chapter 6, part 1, or otherwise, the  
22 department may proceed to establish paternity under the  
23 provisions of 40-5-231 through 40-5-237. An administrative  
24 hearing held under the provisions of 40-5-231 through  
25 40-5-237 is a contested case within the meaning of 2-4-102



1 and is subject to the provisions of Title 2, chapter 4,  
2 except as otherwise provided in 40-5-231 through 40-5-237.

3 (2) It is presumed to be in the best interest of a  
4 child to legally determine and establish his paternity. A  
5 presumption under this subsection may be rebutted by a  
6 preponderance of the evidence.

7 (3) In any proceeding under 40-5-231 through 40-5-237,  
8 if a man acknowledges his paternity of a child in writing  
9 and such the acknowledgment is filed with the department,  
10 the department may enter an order establishing legal  
11 paternity. An acknowledgment is binding on a parent who  
12 executes it, whether or not he the parent is a minor.

13 (4) The department shall commence proceedings to  
14 establish paternity by serving on an alleged father a notice  
15 of paternity determination. The department may not serve  
16 such the notice unless it has:

17 (a) a sworn statement from the child's mother claiming  
18 that the alleged father is the child's natural father;

19 (b) evidence of the existence of a presumption of  
20 paternity under 40-6-105; or

21 (c) any other reasonable cause to believe that the  
22 alleged father is the child's natural father.

23 (5) Service on the alleged father of the notice of  
24 paternity determination shall must be made as provided in  
25 40-5-231(2). The notice must include:

1 (a) an allegation that the alleged father is the  
2 natural father of the child involved;

3 (b) the child's name and place and date of birth;

4 (c) the name of the child's mother and the name of the  
5 person or agency having custody of the child, if other than  
6 the mother;

7 (d) the probable time or period of time during which  
8 conception took place;

9 (e) a statement that if the alleged father fails to  
10 timely deny the allegation of paternity, the question of  
11 paternity may be resolved against him the alleged father  
12 without further notice;

13 (f) a statement that if the alleged father timely  
14 denies the allegation of paternity:

15 (i) he the alleged father is subject to compulsory  
16 blood testing;

17 (ii) a blood test may result in a presumption of  
18 paternity; and

19 (iii) ~~he may request a trial in district court to~~  
20 ~~determine paternity before the final administrative decision~~  
21 is made upon receipt of the blood test results, if the  
22 alleged father continues to deny paternity, the alleged  
23 father may request the department to refer the matter to  
24 district court for a determination of paternity.

25 (6) The alleged father may file a written denial of

1 paternity with the department within 20 days after service  
2 of the notice of paternity determination.

3 (7) When there is more than one alleged father of a  
4 child, the department may serve a notice of paternity  
5 determination on each alleged father in the same  
6 consolidated proceeding or in separate proceedings. Failure  
7 to serve notice on an alleged father does not prevent the  
8 department from serving notice on any other alleged father  
9 of the same child."

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

11 "40-5-242. Civil Notice of support lien -- civil  
12 liability upon failure to honor support lien or to comply  
13 with warrant or-to-honor-assignment-of-wages for distraint.

14 (1) The department may, at any time after asserting a  
15 support lien, serve a notice of the lien on any person,  
16 firm, corporation, association, or political subdivision or  
17 department of the state in possession of any real or  
18 personal property that is due, owing, or belonging to an  
19 obligor. For this purpose, personal property includes the  
20 obligor's share of a decedent's estate, workers'  
21 compensation benefits, and any proceeds of potential  
22 proceeds from suits at law.

