

HOUSE BILL NO. 482

INTRODUCED BY BOHLINGER, FAGG, KEATING, TOOLE, KADAS, KASTEN

IN THE HOUSE

FEBRUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ON MOTION, TAKEN FROM ENGROSSING AND REREFERRED TO COMMITTEE ON APPROPRIATIONS.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
	POSTED ON CONSENT CALENDAR.
MARCH 11, 1993	OBJECTION FILED TO CONSENT CALENDAR RECOMMENDATION.
	ON MOTION, TAKEN FROM CONSENT CALENDAR, PRINTED AND PLACED ON SECOND READING.
MARCH 12, 1993	SECOND READING, DO PASS.
MARCH 13, 1993	ENGROSSING REPORT.
MARCH 15, 1993	THIRD READING, PASSED. AYES, 66; NOES, 32.
MARCH 16, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 18, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE

CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 31, 1993

SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 1, 1993

THIRD READING, CONCURRED IN.
AYES, 45; NOES, 3.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 12, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *482*
 2 INTRODUCED BY *Jim Mocking* *Jazz* *Heating*
 3 *Rich Kider* *Gaston*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CIVIL
 5 CONTEMPT FOR FAILURE TO PAY SUPPORT; REQUIRING EMPLOYERS,
 6 PAYORS, AND UNIONS TO REPORT HIRING INFORMATION TO THE
 7 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; PROVIDING
 8 A PATERNITY ACKNOWLEDGMENT PROCESS; PROVIDING FOR THE
 9 SUSPENSION OF STATE-ISSUED LICENSES FOR FAILURE TO PAY
 10 SUPPORT; AND AMENDING SECTIONS 40-5-403 AND 40-5-443, MCA."

11
 12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
 14 [sections 4 and 12] require the department of social and
 15 rehabilitation services to adopt rules necessary for the
 16 implementation and administration of [sections 4 through
 17 11].

18 The rules may include provisions regarding:

- 19 (1) the provision of reimbursements to hospitals,
 20 institutions, and midwives for paternity acknowledgment
 21 costs;
 22 (2) the notice of intent to suspend licenses;
 23 (3) the hearing procedure used to review the cause for
 24 suspension of a license;
 25 (4) the approval of payment plans agreed to by obligors

1 for payment of support debts;

2 (5) the determination of circumstances creating a
 3 hardship that warrant a stay of action for suspension of a
 4 license; and

5 (6) the procedures for implementing and enforcing an
 6 order suspending a license.
 7

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

9 NEW SECTION. **Section 1. Failure to pay support --**
 10 **civil contempt.** (1) For purposes of this section, "support"
 11 means child support; spousal support; health insurance,
 12 medical, dental, and optical payments; day care expenses;
 13 and any other payments due as support under a court or
 14 administrative order. Submission of health insurance claims
 15 is a support obligation if health insurance coverage is
 16 ordered.

17 (2) If a person obligated to provide support fails to
 18 pay as ordered, the payee or assignee of the payee of the
 19 support order may petition a district court to find the
 20 obligated person in contempt.

21 (3) The petition may be filed in the district court:

- 22 (a) that issued the support order;
 23 (b) of the judicial district in which the obligated
 24 person resides; or
 25 (c) of the judicial district in which the payee or

1 assignee of the payee resides or has an office.

2 (4) Upon filing of a verified petition alleging facts
3 constituting contempt of the support order, the district
4 court shall issue an order requiring the obligated person to
5 appear and show cause why the obligated person should not be
6 held in contempt and punished under this section.

7 (5) The obligated person is presumed to be in contempt
8 upon a showing that:

9 (a) there is a support order issued by a court or
10 administrative agency of this or another state with
11 jurisdiction to enter the order;

12 (b) the obligated person had actual or constructive
13 knowledge of the order; and

14 (c) the obligated person failed to pay support as
15 ordered.

16 (6) Certified payment records maintained by a clerk of
17 court or administrative agency authorized by law or by the
18 support order to collect support are admissible in a
19 proceeding under this section and are prima facie evidence
20 of the amount of support paid and any arrearages under the
21 support order.

22 (7) Following a showing under subsection (5), the
23 obligated person may move to be excused from the contempt by
24 showing clear and convincing evidence that the obligated
25 person:

1 (a) has insufficient income to pay the arrearages;

2 (b) lacks personal or real property that can be sold,
3 mortgaged, or pledged to raise the needed sum;

4 (c) has unsuccessfully attempted to borrow the sum from
5 a financial institution;

6 (d) has no other source, including relatives, from
7 which the sum can be borrowed or secured;

8 (e) does not have a valid out-of-court agreement with
9 the payee waiving, deferring, or otherwise compromising the
10 support obligation; or

11 (f) cannot, for some other reason, reasonably comply
12 with the order.

13 (8) In addition to the requirement of subsection (7),
14 the obligated person shall also show by clear and convincing
15 evidence that factors constituting the excuse were not
16 occasioned or caused by the obligated person voluntarily:

17 (a) remaining unemployed or underemployed when there is
18 employment suitable to the obligated person's skills and
19 abilities available within a reasonable distance from the
20 obligated person's residence;

21 (b) selling, transferring, or encumbering real or
22 personal property for fictitious or inadequate consideration
23 within 6 months prior to a failure to pay support when due;

24 (c) selling or transferring real property without
25 delivery of possession within 6 months prior to a failure to

1 pay support when due or, if the sale or transfer includes a
2 reservation of a trust for the use of the obligated person,
3 purchasing real or personal property in the name of another
4 person or entity;

5 (d) continuing to engage in an unprofitable business or
6 contract unless the obligated person cannot reasonably be
7 removed from the unprofitable situation; or

8 (e) incurring debts subsequent to entry of the support
9 order that impair the obligated person's ability to pay
10 support.

11 (9) If the obligated person is not excused under
12 subsections (7) and (8), the district court shall find the
13 obligated person in contempt of the support order. For each
14 failure to pay support under the order, the district court
15 shall order punishment as follows:

16 (a) 5 days incarceration in the county jail;

17 (b) 120 hours of community service work;

18 (c) a \$500 fine; or

19 (d) any combination of the penalties in subsections
20 (9)(a) through (9)(c).

21 (10) An order under subsection (9) must include a
22 provision allowing the obligated person to purge the
23 contempt. The obligated person may purge the contempt by
24 complying with an order requiring the obligated person to:

25 (a) seek employment and periodically report to the

1 district court all efforts to find employment;

2 (b) meet a repayment schedule;

3 (c) compensate the payee for the payee's attorney fees,
4 costs, and expenses for a proceeding under this section;

5 (d) sell or transfer real or personal property or
6 transfer real or personal property to the payee, even if the
7 property is exempt from execution;

8 (e) borrow the arrearage amount or report to the
9 district court all efforts to borrow the sum;

10 (f) meet any combination of the conditions in
11 subsections (10)(a) through (10)(e); or

12 (g) meet any other conditions that the district court
13 in its discretion finds reasonable.

14 (11) If the obligated person fails to comply with
15 conditions for purging contempt, the district court shall
16 immediately find the obligated person in contempt under this
17 section and impose punishment.

18 (12) A proceeding under this section must be brought
19 within 3 years of the date of the last failure to comply
20 with the support order.

21 **Section 2.** Section 40-5-403, MCA, is amended to read:

22 **"40-5-403. Definitions.** As used in this part, the
23 following definitions apply:

24 (1) "Alternative arrangement" means a written agreement
25 signed by the obligor and obligee, and signed by the

department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

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

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

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

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

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

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

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

the Montana Rules of Civil Procedure.

