

SENATE BILL NO. 217

INTRODUCED BY NATHE, S. RICE, CHRISTIAENS,  
WATERMAN, KEATING, BOHLINGER  
BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 16, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1993	PRINTING REPORT.
FEBRUARY 18, 1993	SECOND READING, DO PASS.
FEBRUARY 19, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 25, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 76; NOES, 23.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
---------------	---

APRIL 5, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 217

2 INTRODUCED BY NATHAN

3 BY REQUEST OF THE DEPARTMENT OF Water & Land  
4 SOCIAL AND REHABILITATION SERVICES Walter G. Gating  
5 John Whittinger

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
7 SUSPENSION OF PROFESSIONAL AND OCCUPATIONAL LICENSES OF  
8 PERSONS DETERMINED BY A COURT OR BY THE DEPARTMENT OF SOCIAL  
9 AND REHABILITATION SERVICES TO BE DELINQUENT IN THE PAYMENT  
10 OF CHILD SUPPORT; PROVIDING FOR NOTICE AND AN OPPORTUNITY  
11 FOR A HEARING PENDING SUSPENSION OF A LICENSE; AND PROVIDING  
12 FOR A STAY OF SUSPENSION UPON A SHOWING OF HARDSHIP OR AN  
13 OBLIGOR'S AGREEMENT TO ENTER INTO A PAYMENT PLAN."

14  
15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because  
17 [section 9] requires the department of social and  
18 rehabilitation services to adopt rules necessary for the  
19 implementation and administration of [sections 1 through 9].

20 It is the intent of the legislature that rules adopted  
21 by the department be consistent with the purpose and policy  
22 stated in [section 1]. Rules may include rules regarding:

- 23 (1) a notice of intent to suspend a license;  
24 (2) a hearing to review the cause for suspension of a  
25 license;

1 (3) approval of a payment plan agreed to by an obligor  
2 for payment of a support debt;

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

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

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

10 NEW SECTION. Section 1. Purpose and policy. The  
11 purpose of [sections 1 through 9] is to provide a more  
12 effective and efficient way to ensure the support of the  
13 dependent children of persons who hold professional or  
14 occupational licenses issued in this state. Licensees who  
15 fail to support their children should not enjoy the  
16 privileges and benefits of licensure granted by the state of  
17 Montana. It is the policy of this state that the support of  
18 children receive the highest priority in the allocation of a  
19 responsible parent's income.

20 NEW SECTION. Section 2. Definitions. As used in  
21 [sections 1 through 9], the following definitions apply:

- 22 (1) (a) "Child" means any person under 18 years of age  
23 who is not emancipated, self-supporting, married, or a  
24 member of the armed forces of the United States, any person  
25 under 19 years of age who is still in high school, or any

1 person who is mentally or physically incapacitated when the  
2 incapacity began prior to that person reaching 18 years of  
3 age and for whom:

- 4 (i) support rights are assigned under 53-2-613;
- 5 (ii) a public assistance payment has been made;
- 6 (iii) the department is providing support enforcement  
7 services under 40-5-203; or
- 8 (iv) the department has received a referral for  
9 interstate services from an agency of another state under  
10 the provisions of the Uniform Reciprocal Enforcement of  
11 Support Act or under Title IV-D of the Social Security Act.

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

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

20 (3) "IV-D case" means a case in which the department of  
21 social and rehabilitation services is providing support  
22 enforcement services as a result of:

- 23 (a) an assignment of support rights under 53-2-613;
- 24 (b) a payment of public assistance;
- 25 (c) an application for support enforcement services

1 under 40-5-203; or

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

6 (4) "License" means any license, certificate,  
7 registration, or authorization issued by a licensing agency  
8 that allows a person to engage in a business, occupation, or  
9 profession.

10 (5) "Licensing agency" means the department of commerce  
11 or any other department or board that issues a license under  
12 Title 37 but does not include the supreme court of Montana.

13 (6) "Obligee" means:

14 (a) a person to whom a support debt or support  
15 obligation is owed; or

16 (b) a public agency of this or another state that has  
17 the right to receive current or accrued support payments or  
18 that is providing support enforcement services under this  
19 chapter.

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

22 (8) "Order suspending a license" means an order issued  
23 by a support enforcement entity to suspend a license. The  
24 order must contain the name of the obligor, the type of  
25 license, and, if known, the social security number of the

1 obligor.

2 (9) "Payment plan" includes but is not limited to a  
3 plan, approved by the support enforcement entity, that  
4 provides sufficient security to ensure compliance and that  
5 incorporates voluntary or involuntary income withholding  
6 under part 3 or 4 of this chapter or a similar plan for  
7 periodic payment of a support debt and, if applicable,  
8 current and future support.

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

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

13 (b) a support order for spousal maintenance if the  
14 judgment or order requiring payment of maintenance also  
15 contains a judgment or order requiring payment of child  
16 support for a child for whom the person awarded maintenance  
17 is the custodial parent.

18 (11) "Support enforcement entity" means:

19 (a) in IV-D cases, the department of social and  
20 rehabilitation services; or

21 (b) in all other cases, the district court that entered  
22 the support order or a district court in which the support  
23 order is registered.