23 (2) Except as provided in subsection (3), A a person,  
24 firm, corporation, association, political subdivision, or  
25 department of the state or entity is liable to the

1 department in an amount equal to 100% of the value of the a  
2 support ~~debt--that--is--the--basis--of--the--distraint--or~~  
3 assignment-of-wages lien or warrant for distraint or the  
4 value of ~~the-distrainted~~ real or personal property subject to  
5 a support lien or distrainted by a warrant for distraint,  
6 whichever is less, together with costs, interest, and  
7 reasonable attorney fees, if the person or entity:

8 ~~(1)--fails-or-refuses-to-deliver--property--pursuant--to~~  
9 ~~the-order;~~

10 ~~(2)(a)~~ (a) pays over, releases, sells, transfers, or  
11 conveys real or personal property subject to a support lien,  
12 to or for the benefit of the obligor, after the person or  
13 entity receives actual notice of filing of the support lien;  
14 or

15 ~~(3)(b)~~ (b) fails or refuses to surrender upon demand  
16 property ~~distrainted--under--40-5-242~~ of an obligor when  
17 presented with a warrant for distraint by a sheriff or  
18 levying officer under the provisions of 40-5-247; or.

19 ~~(4)--fails--or--refuses--to-honor-an-assignment-of-wages~~  
20 ~~presented-by-the-department;~~

21 (3) A person or entity is not liable to the department  
22 under this section when:

23 (a) a written release or waiver of the support lien or  
24 warrant for distraint issued by the department has been  
25 delivered to the person or entity;

1 (b) a determination has been made in an adjudicative  
 2 proceeding, either administrative or judicial, that a  
 3 support lien does not exist or that the lien has been  
 4 satisfied; or

5 (c) the property subject to a support lien has been  
 6 transferred to, paid over to, or repossessed by a person or  
 7 entity holding:

8 (i) a prior perfected lien;

9 (ii) a mortgage, the proceeds of which were used by the  
 10 obligor to purchase real property; or

11 (iii) a perfected purchase money security interest, as  
 12 defined by 30-9-107."

13 **Section 18.** Section 40-5-247, MCA, is amended to read:

14 "40-5-247. Filing-warrant-with-district-court---effect  
 15 of-filing---release Warrant for distraint -- effect --  
 16 satisfaction of support lien -- redemption. {1}-After  
 17 issuing--a-warrant, the department may file the warrant with  
 18 the clerk of a district court. The clerk shall file the  
 19 warrant in the judgment docket, with the name of the  
 20 delinquent obligor listed as the judgment debtor.

21 {2}-Upon filing the warrant, there is a lien against  
 22 all real and personal property of the delinquent obligor  
 23 located in the county where the warrant is filed. The  
 24 resulting lien is treated in the same manner as a property  
 25 docketed judgment lien, and the department may collect

1 delinquent child support and enforce the lien in the same  
 2 manner as a judgment is enforced. The lien is for the amount  
 3 indicated on the warrant plus accrued interest from the date  
 4 of the warrant.

5 (1) The department may issue a warrant for distraint to  
 6 execute support liens established by [section 20 27 26 25]  
 7 or to enforce and collect any money obligation authorized  
 8 under this chapter.

9 (a) The warrant must be an order, under official seal  
 10 of the department, directed to a sheriff of any county of  
 11 the state or to any levying officer authorized by law to  
 12 enforce a district court judgment. The order must command  
 13 the recipient to levy upon and sell nonexempt real and  
 14 personal property to satisfy the support lien upon which the  
 15 warrant is based.

16 (b) A warrant must be signed by the director of the  
 17 department or the director's designee.

18 (c) The warrant must be for the amount of the support  
 19 lien or the amount of any other money obligation determined  
 20 under this chapter, including interest and fees, if any.

21 (d) A warrant for distraint has the same effect as a  
 22 writ of execution issued by a district court to enforce  
 23 money judgments.

24 {3}(2) (a) A copy of the filed warrant for distraint  
 25 may be sent by the department to the sheriff or authorized

1 agent levying officer. Upon receipt of ~~a copy of~~ the filed  
 2 warrant, the sheriff or authorized-agent levying officer  
 3 shall proceed to execute upon the warrant in the same manner  
 4 as prescribed for execution upon a judgment.