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

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

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

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

(8) "Union" means a labor union, union local, union affiliate, or union hiring hall."

Section 3. Section 40-5-443, MCA, is amended to read:

"40-5-443. Payors to provide information -- exemption

1 from liability. (1) Upon notice by the department and except
 2 as provided in subsections (2) and (3), an employer or payor
 3 doing business in this state shall report to the department:

4 (a) the hiring of an individual who resides or works in
 5 this state;

6 (b) a contract or subcontract with an individual who
 7 resides or works in this state; and

8 (c) the rehiring or return to work of an employee,
 9 contractor, or subcontractor.

10 (2) An employer is not required to report the hiring of
 11 an individual who the employer anticipates will be employed
 12 for less than 1 month or will be sporadically employed for
 13 less than 350 hours during any 6-month period.

14 (3) An employer or payor is not required to report
 15 under this section if the employer employs or contracts with
 16 fewer than 10 persons.

17 (4) A union operating in this state shall, upon notice
 18 by the department, provide the department with information
 19 concerning the employment of its members.

20 (5) An employer, payor, or union required to report
 21 under this section shall submit to the department monthly
 22 reports containing its name, address, and employment
 23 security reference number or unified business identifier
 24 number and the name, last-known residential address, social
 25 security number, and date of birth of each employee that was

1 hired or rehired or that returned to work during the
 2 preceding month. The report may be made in writing or by
 3 computer on a form or in a format supplied by the department
 4 or by other means acceptable to the department.

5 (6) The department may retain the reported information
 6 concerning an employee, contractee, or member only if the
 7 department is responsible for establishing, enforcing, or
 8 collecting a support obligation of that person. If the
 9 person does not owe a support obligation, the department may
 10 not create a record regarding the person and the information
 11 must be promptly destroyed.

12 ~~{1}~~ (7) For the purposes of this part, upon Upon written
 13 request by the department, a present or former employer,
 14 payor, or former payor and any labor or union of which the
 15 obligor a person is or may have been a an employee,
 16 contractee, or member shall provide the department with the
 17 following information, if known, regarding the obligor
 18 person:

19 (a) last-known residential address;

20 (b) social security number;

21 (c) dates of employment or union membership or dates of
 22 the term of the contract;

23 (d) amounts of wages, salaries, commissions, and other
 24 earnings paid to the obligor person during any period when
 25 the department provided support enforcement services; and

(e) whether health insurance coverage is or was available to the obligor person and the person's children through the employer, payor, or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered;

(f) the location of the job site; and

(g) any occupational or professional affiliations or licenses required for the employment or contract.

(8) The department shall give an employer, payor, or union failing to report as required by this section a written warning. Upon further failure to report, the department may impose a civil penalty not to exceed \$1,000 for each month for each reportable person. The department shall adopt rules, under Title 2, chapter 4, and 40-5-405, stating administrative hearing and other procedures implementing this subsection.

(9) To cover the report costs, an employer, payor, or union required to report under this section may charge and withhold from the wages or other income of each reported person a fee not to exceed \$5 for each report covering the person.

(10) A An employer, payor, or union who discloses information to the department in compliance with this section is exempt from any liability to the obligor reported

person that may result from such the disclosure."

NEW SECTION. Section 4. Paternity acknowledgment. (1)

Upon the birth of a child to a woman unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of parentage pursuant to 40-6-105;

(b) provide written information, furnished by the department, describing the rights and responsibilities of parentage, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department shall establish by rule the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department for the acknowledgment of paternity.

NEW SECTION. Section 5. Definitions. As used in

[sections 5 through 12], the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

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

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

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

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater

than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

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

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other right or privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

1 (a) a person to whom a support debt or support
2 obligation is owed; or

3 (b) a public agency of this or another state that has
4 the right to receive current or accrued support payments or
5 that is providing support enforcement services under this
6 chapter.

7 (8) "Obligor" means a person who owes a duty of
8 support.

9 (9) "Order suspending a license" means an order issued
10 by a support enforcement entity to suspend a license. The
11 order must contain the name of the obligor, the type of
12 license, and, if known, the social security number of the
13 obligor.

14 (10) "Payment plan" includes but is not limited to a
15 plan approved by the support enforcement entity that
16 provides sufficient security to ensure compliance with a
17 support order and that incorporates voluntary or involuntary
18 income withholding under part 3 or 4 of this chapter or a
19 similar plan for periodic payment of a support debt and, if
20 applicable, current and future support.

21 (11) "Support debt" or "support obligation" means the
22 amount created by:

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

25 (b) a support order for spousal maintenance if the

1 judgment or order requiring payment of maintenance also
2 contains a judgment or order requiring payment of child
3 support for a child for whom the person awarded maintenance
4 is the custodial parent.

5 (12) "Support enforcement entity" means:

6 (a) in IV-D cases, the department; or

7 (b) in all other cases, the district court that entered
8 the support order or a district court in which the support
9 order is registered.

10 (13) "Support order" means an order providing a
11 determinable amount for temporary or final periodic payment
12 of a support debt or support obligation issued by:

13 (a) a district court of this state;

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

16 (c) an administrative agency pursuant to proceedings
17 under Title 40, chapter 5, part 2; or

18 (d) an administrative agency of another state with a
19 hearing function and process similar to those of the
20 department.

21 NEW SECTION. Section 6. Notice of intent to suspend
22 license. (1) Upon the petition of an obligee alleging the
23 existence of a delinquency, a support enforcement entity may
24 issue a notice of intent to suspend a license.

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

1 personally or by certified mail and may:

2 (a) in a IV-D case, be incorporated into any notice
3 served under Title 17, chapter 4, part 1, or Title 40,
4 chapter 5, part 2 or 4;

5 (b) in all other cases, be combined with any other
6 enforcement proceeding.

7 (3) The notice must state that the obligor's license
8 will be suspended 60 days after service unless within that
9 time the obligor:

10 (a) pays the entire support debt stated in the notice;

11 (b) enters into a payment plan approved by the support
12 enforcement entity; or

13 (c) appears and shows cause in a hearing before the
14 support enforcement entity under [section 7] that suspension
15 of a license is not appropriate.

16 (4) In a IV-D case, the notice must advise the obligor
17 that hearings conducted under [section 7] are subject to the
18 contested case provisions of the Montana Administrative
19 Procedure Act.

20 NEW SECTION. Section 7. Hearing -- order suspending
21 license. (1) To show cause why suspension of a license would
22 not be appropriate, the obligor shall request a hearing from
23 the support enforcement entity that issued the notice of
24 intent to suspend the license. The request must be made
25 within 60 days of the date of service of the notice.

1 (2) Upon receipt of a request for hearing from an
2 obligor, the support enforcement entity shall schedule a
3 hearing for the purpose of determining if suspension of the
4 obligor's license is appropriate. The support enforcement
5 entity shall stay suspension of the license pending the
6 outcome of the hearing.

7 (3) The only issues that may be determined in a hearing
8 under this section are the amount of the support debt or
9 support obligation, if any, whether or not a delinquency
10 exists, and whether or not the obligor has entered into a
11 payment plan.

12 (4) If an obligor fails to respond to a notice of
13 intent to suspend a license, fails to timely request a
14 hearing, or fails to appear at a regularly scheduled
15 hearing, the obligor's defenses, objections, or request for
16 a payment plan must be considered to be without merit and
17 the support enforcement entity shall enter a final decision
18 and order accordingly.