24 (12) "Support order" means an order providing a  
25 determinable amount for temporary or final periodic payment

1 of a support debt or support obligation issued by:

2 (a) a district court of this state;

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

5 (c) an administrative agency pursuant to proceedings  
6 under [sections 1 through 9]; or

7 (d) an administrative agency of another state with a  
8 hearing function and process similar to those of the  
9 department of social and rehabilitation services under  
10 [sections 1 through 9].

11 **NEW SECTION. Section 3. Notice of intent to suspend**  
12 **license.** (1) Upon the petition of an obligee alleging the  
13 existence of a delinquency, a support enforcement entity may  
14 issue a notice of intent to suspend a license.

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

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

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

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

25 (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 4] 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 4] are subject to the contested case provisions of the Montana Administrative Procedure Act.

**NEW SECTION. Section 4. 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 entered into a payment plan, the support enforcement entity shall issue an order suspending the obligor's license. The support enforcement entity shall send a copy of the order suspending the license to the licensing agency and the obligor.

(6) The determinations of the department of social and rehabilitation services 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 of the department of social and rehabilitation services under [sections 1 through 9] does not affect any disciplinary proceeding of the licensing agency pursuant to Title 37.

**NEW SECTION. Section 5. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order

1 suspending a license, a licensing agency shall:

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

4 (b) enter the suspension on the appropriate records;  
5 and

6 (c) report the suspension as appropriate.

7 (2) Further action by the licensing agency is not  
8 necessary to implement the suspension of the license.

9 (3) During the term of a suspension under [sections 1  
10 through 9], the licensing agency may not issue the obligor a  
11 notice of renewal of the license.

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

16 (5) Unless an order staying suspension of a license is  
17 in effect, an obligor who continues to practice an  
18 occupation or profession while the license is suspended is  
19 guilty of a misdemeanor and upon conviction shall be  
20 punished by a fine of not less than \$250 or more than \$500,  
21 by imprisonment for a term not to exceed 6 months, or both.  
22 Upon conviction of a second or subsequent violation, the  
23 obligor shall be punished by a fine of not less than \$500 or  
24 more than \$2,000, by imprisonment for a term not to exceed 1  
25 year, or both.

1 NEW SECTION. Section 6. Stay of suspension of license

2 -- payment plan -- hardship. (1) An obligor may at the time  
3 of the hearing conducted under [section 4] or at any time  
4 after the hearing petition the support enforcement entity  
5 for an order staying suspension of the license.

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

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

17 (4) A stay terminates upon:

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

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

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

24 (5) If the licensing agency has been notified of an  
25 order suspending a license, the support enforcement entity

1 shall send a copy of any order staying or reinstating  
2 suspension of the license to the licensing agency and the  
3 obligor.

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

6 (i) enter the information on appropriate records; and  
7 (ii) report the action as appropriate.

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

11 NEW SECTION. Section 7. Termination of order to  
12 suspend license. (1) When the support enforcement entity  
13 determines that the support debt or support obligation is  
14 paid in full, it shall terminate the order suspending the  
15 license. The support enforcement entity shall send a copy of  
16 the order terminating the suspension of the license to the  
17 licensing agency and the obligor.

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

22 NEW SECTION. Section 8. Fees. (1) Notwithstanding any  
23 other provisions of law, the licensing agencies subject to  
24 [sections 1 through 9] may charge the obligor a fee to cover  
25 the administrative costs incurred by the licensing agency

1 under [sections 1 through 9].

2 (2) Fees collected pursuant to this section must be  
3 deposited in the state special revenue fund for the use of  
4 the licensing agency to pay the costs of administering  
5 [sections 1 through 9] subject to 37-1-101(6).

6 NEW SECTION. Section 9. Rulemaking authority. The  
7 department of social and rehabilitation services shall adopt  
8 rules as may be necessary for the implementation and  
9 administration of [sections 1 through 9].

10 NEW SECTION. Section 10. Nondisciplinary suspension  
11 for failure to pay child support. (1) Notwithstanding any  
12 other provisions of this title, the department of social and  
13 rehabilitation services has the authority to suspend a  
14 license under [sections 1 through 9] without action by the  
15 department of commerce, any other department, or any board  
16 issuing a license under this title. The department of  
17 commerce and any of its licensing boards or any other  
18 department issuing a license under this title shall, upon  
19 receipt of an order issued by the support enforcement entity  
20 under [sections 1 through 9], suspend the professional or  
21 occupational license of the named individual. The suspension  
22 must be nondisciplinary and the provisions of 2-4-631 do not  
23 apply.

24 (2) An order of nondisciplinary suspension continues  
25 until the support enforcement entity advises the appropriate



1 department or licensing board that the nondisciplinary  
 2 suspension has been stayed or terminated. The department or  
 3 board shall advise the licensee that the licensee's license  
 4 is effective.

5 (3) An order of a support enforcement entity must be  
 6 processed by the appropriate department or licensing board  
 7 pursuant to the hearing process provided in [sections 3 and  
 8 4] but without an administrative hearing authorized or  
 9 required under 37-1-131 or any other hearing for suspension,  
 10 revocation, denial, or renewal of a license under this  
 11 title.