5 (b) A sheriff or agent levying officer shall return a  
 6 warrant, along with any funds collected, within 90 days of  
 7 the receipt of the ~~copy of the~~ warrant.

8 (c) Funds resulting from execution upon the warrant  
 9 must first be applied to the sheriff's or levying officer's  
 10 costs, any superior liens, the support lien, or other money  
 11 obligation and to any inferior liens. Any amounts in excess  
 12 of this distribution must be paid to the obligor.

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

16 (3) A sheriff's or levying officer's levy against real  
 17 and personal property of the obligor is not limited to  
 18 property in possession of persons or other entities given  
 19 notice of a support lien under 40-5-242.

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

24 (b) Upon receiving partial payment of the unpaid child  
 25 support warrant amount or if the department determines that

1 a release or partial release of the lien warrant will  
 2 facilitate the collection of the unpaid amount, penalty, and  
 3 interest, the department may release or may partially  
 4 release the ~~lien--acquired--by--filing--the~~ warrant for  
 5 distraint. The department may release the lien warrant if it  
 6 determines that the lien warrant is unenforceable.

7 (5) An obligor or other person or entity having an  
 8 interest in real or personal property levied upon by a  
 9 warrant for distraint at any time prior to sale of the  
 10 property may pay the amount of the support lien or other  
 11 money obligation and any costs incurred by the sheriff or  
 12 levying officer serving the warrant. Upon payment in full,  
 13 the property must be restored to the obligor or other person  
 14 and all proceedings on the warrant must cease.

15 (6) An obligor or other person or entity having an  
 16 interest in real property levied upon and sold by a sheriff  
 17 or levying officer pursuant to a warrant for distraint may,  
 18 within 240 days after sale of the property, redeem the  
 19 property by making payment to the purchaser in the amount  
 20 paid by the purchaser plus interest at the statutory  
 21 interest rate payable on judgments recovered in the district  
 22 court.

23 (7) At any time after distraint of property under a  
 24 warrant for distraint, the department may release all or  
 25 part of the seized property without liability if payment of

1 the support lien or other money obligation is assured or if  
 2 the action will facilitate collection of the support lien or  
 3 other money obligation. The release or return does not  
 4 operate to prevent future action to collect the warrant  
 5 amount from the same or other property.

6 (8) The department may issue a warrant for distraint to  
 7 collect a support lien or other money obligation under this  
 8 section at any time within the statutory limitation period  
 9 for enforcing and collecting delinquent child support.

10 ~~(5)~~(9) The use of the warrant for distraint is not  
 11 exclusive, and the department may use any other remedy  
 12 provided by law for the collection of child support  
 13 amounts."

14 **Section 19.** Section 40-5-255, MCA, is amended to read:

15 **"40-5-255. Charging off child support debts as**  
 16 **uncollectible.** (1) Any support debt due the department from  
 17 an obligor, which debt the department determines  
 18 uncollectible, may be transferred from accounts receivable  
 19 to a suspense account and cease to be accounted as an asset.  
 20 If a warrant for distraint has been filed and the support  
 21 debt has subsequently been charged off as uncollectible, the  
 22 department shall issue a release of lien.

23 (2) ~~At any time after 6-years-from-the-date--a--support~~  
 24 ~~debt--was--incurred 10 years from the date of termination of~~  
 25 the support obligation, the department may charge off as

1 uncollectible any support debt upon which the department  
 2 finds there is no available, practical, or lawful means by  
 3 which the support debt may be collected. ~~No-proceedings A~~  
 4 proceeding or action under the provisions of this part may  
 5 not be begun after expiration of the 6-year 10-year period  
 6 to institute collection of a support debt. ~~Nothing--herein~~  
 7 This part may not be construed to render invalid or  
 8 nonactionable a warrant for distraint ~~filed-with-the-clerk~~  
 9 of-court issued by the department prior to the expiration of  
 10 the 6-year 10-year period or an assignment of earnings  
 11 executed prior to the expiration of the 6-year 10-year  
 12 period."