19 (5) If the support enforcement entity determines that
20 the obligor owes a delinquency and that the obligor has not
21 entered into a payment plan, the support enforcement entity
22 shall issue an order suspending the obligor's license and
23 ordering the obligor to refrain from engaging in the
24 licensed activity. The support enforcement entity shall send
25 a copy of the order suspending a license to the licensing

1 authority and the obligor.

2 (6) The determinations of the department under this
3 section are a final agency decision and are subject to
4 judicial review under 40-5-253 and the Montana
5 Administrative Procedure Act.

6 (7) A determination made by the support enforcement
7 entity under [sections 5 through 12] is independent of any
8 proceeding of the licensing authority to suspend, revoke,
9 deny, terminate, or renew a license.

10 NEW SECTION. Section 8. Suspension, denial, and
11 nonrenewal of licenses. (1) Upon receipt of an order
12 suspending a license, a licensing authority shall implement
13 the suspension of the license by:

14 (a) determining if it has issued a license to the
15 obligor whose name appears on the order;

16 (b) entering the suspension on the appropriate records;

17 (c) reporting the suspension as appropriate; and

18 (d) if required by law, demanding surrender of the
19 suspended license.

20 (2) An order issued by a support enforcement entity
21 under [section 7] suspending a license must be processed by
22 the licensing authority without an additional review or
23 hearing by the licensing authority concerning suspension of
24 the license.

25 (3) During the term of a suspension under [sections 5

1 through 12], the licensing authority may not issue or renew
2 the obligor's license.

3 (4) Notwithstanding the provisions of any other law
4 setting terms of suspension, revocation, denial,
5 termination, or renewal of a license, an order issued by a
6 support enforcement entity suspending a license continues
7 until the support enforcement entity advises the licensing
8 authority that the suspension has been stayed or terminated.

9 (5) In the event that a license is suspended, any funds
10 paid by the obligor to the licensing authority for costs
11 related to issuance, renewal, or maintenance of a license
12 may not be refunded to the obligor.

13 (6) Unless an order staying suspension of a license is
14 in effect, an obligor who continues to engage in the
15 business, occupation, profession, or other licensed activity
16 while the license is suspended under this section is guilty
17 of a misdemeanor and upon conviction shall be punished by a
18 fine of not less than \$250 or more than \$500 or by
19 imprisonment in the county jail for a term not to exceed 6
20 months, or both. Upon conviction of a second or subsequent
21 violation, the obligor shall be punished by a fine of not
22 less than \$500 or more than \$2,000 or by imprisonment in the
23 county jail for a term not to exceed 1 year, or both. The
24 support enforcement entity or the licensing authority may
25 elect the remedy under this section or any other remedy

provided for engaging in a licensed activity without a license or while the license is suspended.

(7) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with [sections 5 through 12].

(8) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

NEW SECTION. Section 9. Stay of suspension of license -- payment plan -- hardship. (1) An obligor may at the time of the hearing conducted under [section 7] or at any time after the hearing petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the licensing authority and the obligor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license.

NEW SECTION. Section 10. Termination of order to suspend license. (1) When the support enforcement entity determines that the support debt or support obligation is paid in full, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of

the order terminating the suspension of the license to the licensing authority and the obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency.

NEW SECTION. Section 11. Fees. A licensing authority subject to [sections 5 through 12] may charge the obligor a fee to cover the administrative costs incurred by the licensing authority under [sections 5 through 12].

NEW SECTION. Section 12. Rulemaking authority. The department shall adopt rules necessary for the implementation and administration of [sections 5 through 11].

NEW SECTION. Section 13. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, apply to [section 4].

(2) [Sections 5 through 12] are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to [sections 5 through 12].

NEW SECTION. Section 14. Coordination instruction. If both Senate Bill No. 217 and [this act], containing [sections 5 through 12], are passed and approved, Senate

Bill No. 217 is void.

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

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0482, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for civil contempt for failure to pay support; requiring employers, payors and unions to report hiring information to the Department of Social and Rehabilitation Services (SRS); providing a paternity acknowledgment process; providing for the suspension of state-issued licenses for failure to pay support.

ASSUMPTIONS:

1. The executive budget contains sufficient resources for the program to absorb these duties.
2. Additional costs to the Child Support Enforcement Division (CSED) will be negligible.
3. Increased collections to the CSED may result in a cost savings to the AFDC and GA programs. The magnitude of the savings is unmeasurable.
4. Caseload levels are anticipated to be:

	<u>FY94</u>	<u>FY95</u>
a. Civil Contempt Cases	8	34
b. License Suspension Cases	15	69
c. Employer Reporting Cases	1,169	5,337
d. Hospital Paternity Cases	232	1,061

5. Collections of child support are expected to increase \$368,816 in FY94 and \$1,767,948 in FY95.

FISCAL IMPACT: The fiscal impact cannot be determined without knowing how the increased collections will impact AFDC and GA.

David Lewis 2-11-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Bohlinger 2-11-93
JOHN BOHLINGER, PRIMARY SPONSOR DATE

Fiscal Note for HB0482, as introduced

HB 482

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 482

INTRODUCED BY BOHLINGER, FAGG, KEATING, TOOLE, KADAS, KASTEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CIVIL CONTEMPT FOR FAILURE TO PAY SUPPORT; REQUIRING EMPLOYERS, PAYORS, AND UNIONS TO REPORT HIRING INFORMATION TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; PROVIDING A PATERNITY ACKNOWLEDGMENT PROCESS; PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES FOR FAILURE TO PAY SUPPORT; AND AMENDING SECTIONS 40-5-403 AND 40-5-443, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 and 12] require the department of social and rehabilitation services to adopt rules necessary for the implementation and administration of [sections 4 through 11].

The rules may include provisions regarding:

- (1) the provision of reimbursements to hospitals, institutions, and midwives for paternity acknowledgment costs;
- (2) the notice of intent to suspend licenses;
- (3) the hearing procedure used to review the cause for suspension of a license;
- (4) the approval of payment plans agreed to by obligors

for payment of support debts;

(5) the determination of circumstances creating a hardship that warrant a stay of action for suspension of a license; and

(6) the procedures for implementing and enforcing an order suspending a license.

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

NEW SECTION. **Section 1.** Failure to pay support -- civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

- (a) that issued the support order;
- (b) of the judicial district in which the obligated person resides; or
- (c) of the judicial district in which the payee or

1 assignee of the payee resides or has an office.

2 (4) Upon filing of a verified petition alleging facts
3 constituting contempt of the support order, the district
4 court shall issue an order requiring the obligated person to
5 appear and show cause why the obligated person should not be
6 held in contempt and punished under this section.

7 (5) The obligated person is presumed to be in contempt
8 upon a showing that:

9 (a) there is a support order issued by a court or
10 administrative agency of this or another state with
11 jurisdiction to enter the order;

12 (b) the obligated person had actual or constructive
13 knowledge of the order; and

14 (c) the obligated person failed to pay support as
15 ordered.

16 (6) Certified payment records maintained by a clerk of
17 court or administrative agency authorized by law or by the
18 support order to collect support are admissible in a
19 proceeding under this section and are prima facie evidence
20 of the amount of support paid and any arrearages under the
21 support order.