12 (4) The department of commerce, any other department,  
 13 or any board issuing a license under this title is exempt  
 14 from any liability for activities conducted in compliance  
 15 with [sections 1 through 9] or this section.

16 **NEW SECTION. Section 11.** Codification instruction. (1)  
 17 [Sections 1 through 9] are intended to be codified as an  
 18 integral part of Title 40, chapter 5, and the provisions of  
 19 Title 40, chapter 5, apply to [sections 1 through 9].

20 (2) [Section 10] is intended to be codified as an  
 21 integral part of Title 37, chapter 1, part 1, and the  
 22 provisions of Title 37, chapter 1, part 1, apply to [section  
 23 10].

24 **NEW SECTION. Section 12.** Severability. If a part of  
 25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this  
 2 act] is invalid in one or more of its applications, the part  
 3 remains in effect in all valid applications that are  
 4 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 SB0217, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill provides for suspension of occupational licenses, where child support payment is delinquent, as a Child Support Enforcement tool.

ASSUMPTIONS:

Department of Social and Rehabilitation Services


1. The Child Support caseload has the same proportion of obligers with occupational licenses as the general population of Montana.
2. Due process hearings on suspension will be held by the Child Support Enforcement Division (CSED) hearings office and a decision will be rendered by CSED.
3. The licensing board will implement suspensions.
4. More than one-half of all locatable occupationally-licensed obligers who have child support orders being enforced by CSED do not pay. Some of these will go to hearing and nearly all will be suspended.
5. Most or all of these cases will already be in the CSED hearing caseload when the licensing issue is addressed. The CSED will be able to absorb the additional workload allowed in SB217 without additional funding.
6. Child Support collections will increase as a result of SB217 based on the following estimates:

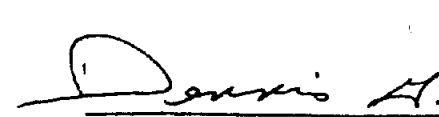
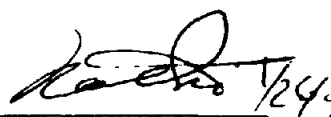
	<u>FY94</u>	<u>FY95</u>
a. Number of locatable non-paying obligers with occupational licenses	695	789
b. Number of CSED hearings on occupational license suspensions	104	39
c. Number of cases referred to licensing boards for implementation of suspension	94	36
d. Possible increase in collections from this initiative	\$491,000*	\$585,000*
(Note: The estimate of \$491,000 assumes 591 obligers will comply with the child support order in FY94 and \$585,000 assumes 750 obligers will comply in FY95.)		

Department of Commerce

1. There will be 94 nondisciplinary suspensions in FY94 and 36 nondisciplinary suspensions in FY95 (requiring 3 hours of data input and follow-up each), 3 petitions for review per year (requiring 8 hours each), and 33 licensing programs rules will be impacted (rule adoption requiring 24 hours per program).
2. The budget will be executive current level plus modifieds for the 95 biennium.
3. The amount of expenditures will be reflected in both the Administrative Services Pool and in the authority for the boards, to enable them to pay the additional overhead.

(continued)

 1-26-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

   
DENNIS G. NATHE, PRIMARY SPONSOR      DATE

Fiscal Note for SB0217, as introduced

SB 217

FISCAL IMPACT:

Expenditures: Department of Commerce

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	812,181	831,996	19,815	814,425	832,186	17,761
Operating Expenses	418,054	426,554	8,500	393,437	399,637	6,200
Capital Outlay	67,117	70,317	3,200	10,687	10,687	0
Benefits and Claims	0	0	0	0	0	0
Total	1,297,352	1,328,867	31,515	1,218,549	1,242,510	23,961

Department of Social and Rehabilitation Services: None

Revenues: Department of Commerce

Overhead Fees from Obligers	1,297,352	1,328,867	31,515	1,218,549	1,242,510	23,961
-----------------------------	-----------	-----------	--------	-----------	-----------	--------

Department of Social and Rehabilitation Services

General Fund	0	(491,000)	(491,000)	0	(585,000)	(585,000)
Net Impact:						
General Fund	0	(491,000)	(491,000)	0	(585,000)	(585,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. There may be a decrease in the AFDC caseload as a result of increased Child Support collections. The magnitude of this decrease is impossible to determine.
2. The POL licensees will pay higher fees to cover the costs of the program.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0217, second reading.

**DESCRIPTION OF PROPOSED LEGISLATION:** This bill provides for suspension of occupational licenses, where child support payment is delinquent, as a child support enforcement tool.