13 **Section 20.** Section 40-5-415, MCA, is amended to read:

14 **"40-5-415. Order to withhold income -- rules.** (1) When  
 15 the requirements of this part have been met, the department  
 16 shall serve an order or modification order to withhold and  
 17 deliver income upon any payor or combination of payors. The  
 18 order must:

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

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

25 (c) state that the order is binding on the payor until

1 further notice by the department;

2 (d) state the rights and duties of the payor under this  
3 part; and

4 (e) include a statement that the obligor is required  
5 under a support order to provide health insurance coverage  
6 for the obligor's child, if appropriate.

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. Whenever an  
16 obligor's income is subject to withholding for more than one  
17 obligee, the department may consolidate the payments  
18 received each month and distribute the income among the  
19 obligees according to department rules."

20 **Section 21.** Section 40-6-116, MCA, is amended to read:

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

25 (2) If the judgment or order of the court is at

1 variance with the child's birth certificate, the court shall  
2 order that a substitute birth certificate be issued under  
3 40-6-123.

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

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

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

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

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

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

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

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

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

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

10 (d) the earning ability of the parents;

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

13 (f) the age of the child;

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

16 (h) the responsibility of the parents for the support  
 17 of others;

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

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

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

23 (6) (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

1 section and the uniform child support guidelines adopted by  
 2 the department of social and rehabilitation services  
 3 pursuant to 40-5-209, unless the court finds by clear and  
 4 convincing evidence that the application of the standards  
 5 and guidelines is unjust to the child or to any of the  
 6 parties or is inappropriate in that particular case.

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

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

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

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

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

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

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

14 (8) (a) Unless an exception is found under 40-5-315 or  
 15 40-5-411 and the exception is included in the support order,  
 16 a support obligation established by judgment, decree, or  
 17 order under this section, whether temporary or final, and  
 18 each modification of an existing support obligation made  
 19 under 40-6-118 must be enforced by immediate or delinquency  
 20 income withholding, or both, under Title 40, chapter 5, part  
 21 3 or 4. A support order that omits the exception or that  
 22 provides for a payment arrangement inconsistent with this  
 23 section is nevertheless subject to withholding for the  
 24 payment of support without need for an amendment to the  
 25 support order or for any further action by the court.

1 (b) After October 1, 1993, if a support order subject  
 2 to income withholding is expressed in terms of a monthly  
 3 obligation, the order may be annualized and withheld on a  
 4 weekly or biweekly basis, corresponding to the obligor's  
 5 regular pay period.

6 (9) For the purposes of income withholding as provided  
 7 in subsection (8), whenever the district court establishes  
 8 or modifies a child support obligation, the judgment,  
 9 decree, or order must include a provision requiring the  
 10 parent obligated to pay support to inform the court and, if  
 11 the department of social and rehabilitation services is  
 12 providing services under Title IV-D of the Social Security  
 13 Act for the enforcement of the judgment, decree, or order,  
 14 the department, of the following:

15 (a) the name and address of the parent's current  
 16 employer;

17 (b) whether the parent has access to health insurance  
 18 through an employer or other group; and

19 (c) if insurance coverage is available, the health  
 20 insurance policy information.

21 (10) If the department of social and rehabilitation  
 22 services is providing or later provides support enforcement  
 23 services under Title IV-D of the Social Security Act, each  
 24 district court order or modification of an order must  
 25 contain a statement providing that the noncustodial parent,



1 without further order of the court, is required to obtain  
 2 and maintain health insurance coverage as provided in  
 3 40-5-208. Failure to include a warning statement in the  
 4 judgment or order does not preclude the imposition of  
 5 sanctions under 40-5-208.