22 (7) Following a showing under subsection (5), the
23 obligated person may move to be excused from the contempt by
24 showing clear and convincing evidence that the obligated
25 person:

1 (a) has insufficient income to pay the arrearages;

2 (b) lacks personal or real property that can be sold,
3 mortgaged, or pledged to raise the needed sum;

4 (c) has unsuccessfully attempted to borrow the sum from
5 a financial institution;

6 (d) has no other source, including relatives, from
7 which the sum can be borrowed or secured;

8 (e) does not have a valid out-of-court agreement with
9 the payee waiving, deferring, or otherwise compromising the
10 support obligation; or

11 (f) cannot, for some other reason, reasonably comply
12 with the order.

13 (8) In addition to the requirement of subsection (7),
14 the obligated person shall also show by clear and convincing
15 evidence that factors constituting the excuse were not
16 occasioned or caused by the obligated person voluntarily:

17 (a) remaining unemployed or underemployed when there is
18 employment suitable to the obligated person's skills and
19 abilities available within a reasonable distance from the
20 obligated person's residence;

21 (b) selling, transferring, or encumbering real or
22 personal property for fictitious or inadequate consideration
23 within 6 months prior to a failure to pay support when due;

24 (c) selling or transferring real property without
25 delivery of possession within 6 months prior to a failure to

1 pay support when due or, if the sale or transfer includes a
 2 reservation of a trust for the use of the obligated person,
 3 purchasing real or personal property in the name of another
 4 person or entity;

5 (d) continuing to engage in an unprofitable business or
 6 contract unless the obligated person cannot reasonably be
 7 removed from the unprofitable situation; or

8 (e) incurring debts subsequent to entry of the support
 9 order that impair the obligated person's ability to pay
 10 support.

11 (9) If the obligated person is not excused under
 12 subsections (7) and (8), the district court shall find the
 13 obligated person in contempt of the support order. For each
 14 failure to pay support under the order, the district court
 15 shall order punishment as follows:

- 16 (a) 5 days incarceration in the county jail;
- 17 (b) 120 hours of community service work;
- 18 (c) a \$500 fine; or
- 19 (d) any combination of the penalties in subsections
- 20 (9)(a) through (9)(c).

21 (10) An order under subsection (9) must include a
 22 provision allowing the obligated person to purge the
 23 contempt. The obligated person may purge the contempt by
 24 complying with an order requiring the obligated person to:

- 25 (a) seek employment and periodically report to the

1 district court all efforts to find employment;

- 2 (b) meet a repayment schedule;

3 (c) compensate the payee for the payee's attorney fees,
 4 costs, and expenses for a proceeding under this section;

5 (d) sell or transfer real or personal property or
 6 transfer real or personal property to the payee, even if the
 7 property is exempt from execution;

8 (e) borrow the arrearage amount or report to the
 9 district court all efforts to borrow the sum;

10 (f) meet any combination of the conditions in
 11 subsections (10)(a) through (10)(e); or

12 (g) meet any other conditions that the district court
 13 in its discretion finds reasonable.

14 (11) If the obligated person fails to comply with
 15 conditions for purging contempt, the district court shall
 16 immediately find the obligated person in contempt under this
 17 section and impose punishment.

18 (12) A proceeding under this section must be brought
 19 within 3 years of the date of the last failure to comply
 20 with the support order.

21 **Section 2.** Section 40-5-403, MCA, is amended to read:

22 **"40-5-403. Definitions.** As used in this part, the
 23 following definitions apply:

24 (1) "Alternative arrangement" means a written agreement
 25 signed by the obligor and obligee, and signed by the

1 department in the case of an assignment of rights under
2 53-2-613, that has been approved and entered in the record
3 of the court or administrative authority issuing or
4 modifying the support order.

5 (2) "Department" means the department of social and
6 rehabilitation services provided for in 2-15-2201.

7 (3) "Income" means any form of periodic payment to a
8 person, including earnings and wages. However, income does
9 not include:

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

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

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

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

21 (6) "Payor" means any payor of income to an obligor on
22 a periodic basis and includes any person, firm, corporation,
23 association, employer, trustee, political subdivision, state
24 agency, or any agent thereof, who is subject to the
25 jurisdiction of the courts of this state under Rule 4B of

1 the Montana Rules of Civil Procedure.

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

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

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

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

22 (8) "Union" means a labor union, union local, union
23 affiliate, or union hiring hall."

24 **Section 3.** Section 40-5-443, MCA, is amended to read:

25 **"40-5-443. Payors to provide information -- exemption**

from liability. (1) Upon notice by the department and except as provided in ~~subsections-(2)-and-(3)~~ SUBSECTION (2), an employer or payor doing business in this state shall report to the department:

(a) the hiring of an individual who resides or works in this state;

(b) a contract or subcontract with an individual who resides or works in this state; and

(c) the rehiring or return to work of an employee, contractor, or subcontractor.

(2) An employer is not required to report the hiring of an individual who the employer anticipates will be employed for less than 1 month or will be sporadically employed for less than 350 hours during any 6-month period.

~~(3)--An--employer--or--payor--is--not--required--to--report--under--this--section--if--the--employer--employs--or--contracts--with--fewer--than--10--persons--~~

~~(4)~~(3) A union operating in this state shall, upon notice by the department, provide the department with information concerning the employment of its members.

~~(5)~~(4) An employer, payor, or union required to report under this section shall submit to the department monthly reports containing its name, address, and employment security reference number or unified business identifier number and the name, last-known residential address, social

security number, and date of birth of each employee that was hired or rehired or that returned to work during the preceding month. The report may be made in writing or by computer on a form or in a format supplied by the department or by other means acceptable to the department.

~~(6)~~(5) The department may retain the reported information concerning an employee, contractee, or member only if the department is responsible for establishing, enforcing, or collecting a support obligation of that person. THE INFORMATION MUST BE KEPT CONFIDENTIAL BY THE DEPARTMENT AND MAY NOT BE DISSEMINATED BY IT. If the person does not owe a support obligation, the department may not create a record regarding the person and the information must be promptly destroyed.

~~(7)~~(6) For the purposes of this part, upon written request by the department, a present or former employer, payor, or former payor and any labor or union of which the obligor a person is or may have been a an employee, contractee, or member shall provide the department with the following information, if known, regarding the obligor person:

(a) last-known residential address;

(b) social security number;

(c) dates of employment or union membership or dates of the term of the contract;

(d) amounts of wages, salaries, commissions, and other earnings paid to the obligor person during any period when the department provided support enforcement services; and

(e) whether health insurance coverage is or was available to the obligor person and the person's children through the employer, payor, or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered;

(f) the location of the job site; and

(g) any occupational or professional affiliations or licenses required for the employment or contract.

~~(8)~~(7) The department shall give an employer, payor, or union failing to report as required by this section a written warning. Upon further failure to report, the department may impose a civil penalty not to exceed \$1,000 for each month for each reportable person. The department shall adopt rules, under Title 2, chapter 4, and 40-5-405, stating administrative hearing and other procedures implementing this subsection.

~~(9)~~(8) To cover the report costs, an employer, payor, or union required to report under this section may charge and withhold from the wages or other income of each reported person a fee not to exceed \$5 \$3 for each report covering the person.

~~(2)~~~~(10)~~(9) A An employer, payor, or union who discloses information to the department in compliance with this section is exempt from any liability to the obligor reported person that may result from such the disclosure."

NEW SECTION. Section 4. Paternity acknowledgment. (1)

Upon the birth of a child to a woman unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of parentage pursuant to 40-6-105;

(b) provide written information, furnished by the department, describing the rights and responsibilities of parentage, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department shall establish by rule the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use

forms prescribed by the department for the acknowledgment of paternity.