**ASSUMPTIONS:**

**Department of Social and Rehabilitation Services**

1. The child support caseload has the same proportion of obligers with occupational licenses as the general population of Montana.
2. Due process hearings on suspension will be held by the Child Support Enforcement Division (CSED) hearings office and a decision will be rendered by CSED.
3. The licensing board will implement suspensions.
4. More than one-half of all locatable occupationally-licensed obligers who have child support orders being enforced by CSED do not pay. Some of these will go to hearing and nearly all will be suspended.
5. Most or all of these cases will already be in the CSED hearing caseload when the licensing issue is addressed. The CSED will be able to absorb the additional workload in the bill without additional funding.
6. Child support collections will increase as a result of the proposed law based on the following estimates:

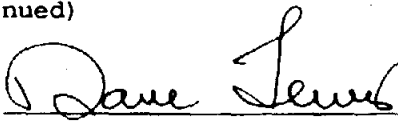
	<u>FY94</u>	<u>FY95</u>
a. Number of locatable non-paying obligers with occupational licenses	695	789
b. Number of CSED hearings on occupational license suspensions	104	39
c. Number of cases referred to licensing boards for implementation of suspension	94	36
d. Possible increase in collections from this initiative	\$491,000*	\$585,000*
(*Note: The estimate of \$491,000 assumes 591 obligers will comply with the child support order in FY94 and \$585,000 assumes 750 obligers will comply in FY95.)		

7. Fees collected under this bill will be passed on to the parent of the supported child (obligee) in cases where the obligee does not receive AFDC benefits. In cases where the obligee receives AFDC benefits, the money collected will be used to offset the AFDC benefits.

**Department of Commerce**

8. There will be 94 nondisciplinary suspensions in FY94 and 36 nondisciplinary suspensions in FY95 (requiring 3 hours of data input and follow-up each), 3 petitions for review per year (requiring 8 hours each), and 33 licensing programs rules will be impacted (rule adoption requiring 24 hours per program).
9. The budget will be executive current level plus modifieds for the 1995 biennium.
10. The amount of expenditures will be reflected both in the Administrative Services Pool and in the authority for the boards, to enable them to pay the additional overhead.

(continued)

 2-23-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/23/93  
DENNIS NATHE, PRIMARY SPONSOR      DATE

Fiscal Note for SB0217, second reading

SB 217-#2

FISCAL IMPACT:  
Department of Commerce  
Expenditures:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	812,181	831,996	19,815	814,425	832,186	17,761
Operating Expenses	418,054	426,554	8,500	393,437	399,637	6,200
Capital Outlay	67,117	70,317	3,200	10,687	10,687	0
Benefits and Claims	0	0	0	0	0	0
Total	1,297,352	1,328,867	31,515	1,218,549	1,242,510	23,961
<u>Funding:</u>						
State Special Revenue (02)	1,297,352	1,328,867	31,515	1,218,549	1,242,510	23,961
<u>Revenues:</u>						
Overhead Fees from Obligers	1,297,352	1,328,867	31,515	1,218,549	1,242,510	23,961

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. There may be a decrease in the AFDC caseload (and therefore some decrease in general fund AFDC expenditures) as a result of increased child support collections. The magnitude of this decrease is impossible to estimate.
2. The POL licensees will pay slightly higher fees to cover the costs of the program.

TECHNICAL NOTES:

AFDC general fund is likely to be reduced due to the payments made to AFDC on behalf of obligees who have received AFDC benefits, but this general fund savings is difficult to estimate. Any additional funds collected, after the parent of the supported child or AFDC is paid, are placed in the CSED state special revenue account and used to support CSED. After all CSED functions are funded and a balance of \$500,000 above that amount is reached, any additional money reverts to the general fund. However, it is not possible to estimate accurately the impact this bill may have on the general fund. Therefore, the amounts of \$491,000 in FY94 and \$585,000 in FY95 (see assumption 6) are not shown as impacting the general fund, as was indicated on the fiscal note as introduced.

APPROVED BY COMMITTEE  
ON JUDICIARY

## SENATE BILL NO. 217

INTRODUCED BY NATHE, S. RICE, CHRISTIAENS,  
WATERMAN, KEATING, BOHLINGER  
BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
SUSPENSION OF PROFESSIONAL AND OCCUPATIONAL LICENSES OF  
PERSONS DETERMINED BY A COURT OR BY THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES TO BE DELINQUENT IN THE PAYMENT  
OF CHILD SUPPORT; PROVIDING FOR NOTICE AND AN OPPORTUNITY  
FOR A HEARING PENDING SUSPENSION OF A LICENSE; AND PROVIDING  
FOR A STAY OF SUSPENSION UPON A SHOWING OF HARDSHIP OR AN  
OBLIGOR'S AGREEMENT TO ENTER INTO A PAYMENT PLAN."

## STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 9] requires the department of social and  
rehabilitation services to adopt rules necessary for the  
implementation and administration of [sections 1 through 9].

It is the intent of the legislature that rules adopted  
by the department be consistent with the purpose and policy  
stated in [section 1]. Rules may include rules regarding:

- (1) a notice of intent to suspend a license;
- (2) a hearing to review the cause for suspension of a

license;

(3) approval of a payment plan agreed to by an obligor  
for payment of a support debt;

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

(5) 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. Purpose and policy.** The  
purpose of [sections 1 through 9] is to provide a more  
effective and efficient way to ensure the support of the  
dependent children of persons who hold professional or  
occupational licenses issued in this state. Licensees who  
fail to support their children should not enjoy the  
privileges and benefits of licensure granted by the state of  
Montana. It is the policy of this state that the support of  
children receive the highest priority in the allocation of a  
responsible parent's income.