6 (11) Each district court judgment, decree, or order  
 7 establishing a final child support obligation under this  
 8 part and each modification of a final order for child  
 9 support must contain a statement that the order is subject  
 10 to review and modification by the department of social and  
 11 rehabilitation services upon the request of the department  
 12 or a party under 40-5-271 through 40-5-273 when the  
 13 department is providing services under Title IV-D of the  
 14 Social Security Act for the enforcement of the order."

15 **Section 22.** Section 40-6-117, MCA, is amended to read:

16 "40-6-117. Enforcement of judgment or order. (1) If  
 17 existence of the father and child relationship is declared  
 18 or paternity or a duty of support has been acknowledged or  
 19 adjudicated under this part or under prior law, the court  
 20 may order support payments to be made to the mother, the  
 21 clerk of the court, or a person, corporation, or agency  
 22 designated to administer them for the benefit of the child  
 23 under the supervision of the court.

24 (2) Willful failure to obey the judgment or order of  
 25 the court is a civil contempt of the court. All remedies for

1 the enforcement of judgments apply.

2 ~~(3) Child--support--ordered--on-behalf-of-a-minor-child~~  
 3 must (A) A DISTRICT COURT JUDGMENT, DECREE, OR ORDER THAT  
 4 ESTABLISHES OR MODIFIES A CHILD SUPPORT OBLIGATION MUST  
 5 INCLUDE A PROVISION REQUIRING THE CHILD SUPPORT TO be paid  
 6 to:

7 ~~(a)}~~(I) the legal custodian of the minor child;  
 8 ~~(b)}~~(II) (A) any other person, organization, or  
 9 agency having legal physical custody of the minor child or  
 10 collecting child support on behalf of the minor child under  
 11 a legal assignment of rights; or  
 12 ~~(c)}~~(B) the court for the benefit of the minor child;  
 13 ~~(d)}~~(III) any other person or agency designated as  
 14 caretaker of the minor child by agreement of the legal  
 15 custodian; or  
 16 ~~(e)}~~(IV) any assignee or other person, organization, or  
 17 agency authorized to receive or collect child support.

18 (B) A JUDGMENT, DECREE, OR ORDER THAT OMITTS THE  
 19 PROVISION REQUIRED BY SUBSECTION (3)(A) IS SUBJECT TO THE  
 20 REQUIREMENTS OF SUBSECTION (3)(A) WITHOUT NEED FOR AN  
 21 AMENDMENT TO THE JUDGMENT, DECREE, OR ORDER OR FOR ANY  
 22 FURTHER ACTION BY THE COURT."

23 **Section 23.** Section 53-2-613, MCA, is amended to read:

24 "53-2-613. Application for assistance -- assignment of  
 25 support rights. (1) Applications for public assistance,

1 including but not limited to aid to families with dependent  
 2 children and medical assistance, must be made to the county  
 3 department of public welfare in the county in which the  
 4 person is residing. The application ~~shall~~ must be submitted,  
 5 in the manner and form prescribed by the department of  
 6 social and rehabilitation services, and ~~shall~~ must contain  
 7 information required by the department of social and  
 8 rehabilitation services.

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

16 (3) The assignment:

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

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

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

25 (4) Whenever a support obligation is assigned to the

1 department of social and rehabilitation services pursuant to  
 2 this section, the following provisions apply:

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

8 (b) No A recipient or former recipient of public  
 9 assistance may not commence or maintain an action to recover  
 10 a delinquent support obligation without notifying the  
 11 ~~department~~ department's child support enforcement division.  
 12 The department may then release or relinquish its assigned  
 13 interest or enter the proceeding. This subsection (4)(b)  
 14 does not limit the right of any person to recover money not  
 15 assigned.

16 (c) If a notice of assigned interest is filed with the  
 17 district court, the clerk of the court may not pay over or  
 18 release for the benefit of any recipient or former recipient  
 19 of public assistance any amounts received pursuant to a  
 20 judgment or decree or an order of the court until the  
 21 ~~department~~ department's child support enforcement division  
 22 has filed a written notice that:

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

25 (ii) all assigned support delinquencies, if any, are

1 satisfied or released.