NEW SECTION. Section 5. Definitions. As used in [sections 5 through 12], the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

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

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

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

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending

beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

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

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other right or privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department,

1 division, board, agency, or instrumentality of this state
2 that issues a license.

3 (7) "Obligee" means:

4 (a) a person to whom a support debt or support
5 obligation is owed; or

6 (b) a public agency of this or another state that has
7 the right to receive current or accrued support payments or
8 that is providing support enforcement services under this
9 chapter.

10 (8) "Obligor" means a person who owes a duty of
11 support.

12 (9) "Order suspending a license" means an order issued
13 by a support enforcement entity to suspend a license. The
14 order must contain the name of the obligor, the type of
15 license, and, if known, the social security number of the
16 obligor.

17 (10) "Payment plan" includes but is not limited to a
18 plan approved by the support enforcement entity that
19 provides sufficient security to ensure compliance with a
20 support order and that incorporates voluntary or involuntary
21 income withholding under part 3 or 4 of this chapter or a
22 similar plan for periodic payment of a support debt and, if
23 applicable, current and future support.

24 (11) "Support debt" or "support obligation" means the
25 amount created by:

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

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

8 (12) "Support enforcement entity" means:

9 (a) in IV-D cases, the department; or

10 (b) in all other cases, the district court that entered
11 the support order or a district court in which the support
12 order is registered.

13 (13) "Support order" means an order providing THAT
14 PROVIDES a determinable amount for temporary or final
15 periodic payment of a support debt or support obligation AND
16 THAT MAY INCLUDE PAYMENT OF A DETERMINABLE OR INDETERMINABLE
17 AMOUNT FOR INSURANCE COVERING THE CHILD issued by:

18 (a) a district court of this state;

19 (b) a court of appropriate jurisdiction of another
20 state, an Indian tribe, or a foreign country;

21 (c) an administrative agency pursuant to proceedings
22 under Title 40, chapter 5, part 2; or

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

NEW SECTION. Section 6. Notice of intent to suspend license. (1) Upon the petition of an obligee alleging the existence of a delinquency, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obligor personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; or

(c) appears and shows cause in a hearing before the support enforcement entity under [section 7] that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under [section 7] are subject to the contested case provisions of the Montana Administrative Procedure Act.

NEW SECTION. Section 7. Hearing -- order suspending

license. (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the obligor has entered into a payment plan.

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not

1 entered into a payment plan, the support enforcement entity
 2 shall issue an order suspending the obligor's license and
 3 ordering the obligor to refrain from engaging in the
 4 licensed activity. The support enforcement entity shall send
 5 a copy of the order suspending a license to the licensing
 6 authority and the obligor.

7 (6) The determinations of the department under this
 8 section are a final agency decision and are subject to
 9 judicial review under 40-5-253 and the Montana
 10 Administrative Procedure Act.

11 (7) A determination made by the support enforcement
 12 entity under [sections 5 through 12] is independent of any
 13 proceeding of the licensing authority to suspend, revoke,
 14 deny, terminate, or renew a license.

15 **NEW SECTION. Section 8. Suspension, denial, and**
 16 **nonrenewal of licenses.** (1) Upon receipt of an order
 17 suspending a license, a licensing authority shall implement
 18 the suspension of the license by:

19 (a) determining if it has issued a license to the
 20 obligor whose name appears on the order;

21 (b) entering the suspension on the appropriate records;

22 (c) reporting the suspension as appropriate; and

23 (d) if required by law, demanding surrender of the
 24 suspended license.

25 (2) An order issued by a support enforcement entity

1 under [section 7] suspending a license must be processed by
 2 the licensing authority without an additional review or
 3 hearing by the licensing authority concerning suspension of
 4 the license.

5 (3) During the term of a suspension under [sections 5
 6 through 12], the licensing authority may not issue or renew
 7 the obligor's license.

8 (4) Notwithstanding the provisions of any other law
 9 setting terms of suspension, revocation, denial,
 10 termination, or renewal of a license, an order issued by a
 11 support enforcement entity suspending a license continues
 12 until the support enforcement entity advises the licensing
 13 authority that the suspension has been stayed or terminated.

14 (5) In the event that a license is suspended, any funds
 15 paid by the obligor to the licensing authority for costs
 16 related to issuance, renewal, or maintenance of a license
 17 may not be refunded to the obligor.

18 (6) Unless an order staying suspension of a license is
 19 in effect, an obligor who continues to engage in the
 20 business, occupation, profession, or other licensed activity
 21 while the license is suspended under this section is guilty
 22 of a misdemeanor and upon conviction shall be punished by a
 23 fine of not less than \$250 or more than \$500 or by
 24 imprisonment in the county jail for a term not to exceed 6
 25 months, or both. Upon conviction of a second or subsequent

violation, the obligor shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(7) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with [sections 5 through 12].

(8) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

NEW SECTION. Section 9. Stay of suspension of license -- payment plan -- hardship. (1) An obligor may at the time of the hearing conducted under [section 7] or at any time after the hearing petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship

to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the licensing authority and the obligor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license.

NEW SECTION. Section 10. Termination of order to suspend license. (1) When the support enforcement entity determines that the support debt or support obligation is paid in full, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the licensing authority and the obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency.

NEW SECTION. Section 11. Fees. A licensing authority subject to [sections 5 through 12] may charge the obligor a fee to cover the administrative costs incurred by the licensing authority under [sections 5 through 12].

NEW SECTION. Section 12. Rulemaking authority. The department shall adopt rules necessary for the implementation and administration of [sections 5 through 11].

NEW SECTION. Section 13. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, apply to [section 4].

(2) [Sections 5 through 12] are intended to be codified as an integral part of Title 40, chapter 5, and the

provisions of Title 40, chapter 5, apply to [sections 5 through 12].

NEW SECTION. Section 14. Coordination instruction. If both Senate Bill No. 217 and [this act], containing [sections 5 through 12], are passed and approved, Senate Bill No. 217 is void.

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

-End-

1 HOUSE BILL NO. 482

2 INTRODUCED BY BOHLINGER, FAGG, KEATING, TOOLE, KADAS, KASTEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CIVIL
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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:9 NEW SECTION. Section 1. Failure to pay support --

10 civil contempt. (1) For purposes of this section, "support"
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16 ordered.

17 (2) If a person obligated to provide support fails to
18 pay as ordered, the payee or assignee of the payee of the

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

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 29, 1993

Page 2 of 2
March 29, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 482 (third reading copy -- blue), respectfully report that House Bill No. 482 be amended as follows and as so amended be concurred in.

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

That such amendments read:

1. Title, lines 5 through 7.
Strike: "REQUIRING" on line 5 through "SERVICES;" on line 7
Insert: "AND"
2. Title, line 10.
Strike: "; AND" through "MCA"
3. Page 1, line 14.
Strike: "4 and 12"
Insert: "2 and 10"
4. Page 1, line 16.
Strike: "4"
Insert: "2"
5. Page 1, line 17.
Strike: "11"
Insert: "9"
6. Page 5, line 16.
Following: "(a)"
Insert: "not more than"
7. Page 5, line 17.
Following: "(b)"
Insert: "not more than"
8. Page 5, line 18.
Following: "(c)"
Insert: "not more than"
9. Page 6, line 21 through line 4 of page 12.
Strike: sections 2 and 3 in their entirety
Re-number: subsequent sections

10. Page 14, line 22.
Strike: "right or"

11. Page 13, line 4.
Page 19, line 12.
Page 20, lines 5 and 6.
Page 21, line 10.
Page 23, lines 13 and 15.
Page 23, lines 18 and 19.
Page 23, line 24.
Page 24, lines 1 and 2.
Page 24, line 5.
Strike: "5 through 12"
Insert: "3 through 10"

12. Page 17, lines 19 and 22.
Page 20, line 1.
Page 21, line 16.
Strike: "7"
Insert: "5"

13. Page 23, lines 21 and 23.
Strike: "4"
Insert: "2"

-END-

Ad Amd. Coord.
Sec. of Senate

Rye
Senator Carrying Bill

701253SC.San

SENATE

HB 482
701253SC.San

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 30, 1993 10:45 pm

March 31, 1993

Page 2 of 2

Mr. Chairman: I move to amend House Bill No. 482 (third reading copy -- blue).