NEW SECTION. **Section 2. Definitions.** As used in  
[sections 1 through 9], the following definitions apply:

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

under 19 years of age who is still in high school, or any person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age and, IN IV-D CASES, for whom:

- (i) support rights are assigned under 53-2-613;
- (ii) a public assistance payment has been made;
- (iii) the department is providing support enforcement services under 40-5-203; or
- (iv) 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 to extend 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) "IV-D case" means a case in which the department of social and rehabilitation services 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.

(4) "License" means any license, certificate, registration, or authorization issued by a licensing agency that allows a person to engage in a business, occupation, or profession.

(5) "Licensing agency" means the department of commerce or any other department or board that issues a license under Title 37 but does not include the supreme court of Montana.

(6) "Obligee" means:

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

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

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

(8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of

1 license, and, if known, the social security number of the  
2 obligor.

3 (9) "Payment plan" includes but is not limited to a  
4 plan, approved by the support enforcement entity, that  
5 provides sufficient security to ensure compliance and that  
6 incorporates voluntary or involuntary income withholding  
7 under part 3 or 4 of this chapter or a similar plan for  
8 periodic payment of a support debt and, if applicable,  
9 current and future support.

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

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

14 (b) a support order for spousal maintenance if the  
15 judgment or order requiring payment of maintenance also  
16 contains a judgment or order requiring payment of child  
17 support for a child for whom the person awarded maintenance  
18 is the custodial parent.

19 (11) "Support enforcement entity" means:

20 (a) in IV-D cases, the department of social and  
21 rehabilitation services; or

22 (b) in all other cases, the district court that entered  
23 the support order or a district court in which the support  
24 order is registered.

25 (12) "Support order" means an order providing a

1 determinable amount for temporary or final periodic payment  
2 of a support debt or support obligation issued by:

3 (a) a district court of this state;

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

6 (c) an administrative agency pursuant to proceedings  
7 under [sections 1 through 9]; or

8 (d) an administrative agency of another state with a  
9 hearing function and process similar to those of the  
10 department of social and rehabilitation services under  
11 ~~{sections 1 through 9}~~.

12 NEW SECTION. **Section 3.** Notice of intent to suspend  
13 license. (1) Upon the petition of an obligee alleging the  
14 existence of a delinquency, a support enforcement entity may  
15 issue a notice of intent to suspend a license.

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

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

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

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



- 1 (a) pays the entire support debt stated in the notice;  
 2 (b) enters into a payment plan approved by the support  
 3 enforcement entity; or  
 4 (c) appears and shows cause in a hearing before the  
 5 support enforcement entity under [section 4] that suspension  
 6 of a license is not appropriate.  
 7 (4) In a IV-D case, the notice must advise the obligor  
 8 that hearings conducted under [section 4] are subject to the  
 9 contested case provisions of the Montana Administrative  
 10 Procedure Act.

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

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

23 (3) The only issues that may be determined in a hearing  
 24 under this section are the amount of the support debt or  
 25 support obligation, if any, whether or not a delinquency

1 exists, and whether or not the obligor has entered into a  
 2 payment plan.

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

10 (5) If the support enforcement entity determines that  
 11 the obligor owes a delinquency and that the obligor has not  
 12 entered into a payment plan, the support enforcement entity  
 13 shall issue an order suspending the obligor's license. The  
 14 support enforcement entity shall send a copy of the order  
 15 suspending the license to the licensing agency and the  
 16 obligor.

17 (6) The determinations of the department of social and  
 18 rehabilitation services under this section are a final  
 19 agency decision and are subject to judicial review under  
 20 40-5-253 and the Montana Administrative Procedure Act.

21 (7) A determination of the department of social and  
 22 rehabilitation services under [sections 1 through 9] does  
 23 not affect any disciplinary proceeding of the licensing  
 24 agency pursuant to Title 37.

25 NEW SECTION. Section 5. Suspension, denial, and

1 nonrenewal of licenses. (1) Upon receipt of an order  
2 suspending a license, a licensing agency shall:

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

5 (b) enter the suspension on the appropriate records;  
6 and

7 (c) report the suspension as appropriate.

8 (2) Further action by the licensing agency is not  
9 necessary to implement the suspension of the license.

10 ~~{3}--During--the--term--of--a--suspension--under--{sections--1~~  
11 ~~through--9},--the--licensing--agency--may--not--issue--the--obligor--a~~  
12 ~~notice--of--renewal--of--the--license--~~

13 ~~{4}{3}~~ In the event that a license is suspended, any  
14 funds paid by the obligor to the licensing agency for costs  
15 related to issuance, renewal, or maintenance of a license  
16 may not be refunded to the obligor.

17 ~~{5}{4}~~ Unless an order staying suspension of a license  
18 is in effect, an obligor who continues to practice an  
19 occupation or profession while the license is suspended is  
20 guilty of a misdemeanor and upon conviction shall be  
21 punished by a fine of not less than \$250 or more than \$500,  
22 by imprisonment for a term not to exceed 6 months, or both.  
23 Upon conviction of a second or subsequent violation, the  
24 obligor shall be punished by a fine of not less than \$500 or  
25 more than \$2,000, by imprisonment for a term not to exceed 1

1 year, or both.