2 (d) No A recipient or former recipient of public  
 3 assistance may not take action to modify or make any  
 4 agreement to modify, settle, or release any past, present,  
 5 or future support obligation unless the department  
 6 department's child support enforcement division is given  
 7 written notice and an opportunity to participate. Any  
 8 modifications or agreements entered into without the  
 9 participation of the department are void with respect to the  
 10 state, the department ~~of social and rehabilitation services,~~  
 11 and the county welfare department."

12 NEW SECTION. Section 24. Child support payments to  
 13 follow the child. Child support ordered on behalf of a minor  
 14 child must (1) A SUPPORT ORDER ISSUED OR MODIFIED UNDER THIS  
 15 PART MUST CONTAIN A PROVISION REQUIRING THE CHILD SUPPORT TO  
 16 be paid to:

- 17 ~~f1~~(A) the legal custodian of the minor child;
- 18 ~~f2~~--~~f1~~(B) (I) any other person, organization, or
- 19 agency having legal physical custody of the minor child or
- 20 collecting child support on behalf of the minor child under
- 21 a legal assignment of rights; or
- 22 ~~f3~~(II) the court for the benefit of the minor child;
- 23 ~~f3~~(C) any other person or agency designated as
- 24 caretaker of the minor child by agreement of the legal
- 25 custodian; or

1 ~~f4~~(D) any assignee or other person, organization, or  
 2 agency authorized to receive or collect child support.

3 (2) AN ORDER THAT OMITTS THE PROVISION REQUIRED BY  
 4 SUBSECTION (1) IS SUBJECT TO THE REQUIREMENTS OF SUBSECTION  
 5 (1) WITHOUT NEED FOR AN AMENDMENT TO THE ORDER OR FOR ANY  
 6 FURTHER ACTION BY THE DEPARTMENT.

7 NEW SECTION. Section 25. Lien against real and  
 8 personal property -- effect of lien -- interest -- warrant  
 9 for distraint. (1) There is a support lien on the real and  
 10 personal property of an obligor:

11 (a) when the department has entered a final decision in  
 12 a contested case under this chapter that finds the obligor  
 13 owes a sum certain debt either to this department or to an  
 14 obligee, or both; or

15 (b) upon registration under 40-5-271 of a support order  
 16 that includes finding that the obligor owes a sum certain  
 17 amount of delinquent support.

18 (2) A support lien is for the amount required to  
 19 satisfy:

20 (a) the sum certain debt shown in a final decision in a  
 21 contested case under this chapter or the sum certain support  
 22 debt included in any support order registered under  
 23 40-5-271;

24 (b) interest claimed under this section; and

25 (c) any fees that may be due under 40-5-210.

1 (3) A support lien has the priority of a secured  
2 creditor from the date the lien is perfected as provided by  
3 this section; however, the lien is subordinate to:

- 4 (a) any prior perfected lien or security interest;
- 5 (b) a mortgage, the proceeds of which are used by an  
6 obligor to purchase real property; or
- 7 (c) any perfected purchase money security interest, as  
8 defined in 30-9-107.

9 (4) Support liens remain in effect until the  
10 delinquency upon which the lien is based is satisfied or  
11 until 2 years after the child to whom the support lien is  
12 related attains the age of majority, whichever occurs first.

13 (5) The lien applies to all real and personal property  
14 owned by the obligor, if it can be located in the state. The  
15 lien applies to all real and personal property that the  
16 obligor can afterward acquire.

17 (6) The department shall keep a record of support liens  
18 asserted under this section in the registry of support  
19 orders established by 40-5-271.

20 (a) Except as provided by subsection (7) for motor  
21 vehicle liens, a support lien is perfected upon filing the  
22 lien with the department's registry.