ADOPT

REJECT

Signed: _____

Senator Mike Halligan

That such amendments read:

1. Page 1, line 14.
Page 13, line 4.
Page 19, line 12.
Page 21, line 10.
Page 23, lines 13, 15, and 24.
Page 24, lines 2 and 5.
Strike: "12"
Insert: "13"
2. Page 1, line 17.
Strike: "11]."
Insert: "12] and [section 13] requires the licensing authority to adopt rules necessary for the implementation and administration of [sections 5 through 12]."
3. Page 20, line 3.
Strike: "by"
Insert: "involving"
4. Page 20, lines 5 through 7.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections
5. Page 20, line 11.
Following: "license"
Insert: "must be implemented by the licensing authority and"
6. Page 21, line 14.
Following: line 13
Insert: "(8) To the extent that inconsistencies exist between [sections 5 through 13] and the procedural requirements for suspension of a license issued by the department of health and environmental sciences, [sections 5 through 13] supercede those requirements."

NEW SECTION. Section 9. Nondisciplinary suspension for failure to pay child support. Notwithstanding any other provision of this title, the department has the authority to suspend a license under [sections 5 through 13] without any action by the licensing authority. The licensing authority shall, upon receipt of an order issued by the support enforcement entity, suspend the license of the named individual. The suspension must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not apply."

Renumber: subsequent sections

7. Page 23, line 15.

Following: "12]."

Insert: "Fees collected pursuant to this section by a licensing authority with a state special revenue fund must be deposited in the state special revenue fund for the use of the licensing authority to pay the costs of administering [sections 5 through 13]."

8. Page 23, line 19.

Strike: "11]."

Insert: " 12]. The licensing authority shall adopt rules necessary for the implementation and administration of [sections 5 through 12]."

-END-

HOUSE BILL NO. 482

INTRODUCED BY BOHLINGER, FAGG, KEATING, TOOLE, KADAS, KASTEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CIVIL CONTEMPT FOR FAILURE TO PAY SUPPORT; ~~REQUIRING EMPLOYERS, PAYERS, AND UNIONS TO REPORT HIRING INFORMATION TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES,~~ PROVIDING A PATERNITY ACKNOWLEDGMENT PROCESS; AND PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES FOR FAILURE TO PAY SUPPORT; ~~AND AMENDING SECTIONS 40-5-403 AND 40-5-443, MCA.~~"

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections ~~4~~ and ~~12~~ 2 AND 11] require the department of social and rehabilitation services to adopt rules necessary for the implementation and administration of [sections ~~4~~ 2 through ~~11~~ 10] AND [SECTION 11] REQUIRES THE LICENSING AUTHORITY TO ADOPT RULES NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF [SECTIONS 3 THROUGH 10].

The rules may include provisions regarding:

- (1) the provision of reimbursements to hospitals, institutions, and midwives for paternity acknowledgment costs;
- (2) the notice of intent to suspend licenses;
- (3) the hearing procedure used to review the cause for

suspension of a license;

(4) the approval of payment plans agreed to by obligors for payment of support debts;

(5) the determination of circumstances creating a hardship that warrant a stay of action for suspension of a license; and

(6) the procedures for implementing and enforcing an order suspending a license.

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

NEW SECTION. Section 1. Failure to pay support --
civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated

1 person resides; or

2 (c) of the judicial district in which the payee or
3 assignee of the payee resides or has an office.

4 (4) Upon filing of a verified petition alleging facts
5 constituting contempt of the support order, the district
6 court shall issue an order requiring the obligated person to
7 appear and show cause why the obligated person should not be
8 held in contempt and punished under this section.

9 (5) The obligated person is presumed to be in contempt
10 upon a showing that:

11 (a) there is a support order issued by a court or
12 administrative agency of this or another state with
13 jurisdiction to enter the order;

14 (b) the obligated person had actual or constructive
15 knowledge of the order; and

16 (c) the obligated person failed to pay support as
17 ordered.

18 (6) Certified payment records maintained by a clerk of
19 court or administrative agency authorized by law or by the
20 support order to collect support are admissible in a
21 proceeding under this section and are prima facie evidence
22 of the amount of support paid and any arrearages under the
23 support order.

24 (7) Following a showing under subsection (5), the
25 obligated person may move to be excused from the contempt by

1 showing clear and convincing evidence that the obligated
2 person:

3 (a) has insufficient income to pay the arrearages;

4 (b) lacks personal or real property that can be sold,
5 mortgaged, or pledged to raise the needed sum;

6 (c) has unsuccessfully attempted to borrow the sum from
7 a financial institution;

8 (d) has no other source, including relatives, from
9 which the sum can be borrowed or secured;

10 (e) does not have a valid out-of-court agreement with
11 the payee waiving, deferring, or otherwise compromising the
12 support obligation; or

13 (f) cannot, for some other reason, reasonably comply
14 with the order.

15 (8) In addition to the requirement of subsection (7),
16 the obligated person shall also show by clear and convincing
17 evidence that factors constituting the excuse were not
18 occasioned or caused by the obligated person voluntarily:

19 (a) remaining unemployed or underemployed when there is
20 employment suitable to the obligated person's skills and
21 abilities available within a reasonable distance from the
22 obligated person's residence;

23 (b) selling, transferring, or encumbering real or
24 personal property for fictitious or inadequate consideration
25 within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) NOT MORE THAN 5 days incarceration in the county jail;

(b) NOT MORE THAN 120 hours of community service work;

(c) NOT MORE THAN a \$500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the

contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order.

~~Section 2.--Section 40-5-403, MEA, is amended to read:--~~

~~"40-5-403.--Definitions.--As used in this part, the~~

following definitions apply:

{1}--"Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

{2}--"Department" means the department of social and rehabilitation services provided for in 2-15-2201.

{3}--"Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

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

{b}--any amounts exempted from judgment, execution, or attachment by federal or state law;

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

{5}--"Obligor" means a person who owes a duty to make payments under a support order.

{6}--"Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation,

association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

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

{a}--an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

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

{c}--an order requiring payment of interest due on unpaid judgments for child support.

{8}--"Union" means a labor union, union, local union,

affiliate, or union hiring hall."