2 NEW SECTION. **Section 6.** Stay of suspension of license

3 -- payment plan -- hardship. (1) An obligor may at the time  
4 of the hearing conducted under [section 4] or at any time  
5 after the hearing petition the support enforcement entity  
6 for an order staying suspension of the license.

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

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

18 (4) A stay terminates upon:

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

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

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

25 (5) If the licensing agency has been notified of an

1 order suspending a license, the support enforcement entity  
2 shall send a copy of any order staying or reinstating  
3 suspension of the license to the licensing agency and the  
4 obligor.

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

7 (i) enter the information on appropriate records; and  
8 (ii) report the action as appropriate.

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

12 NEW SECTION. Section 7. Termination of order to  
13 suspend license. (1) When the support enforcement entity  
14 determines that the support debt or support obligation is  
15 paid in full, it shall terminate the order suspending the  
16 license. The support enforcement entity shall send a copy of  
17 the order terminating the suspension of the license to the  
18 licensing agency and the obligor.

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

23 NEW SECTION. Section 8. Fees. (1) Notwithstanding any  
24 other provisions of law, the licensing agencies subject to  
25 [sections 1 through 9] may charge the obligor a fee to cover

1 the administrative costs incurred by the licensing agency  
2 under [sections 1 through 9].

3 (2) Fees collected pursuant to this section must be  
4 deposited in the state special revenue fund for the use of  
5 the licensing agency to pay the costs of administering  
6 [sections 1 through 9] subject to 37-1-101(6).

7 NEW SECTION. Section 9. Rulemaking authority. The  
8 department of social and rehabilitation services shall adopt  
9 rules as may be necessary for the implementation and  
10 administration of [sections 1 through 9].

11 NEW SECTION. Section 10. Nondisciplinary suspension  
12 for failure to pay child support. (1) Notwithstanding any  
13 other provisions of this title, the department of social and  
14 rehabilitation services has the authority to suspend a  
15 license under [sections 1 through 9] without action by the  
16 department of commerce, any other department, or any board  
17 issuing a license under this title. The department of  
18 commerce and any of its licensing boards or any other  
19 department issuing a license under this title shall, upon  
20 receipt of an order issued by the support enforcement entity  
21 under [sections 1 through 9], suspend the professional or  
22 occupational license of the named individual. The suspension  
23 must be nondisciplinary and the provisions of 2-4-631 do not  
24 apply.

25 (2) An order of nondisciplinary suspension continues

1 until the support enforcement entity advises the appropriate  
 2 department or licensing board that the nondisciplinary  
 3 suspension has been stayed or terminated. The department or  
 4 board shall advise the licensee that the licensee's license  
 5 ~~is-effective~~ HAS BEEN REINSTATED.

6 (3) An order of a support enforcement entity must be  
 7 processed by the appropriate department or licensing board  
 8 pursuant to the hearing process provided in [sections 3 and  
 9 4] but without an administrative hearing authorized or  
 10 required under 37-1-131 or any other hearing for suspension,  
 11 revocation, denial, or renewal of a license under this  
 12 title.

13 (4) The department of commerce, any other department,  
 14 or any board issuing a license under this title is exempt  
 15 from any liability for activities conducted in compliance  
 16 with [sections 1 through 9] or this section.

17 NEW SECTION. Section 11. Codification instruction. (1)  
 18 [Sections 1 through 9] are intended to be codified as an  
 19 integral part of Title 40, chapter 5, and the provisions of  
 20 Title 40, chapter 5, apply to [sections 1 through 9].

21 (2) [Section 10] is intended to be codified as an  
 22 integral part of Title 37, chapter 1, part 1, and the  
 23 provisions of Title 37, chapter 1, part 1, apply to [section  
 24 10].

25 NEW SECTION. Section 12. Severability. If a part of

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

-End-

SENATE BILL NO. 217  
INTRODUCED BY NATHE, S. RICE, CHRISTIAENS,  
WATERMAN, KEATING, BOHLINGER  
BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
SUSPENSION OF PROFESSIONAL AND OCCUPATIONAL LICENSES OF  
PERSONS DETERMINED BY A COURT OR BY THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES TO BE DELINQUENT IN THE PAYMENT  
OF CHILD SUPPORT; PROVIDING FOR NOTICE AND AN OPPORTUNITY  
FOR A HEARING PENDING SUSPENSION OF A LICENSE; AND PROVIDING  
FOR A STAY OF SUSPENSION UPON A SHOWING OF HARDSHIP OR AN  
OBLIGOR'S AGREEMENT TO ENTER INTO A PAYMENT PLAN."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 9] requires the department of social and  
rehabilitation services to adopt rules necessary for the  
implementation and administration of [sections 1 through 9].