23 (b) The department shall make information about a  
24 support lien available to any interested person or entity  
25 AND TO THE CLERK AND RECORDER OF EACH COUNTY IN WHICH REAL

1 ESTATE IS LOCATED IN WHICH THE OBLIGOR HAS AN INTEREST.

2 (c) A support lien filed with the department's registry  
3 constitutes constructive notice to a purchaser of real  
4 property from an obligor.

5 (d) Except as provided by subsection (7), a lien  
6 against an obligor's personal property is not effective  
7 against any person, firm, corporation, association,  
8 political subdivision, or agency of the state in possession  
9 of the obligor's personal property until the department  
10 serves a notice of the lien to the person or entity.

11 (e) EXCEPT AS PROVIDED IN SUBSECTION (7), A BUYER FOR  
12 VALUE OF AN OBLIGOR'S PERSONAL PROPERTY WHO BUYS IN GOOD  
13 FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE  
14 PROPERTY FREE OF THE SUPPORT LIEN.

15 (7) A support lien may be asserted against any motor  
16 vehicle, as defined in 61-1-102, as follows:

17 (a) When an obligor is the owner of a motor vehicle,  
18 the department may SHALL give notice of the support lien to  
19 the department of justice as provided in 61-3-103(6). A  
20 notice of support lien filed with the department of justice  
21 constitutes constructive notice of the lien to subsequent  
22 purchasers or encumbrancers of a motor vehicle from the  
23 obligor, commencing from the date the notice is delivered to  
24 the department of justice.

25 (b) (i) To assert a support lien on motor vehicles of

1 ~~which an obligor may later acquire ownership, the department~~  
 2 ~~may, each month, prepare and submit to the department of~~  
 3 ~~justice a list of obligors against whom there is a support~~  
 4 ~~lien. The list must identify each obligor by name,~~  
 5 ~~last known address, amount of lien, social security number,~~  
 6 ~~if known, and any other identifying information needed by~~  
 7 ~~the department of justice to identify the obligor.~~

8 ~~(ii) The department of justice shall, before issuing a~~  
 9 ~~certificate of ownership for any motor vehicle, determine~~  
 10 ~~whether the name of the person applying for the certificate~~  
 11 ~~is on the most recent monthly support lien list. If the~~  
 12 ~~person's name is on the list, the department of justice~~  
 13 ~~shall enter a lien on the certificate of ownership under the~~  
 14 ~~name of the department as lienholder.~~

15 ~~(c) The department shall reimburse the department of~~  
 16 ~~justice for reasonable costs incurred by the department of~~  
 17 ~~justice in implementing this subsection (7).~~

18 (7) A SUPPORT LIEN IS PERFECTED:

19 (A) AS TO REAL PROPERTY, UPON FILING A NOTICE OF  
 20 SUPPORT LIEN WITH THE CLERK OF THE DISTRICT COURT IN THE  
 21 COUNTY OR COUNTIES IN WHICH THE REAL PROPERTY IS OR MAY BE  
 22 LOCATED AT THE TIME OF FILING OR AT ANY TIME IN THE FUTURE;

23 (B) AS TO MOTOR VEHICLES OR OTHER ITEMS FOR WHICH A  
 24 CERTIFICATE OF OWNERSHIP IS ISSUED BY THE DEPARTMENT OF  
 25 JUSTICE, UPON FILING A NOTICE OF SUPPORT LIEN WITH THE

1 DEPARTMENT OF JUSTICE IN ACCORDANCE WITH THE PROVISIONS OF  
 2 TITLES 23 AND 61;

3 (C) AS TO ALL OTHER PERSONAL PROPERTY, UPON FILING A  
 4 NOTICE OF SUPPORT LIEN IN THE PLACE REQUIRED TO PERFECT A  
 5 SECURITY INTEREST UNDER 30-9-401, THE COUNTY CLERK AND  
 6 RECORDER OR THE SECRETARY OF STATE, AS APPROPRIATE, SHALL  
 7 CAUSE THE NOTICE OF SUPPORT LIEN TO BE MARKED, HELD, AND  
 8 INDEXED AS IF THE NOTICE OF SUPPORT LIEN WERE A FINANCING  
 9 STATEMENT WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE.