Section 3. ~~Section 40-5-443, MCA, is amended to read:--~~

~~"40-5-443. Payors to provide information --- exemption from liability. (1) Upon notice by the department and except as provided in subsections (2) and (3) SUBSECTION (2), an employer or payor doing business in this state shall report to the department:~~

~~(a) the hiring of an individual who resides or works in this state;~~

~~(b) a contract or subcontract with an individual who resides or works in this state; and~~

~~(c) the rehiring or return to work of an employee, contractor, or subcontractor;~~

~~(2) An employer is not required to report the hiring of an individual who the employer anticipates will be employed for less than 1 month or will be sporadically employed for less than 350 hours during any 6-month period;~~

~~(3) An employer or payor is not required to report under this section if the employer employs or contracts with fewer than 10 persons;~~

~~(4)(3) A union operating in this state shall, upon notice by the department, provide the department with information concerning the employment of its members;~~

~~(5)(4) An employer, payor, or union required to report under this section shall submit to the department monthly~~

~~reports containing its name, address, and employment security reference number or unified business identifier number and the name, last known residential address, social security number, and date of birth of each employee that was hired or rehired or that returned to work during the preceding month. The report may be made in writing or by computer on a form or in a format supplied by the department or by other means acceptable to the department;~~

~~(6)(5) The department may retain the reported information concerning an employee, contractee, or member only if the department is responsible for establishing, enforcing, or collecting a support obligation of that person. THE INFORMATION MUST BE KEPT CONFIDENTIAL BY THE DEPARTMENT AND MAY NOT BE DISSEMINATED BY IT. If the person does not owe a support obligation, the department may not create a record regarding the person and the information must be promptly destroyed;~~

~~(1)(7)(6) For the purposes of this part, upon Upon written request by the department, a present or former employer, payor, or former payor and any labor or union of which the obligor a person is or may have been a an employee, contractee, or member shall provide the department with the following information, if known, regarding the obligor person:~~

~~(a) last known residential address;~~

~~(b) social security number;~~
~~(c) dates of employment or union membership or dates of the term of the contract;~~
~~(d) amounts of wages, salaries, commissions, and other earnings paid to the obligor person during any period when the department provided support enforcement services; and~~
~~(e) whether health insurance coverage is or was available to the obligor person and the person's children through the employer, payor, or union and, if so:~~
~~(i) the name of the insurer or health care provider;~~
~~(ii) the policy numbers or other identifiers; and~~
~~(iii) the persons covered;~~
~~(f) the location of the job site; and~~
~~(g) any occupational or professional affiliations or licenses required for the employment or contract.~~
~~(8)(7) The department shall give an employer, payor, or union failing to report as required by this section a written warning. Upon further failure to report, the department may impose a civil penalty not to exceed \$1,000 for each month for each reportable person. The department shall adopt rules, under Title 2, chapter 4, and 40-5-405, stating administrative hearing and other procedures implementing this subsection.~~
~~(9)(8) To cover the report costs, an employer, payor, or union required to report under this section may charge~~

~~and withhold from the wages or other income of each reported person a fee not to exceed \$5 \$3 for each report covering the person.~~

~~(2)(10)(9) A An employer, payor, or union who discloses information to the department in compliance with this section is exempt from any liability to the obligor reported person that may result from such the disclosure."~~

NEW SECTION. Section 2. Paternity acknowledgment. (1)

Upon the birth of a child to a woman unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of parentage pursuant to 40-6-105;

(b) provide written information, furnished by the department, describing the rights and responsibilities of parentage, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department shall establish by rule the amount of reasonable costs, not to exceed the amount for

1 which federal financial participation is available, and the
2 procedures for claiming reimbursement.

3 (3) Hospitals, institutions, and midwives shall use
4 forms prescribed by the department for the acknowledgment of
5 paternity.

6 NEW SECTION. **Section 3. Definitions.** As used in
7 [sections 5--through--12 3 THROUGH 11], the following
8 definitions apply:

9 (1) (a) "Child" means:

10 (i) a person under 18 years of age who is not
11 emancipated, self-supporting, married, or a member of the
12 armed forces of the United States;

13 (ii) a person under 19 years of age who is still in high
14 school;

15 (iii) a person who is mentally or physically
16 incapacitated when the incapacity began prior to that person
17 reaching 18 years of age; and

18 (iv) in IV-D cases, a person for whom:

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

20 (B) a public assistance payment has been made;

21 (C) the department is providing support enforcement
22 services under 40-5-203; or

23 (D) the department has received a referral for
24 interstate services from an agency of another state under
25 the provisions of the Uniform Reciprocal Enforcement of

1 Support Act or under Title IV-D of the Social Security Act.

2 (b) The term may not be construed to limit the ability
3 of the department to enforce a support order according to
4 its terms when the order provides for support extending
5 beyond the time the child reaches 18 years of age.

6 (2) "Delinquency" means a support debt or support
7 obligation due under a support order in an amount greater
8 than or equal to 6 months' support payments as of the date
9 of service of a notice of intent to suspend a license.

10 (3) "Department" means the department of social and
11 rehabilitation services.

12 (4) "IV-D case" means a case in which the department is
13 providing support enforcement services as a result of:

14 (a) an assignment of support rights under 53-2-613;

15 (b) a payment of public assistance;

16 (c) an application for support enforcement services
17 under 40-5-203; or

18 (d) a referral for interstate services from an agency
19 of another state under the provisions of the Uniform
20 Reciprocal Enforcement of Support Act or under Title IV-D of
21 the Social Security Act.

22 (5) "License" means a license, certificate,
23 registration, or authorization issued by an agency of the
24 state of Montana granting a person a right or privilege to
25 engage in a business, occupation, or profession or any other

1 right--or privilege that is subject to suspension,
2 revocation, forfeiture, or termination by the licensing
3 authority prior to its date of expiration.

4 (6) "Licensing authority" means any department,
5 division, board, agency, or instrumentality of this state
6 that issues a license.

7 (7) "Obligee" means:

8 (a) a person to whom a support debt or support
9 obligation is owed; or

10 (b) a public agency of this or another state that has
11 the right to receive current or accrued support payments or
12 that is providing support enforcement services under this
13 chapter.

14 (8) "Obligor" means a person who owes a duty of
15 support.

16 (9) "Order suspending a license" means an order issued
17 by a support enforcement entity to suspend a license. The
18 order must contain the name of the obligor, the type of
19 license, and, if known, the social security number of the
20 obligor.

21 (10) "Payment plan" includes but is not limited to a
22 plan approved by the support enforcement entity that
23 provides sufficient security to ensure compliance with a
24 support order and that incorporates voluntary or involuntary
25 income withholding under part 3 or 4 of this chapter or a

1 similar plan for periodic payment of a support debt and, if
2 applicable, current and future support.

3 (11) "Support debt" or "support obligation" means the
4 amount created by:

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

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

12 (12) "Support enforcement entity" means:

13 (a) in IV-D cases, the department; or

14 (b) in all other cases, the district court that entered
15 the support order or a district court in which the support
16 order is registered.

17 (13) "Support order" means an order providing THAT
18 PROVIDES a determinable amount for temporary or final
19 periodic payment of a support debt or support obligation AND
20 THAT MAY INCLUDE PAYMENT OF A DETERMINABLE OR INDETERMINABLE
21 AMOUNT FOR INSURANCE COVERING THE CHILD issued by:

22 (a) a district court of this state;

23 (b) a court of appropriate jurisdiction of another
24 state, an Indian tribe, or a foreign country;

25 (c) an administrative agency pursuant to proceedings

1 under Title 40, chapter 5, part 2; or

2 (d) an administrative agency of another state with a
3 hearing function and process similar to those of the
4 department.

5 NEW SECTION. **Section 4.** Notice of intent to suspend
6 license. (1) Upon the petition of an obligee alleging the
7 existence of a delinquency, a support enforcement entity may
8 issue a notice of intent to suspend a license.

9 (2) The notice must be served upon the obligor
10 personally or by certified mail and may:

11 (a) in a IV-D case, be incorporated into any notice
12 served under Title 17, chapter 4, part 1, or Title 40,
13 chapter 5, part 2 or 4;

14 (b) in all other cases, be combined with any other
15 enforcement proceeding.