It is the intent of the legislature that rules adopted  
by the department be consistent with the purpose and policy  
stated in [section 1]. Rules may include rules regarding:

- (1) a notice of intent to suspend a license;
- (2) a hearing to review the cause for suspension of a

license;

(3) approval of a payment plan agreed to by an obligor  
for payment of a support debt;

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

(5) 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. Purpose and policy. The  
purpose of [sections 1 through 9] is to provide a more  
effective and efficient way to ensure the support of the  
dependent children of persons who hold professional or  
occupational licenses issued in this state. Licensees who  
fail to support their children should not enjoy the  
privileges and benefits of licensure granted by the state of  
Montana. It is the policy of this state that the support of  
children receive the highest priority in the allocation of a  
responsible parent's income.

NEW SECTION. Section 2. Definitions. As used in  
[sections 1 through 9], the following definitions apply:

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

1 under 19 years of age who is still in high school, or any  
2 person who is mentally or physically incapacitated when the  
3 incapacity began prior to that person reaching 18 years of  
4 age and, IN IV-D CASES, for whom:

- 5 (i) support rights are assigned under 53-2-613;
- 6 (ii) a public assistance payment has been made;
- 7 (iii) the department is providing support enforcement  
8 services under 40-5-203; or
- 9 (iv) the department has received a referral for  
10 interstate services from an agency of another state under  
11 the provisions of the Uniform Reciprocal Enforcement of  
12 Support Act or under Title IV-D of the Social Security Act.
- 13 (b) The term may not be construed to limit the ability  
14 of the department to enforce a support order according to  
15 its terms when the order provides for support to extend  
16 beyond the time the child reaches 18 years of age.
- 17 (2) "Delinquency" means a support debt or support  
18 obligation due under a support order in an amount greater  
19 than or equal to 6 months' support payments as of the date  
20 of service of a notice of intent to suspend a license.
- 21 (3) "IV-D case" means a case in which the department of  
22 social and rehabilitation services is providing support  
23 enforcement services as a result of:
- 24 (a) an assignment of support rights under 53-2-613;
- 25 (b) a payment of public assistance;

- 1 (c) an application for support enforcement services  
2 under 40-5-203; or
- 3 (d) a referral for interstate services from an agency  
4 of another state under the provisions of the Uniform  
5 Reciprocal Enforcement of Support Act or under Title IV-D of  
6 the Social Security Act.
- 7 (4) "License" means any license, certificate,  
8 registration, or authorization issued by a licensing agency  
9 that allows a person to engage in a business, occupation, or  
10 profession.
- 11 (5) "Licensing agency" means the department of commerce  
12 or any other department or board that issues a license under  
13 Title 37 but does not include the supreme court of Montana.
- 14 (6) "Obligee" means:
- 15 (a) a person to whom a support debt or support  
16 obligation is owed; or
- 17 (b) a public agency of this or another state that has  
18 the right to receive current or accrued support payments or  
19 that is providing support enforcement services under this  
20 chapter.
- 21 (7) "Obligor" means a person who owes a duty of  
22 support.
- 23 (8) "Order suspending a license" means an order issued  
24 by a support enforcement entity to suspend a license. The  
25 order must contain the name of the obligor, the type of

license, and, if known, the social security number of the obligor.

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

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

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

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

(11) "Support enforcement entity" means:

(a) in IV-D cases, the department of social and rehabilitation services; or

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

(12) "Support order" means an order providing a

determinable amount for temporary or final periodic payment of a support debt or support obligation issued by:

(a) a district court of this state;

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

(c) an administrative agency pursuant to proceedings under [sections 1 through 9]; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department of social and rehabilitation services under {sections-1-through-9}.

**NEW SECTION. Section 3. 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:

1 (a) pays the entire support debt stated in the notice;  
 2 (b) enters into a payment plan approved by the support  
 3 enforcement entity; or  
 4 (c) appears and shows cause in a hearing before the  
 5 support enforcement entity under [section 4] that suspension  
 6 of a license is not appropriate.  
 7 (4) In a IV-D case, the notice must advise the obligor  
 8 that hearings conducted under [section 4] are subject to the  
 9 contested case provisions of the Montana Administrative  
 10 Procedure Act.  
 11 NEW SECTION. Section 4. Hearing -- order suspending  
 12 license. (1) To show cause why suspension of a license would  
 13 not be appropriate, the obligor shall request a hearing from  
 14 the support enforcement entity that issued the notice of  
 15 intent to suspend the license. The request must be made  
 16 within 60 days of the date of service of the notice.  
 17 (2) Upon receipt of a request for hearing from an  
 18 obligor, the support enforcement entity shall schedule a  
 19 hearing for the purpose of determining if suspension of the  
 20 obligor's license is appropriate. The support enforcement  
 21 entity shall stay suspension of the license pending the  
 22 outcome of the hearing.  
 23 (3) The only issues that may be determined in a hearing  
 24 under this section are the amount of the support debt or  
 25 support obligation, if any, whether or not a delinquency