10 (8) A BUYER FOR VALUE OF AN OBLIGOR'S PERSONAL  
 11 PROPERTY, OTHER THAN MOTOR VEHICLES AND OTHER ITEMS FOR  
 12 WHICH A CERTIFICATE OF OWNERSHIP IS ISSUED BY THE DEPARTMENT  
 13 OF JUSTICE, WHO BUYS IN GOOD FAITH AND WITHOUT KNOWLEDGE OF  
 14 THE SUPPORT LIEN TAKES THE PROPERTY FREE OF THE SUPPORT  
 15 LIEN.

16 (9) (a) The department may charge interest on the  
 17 support lien at the rate of 1 1/2 per month.

18 (b) Interest accrues at the close of the business day  
 19 on the last day of each month and is calculated by  
 20 multiplying the unpaid balance of the lien, including prior  
 21 accrued interest existing at the end of the day, by the  
 22 applicable rate of interest.

23 (c) A provision of this section may not be construed to  
 24 require the department to maintain interest balance due  
 25 accounts. The department may waive interest if waiver would

1 facilitate the collection of the debt.

2 (d) Interest under this subsection ~~(8)~~ (9) is in  
3 addition to and not in substitution for any other interest  
4 accrued or accruing under any other provision of law.

5 ~~(9)~~(10) (a) Upon receiving payment in full of the amount  
6 of the lien plus interest and fees, if any, the department  
7 shall take all necessary steps to release the support lien.

8 (b) Upon receiving partial payment of the support lien  
9 or if the department determines that a release or partial  
10 release of the lien will facilitate the collection of  
11 support arrearages, the department may release or partially  
12 release the support lien. The department may release the  
13 support lien if it determines that the lien is  
14 unenforceable.

15 ~~(10)~~(11) A support lien under this section is in  
16 addition to any other lien created by law.

17 ~~(11)~~(12) A support lien under this section may not be  
18 discharged in bankruptcy.

19 ~~(12)~~(13) Support liens provided for by this section may  
20 be enforced or collected through the warrant for distraint  
21 provided for by 40-5-247.

22 NEW SECTION. Section 26. Payment of debts to  
23 department. If money is due and owing the department, a  
24 payment due under Title 40, chapter 5, part 2 or 4, or under  
25 this chapter that is accompanied by or bears any notation by

1 the debtor that the payment represents payment in full is  
2 not full payment, notwithstanding the department's  
3 acceptance of the payment, unless there is additional  
4 written agreement, signed by the department, that the  
5 payment is payment in full.

6 NEW SECTION. Section 27. Repealer. Sections 40-5-241,  
7 40-5-245, and 40-5-246, MCA, are repealed.

8 NEW SECTION. Section 28. Codification instruction. (1)  
9 [Sections ~~26-and-27~~ 25-ANB-26 24 AND 25] are intended to be  
10 codified as an integral part of Title 40, chapter 5, part 2,  
11 and the provisions of Title 40, chapter 5, part 2, apply to  
12 [sections ~~26-and-27~~ 25-ANB-26 24 AND 25].

13 (2) [Section ~~28~~ 27 26] is intended to be codified as an  
14 integral part of Title 53, chapter 2, part 1, and the  
15 provisions of Title 53, chapter 2, part 1, apply to [section  
16 ~~28~~ 27 26].

17 NEW SECTION. Section 29. Severability. If a part of  
18 [this act] is invalid, all valid parts that are severable  
19 from the invalid part remain in effect. If a part of [this  
20 act] is invalid in one or more of its applications, the part  
21 remains in effect in all valid applications that are  
22 severable from the invalid applications.

-End-