16 (3) The notice must state that the obligor's license
17 will be suspended 60 days after service unless within that
18 time the obligor:

19 (a) pays the entire support debt stated in the notice;

20 (b) enters into a payment plan approved by the support
21 enforcement entity; or

22 (c) appears and shows cause in a hearing before the
23 support enforcement entity under [section 7 5] that
24 suspension of a license is not appropriate.

25 (4) In a IV-D case, the notice must advise the obligor

1 that hearings conducted under [section 7 5] are subject to
2 the contested case provisions of the Montana Administrative
3 Procedure Act.

4 NEW SECTION. **Section 5.** Hearing -- order suspending
5 license. (1) To show cause why suspension of a license would
6 not be appropriate, the obligor shall request a hearing from
7 the support enforcement entity that issued the notice of
8 intent to suspend the license. The request must be made
9 within 60 days of the date of service of the notice.

10 (2) Upon receipt of a request for hearing from an
11 obligor, the support enforcement entity shall schedule a
12 hearing for the purpose of determining if suspension of the
13 obligor's license is appropriate. The support enforcement
14 entity shall stay suspension of the license pending the
15 outcome of the hearing.

16 (3) The only issues that may be determined in a hearing
17 under this section are the amount of the support debt or
18 support obligation, if any, whether or not a delinquency
19 exists, and whether or not the obligor has entered into a
20 payment plan.

21 (4) If an obligor fails to respond to a notice of
22 intent to suspend a license, fails to timely request a
23 hearing, or fails to appear at a regularly scheduled
24 hearing, the obligor's defenses, objections, or request for
25 a payment plan must be considered to be without merit and

the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the order suspending a license to the licensing authority and the obligor.

(6) The determinations of the department under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination made by the support enforcement entity under [sections 5--through--12 3 THROUGH 11] is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license.

NEW SECTION. Section 6. Suspension, denial, and nonrenewal of licenses. (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under [section 7 5] suspending a license must be processed by the licensing authority without an additional review or hearing by INVOLVING the licensing authority concerning suspension of the license.

~~{3}--During--the--term--of--a--suspension--under--{sections--5 through--12 3--THROUGH--10--13},--the--licensing--authority--may--not issue--or--renew--the--obligor's--license--~~

~~{4}{3}~~ Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license MUST BE IMPLEMENTED BY THE LICENSING AUTHORITY AND continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

~~{5}{4}~~ In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

~~{6}{5}~~ Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity

1 while the license is suspended under this section is guilty
 2 of a misdemeanor and upon conviction shall be punished by a
 3 fine of not less than \$250 or more than \$500 or by
 4 imprisonment in the county jail for a term not to exceed 6
 5 months, or both. Upon conviction of a second or subsequent
 6 violation, the obligor shall be punished by a fine of not
 7 less than \$500 or more than \$2,000 or by imprisonment in the
 8 county jail for a term not to exceed 1 year, or both. The
 9 support enforcement entity or the licensing authority may
 10 elect the remedy under this section or any other remedy
 11 provided for engaging in a licensed activity without a
 12 license or while the license is suspended.

13 ~~(7)~~(6) The licensing authority is exempt from liability
 14 to the licensee for activities conducted in compliance with
 15 ~~[sections 5-through-12 3 THROUGH 11]~~.

16 ~~(8)~~(7) The licensing authority has no jurisdiction to
 17 modify, remand, reverse, vacate, or stay the order of the
 18 support enforcement entity suspending a license.

19 (8) TO THE EXTENT THAT INCONSISTENCIES EXIST BETWEEN
 20 [SECTIONS 3 THROUGH 11] AND THE PROCEDURAL REQUIREMENTS FOR
 21 SUSPENSION OF A LICENSE ISSUED BY THE DEPARTMENT OF HEALTH
 22 AND ENVIRONMENTAL SCIENCES, [SECTIONS 3 THROUGH 11]
 23 SUPERSEDE THOSE REQUIREMENTS.

24 NEW SECTION. SECTION 7. NONDISCIPLINARY SUSPENSION FOR
 25 FAILURE TO PAY CHILD SUPPORT. NOTWITHSTANDING ANY OTHER

1 PROVISION OF THIS TITLE, THE DEPARTMENT HAS THE AUTHORITY TO
 2 SUSPEND A LICENSE UNDER [SECTIONS 3 THROUGH 11] WITHOUT ANY
 3 ACTION BY THE LICENSING AUTHORITY. THE LICENSING AUTHORITY
 4 SHALL, UPON RECEIPT OF AN ORDER ISSUED BY THE SUPPORT
 5 ENFORCEMENT ENTITY, SUSPEND THE LICENSE OF THE NAMED
 6 INDIVIDUAL. THE SUSPENSION MUST BE NONDISCIPLINARY FOR
 7 PROFESSIONAL OR OCCUPATIONAL LICENSES, AND THE PROVISIONS OF
 8 2-4-631 DO NOT APPLY.

9 NEW SECTION. Section 8. Stay of suspension of license
 10 -- payment plan -- hardship. (1) An obligor may at the time
 11 of the hearing conducted under [section 7 5] or at any time
 12 after the hearing petition the support enforcement entity
 13 for an order staying suspension of the license.

14 (2) The support enforcement entity shall consider the
 15 obligor's petition for a stay separately from any
 16 determination on whether suspension of a license is
 17 appropriate.

18 (3) The support enforcement entity may stay suspension
 19 of a license upon a showing that suspension or continued
 20 suspension of a license would create a significant hardship
 21 to the obligor, to the obligor's employees, to legal
 22 dependents residing in the obligor's household, or to
 23 persons, businesses, or other entities served by the
 24 obligor.

25 (4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the licensing authority and the obligor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license.

NEW SECTION. Section 9. Termination of order to suspend license. (1) When the support enforcement entity determines that the support debt or support obligation is paid in full, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of

the order terminating the suspension of the license to the licensing authority and the obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency.

NEW SECTION. Section 10. Fees. A licensing authority subject to [sections 5-through-12 3 THROUGH 11] may charge the obligor a fee to cover the administrative costs incurred by the licensing authority under [sections 5-through-12 3 THROUGH 11]. FEES COLLECTED PURSUANT TO THIS SECTION BY A LICENSING AUTHORITY WITH A STATE SPECIAL REVENUE FUND MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND FOR THE USE OF THE LICENSING AUTHORITY TO PAY THE COSTS OF ADMINISTERING [SECTIONS 3 THROUGH 11].

NEW SECTION. Section 11. Rulemaking authority. The department shall adopt rules necessary for the implementation and administration of [sections 5-through-11 3 THROUGH 10]. THE LICENSING AUTHORITY SHALL ADOPT RULES NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF [SECTIONS 3 THROUGH 10].

NEW SECTION. Section 12. Codification instruction. (1) [Section 4 2] is intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, apply to [section 4 2].

1 (2) [Sections ~~5--through-12~~ 3 THROUGH 11] are intended
2 to be codified as an integral part of Title 40, chapter 5,
3 and the provisions of Title 40, chapter 5, apply to
4 [sections ~~5-through-12~~ 3 THROUGH 11].

5 NEW SECTION. **Section 13.** Coordination instruction. If
6 both Senate Bill No. 217 and [this act], containing
7 [sections ~~5--through--12~~ 3 THROUGH 11], are passed and
8 approved, Senate Bill No. 217 is void.

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

-End-