1 exists, and whether or not the obligor has entered into a  
 2 payment plan.  
 3 (4) If an obligor fails to respond to a notice of  
 4 intent to suspend a license, fails to timely request a  
 5 hearing, or fails to appear at a regularly scheduled  
 6 hearing, the obligor's defenses, objections, or request for  
 7 a payment plan must be considered to be without merit and  
 8 the support enforcement entity shall enter a final decision  
 9 and order accordingly.  
 10 (5) If the support enforcement entity determines that  
 11 the obligor owes a delinquency and that the obligor has not  
 12 entered into a payment plan, the support enforcement entity  
 13 shall issue an order suspending the obligor's license. The  
 14 support enforcement entity shall send a copy of the order  
 15 suspending the license to the licensing agency and the  
 16 obligor.  
 17 (6) The determinations of the department of social and  
 18 rehabilitation services under this section are a final  
 19 agency decision and are subject to judicial review under  
 20 40-5-253 and the Montana Administrative Procedure Act.  
 21 (7) A determination of the department of social and  
 22 rehabilitation services under [sections 1 through 9] does  
 23 not affect any disciplinary proceeding of the licensing  
 24 agency pursuant to Title 37.  
 25 NEW SECTION. Section 5. Suspension, denial, and



1 nonrenewal of licenses. (1) Upon receipt of an order  
2 suspending a license, a licensing agency shall:

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

5 (b) enter the suspension on the appropriate records;  
6 and

7 (c) report the suspension as appropriate.

8 (2) Further action by the licensing agency is not  
9 necessary to implement the suspension of the license.

10 ~~{3}--During--the--term--of--a--suspension--under--{sections--1~~  
11 ~~through--9},--the--licensing--agency--may--not--issue--the--obligor--a~~  
12 ~~notice--of--renewal--of--the--license--}~~

13 ~~{4}{3}~~ In the event that a license is suspended, any  
14 funds paid by the obligor to the licensing agency for costs  
15 related to issuance, renewal, or maintenance of a license  
16 may not be refunded to the obligor.

17 ~~{5}{4}~~ Unless an order staying suspension of a license  
18 is in effect, an obligor who continues to practice an  
19 occupation or profession while the license is suspended is  
20 guilty of a misdemeanor and upon conviction shall be  
21 punished by a fine of not less than \$250 or more than \$500,  
22 by imprisonment for a term not to exceed 6 months, or both.  
23 Upon conviction of a second or subsequent violation, the  
24 obligor shall be punished by a fine of not less than \$500 or  
25 more than \$2,000, by imprisonment for a term not to exceed 1

1 year, or both.

2 NEW SECTION. Section 6. Stay of suspension of license

3 -- payment plan -- hardship. (1) An obligor may at the time  
4 of the hearing conducted under [section 4] or at any time  
5 after the hearing petition the support enforcement entity  
6 for an order staying suspension of the license.

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

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

18 (4) A stay terminates upon:

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

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

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

25 (5) If the licensing agency 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 agency and the obligor.

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

(i) enter the information on appropriate records; and

(ii) report the action as appropriate.

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

**NEW SECTION. Section 7. 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 agency 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 8. Fees.** (1) Notwithstanding any other provisions of law, the licensing agencies subject to [sections 1 through 9] may charge the obligor a fee to cover

the administrative costs incurred by the licensing agency under [sections 1 through 9].

(2) Fees collected pursuant to this section must be deposited in the state special revenue fund for the use of the licensing agency to pay the costs of administering [sections 1 through 9] subject to 37-1-101(6).

**NEW SECTION. Section 9. Rulemaking authority.** The department of social and rehabilitation services shall adopt rules as may be necessary for the implementation and administration of [sections 1 through 9].

**NEW SECTION. Section 10. Nondisciplinary suspension for failure to pay child support.** (1) Notwithstanding any other provisions of this title, the department of social and rehabilitation services has the authority to suspend a license under [sections 1 through 9] without action by the department of commerce, any other department, or any board issuing a license under this title. The department of commerce and any of its licensing boards or any other department issuing a license under this title shall, upon receipt of an order issued by the support enforcement entity under [sections 1 through 9], suspend the professional or occupational license of the named individual. The suspension must be nondisciplinary and the provisions of 2-4-631 do not apply.

(2) An order of nondisciplinary suspension continues

1 until the support enforcement entity advises the appropriate  
 2 department or licensing board that the nondisciplinary  
 3 suspension has been stayed or terminated. The department or  
 4 board shall advise the licensee that the licensee's license  
 5 is-effective HAS BEEN REINSTATED.

6 (3) An order of a support enforcement entity must be  
 7 processed by the appropriate department or licensing board  
 8 pursuant to the hearing process provided in [sections 3 and  
 9 4] but without an administrative hearing authorized or  
 10 required under 37-1-131 or any other hearing for suspension,  
 11 revocation, denial, or renewal of a license under this  
 12 title.

13 (4) The department of commerce, any other department,  
 14 or any board issuing a license under this title is exempt  
 15 from any liability for activities conducted in compliance  
 16 with [sections 1 through 9] or this section.

17 NEW SECTION. Section 11. Codification instruction. (1)  
 18 [Sections 1 through 9] are intended to be codified as an  
 19 integral part of Title 40, chapter 5, and the provisions of  
 20 Title 40, chapter 5, apply to [sections 1 through 9].

21 (2) [Section 10] is intended to be codified as an  
 22 integral part of Title 37, chapter 1, part 1, and the  
 23 provisions of Title 37, chapter 1, part 1, apply to [section  
 24 10].

25 NEW SECTION. Section 12. Severability. If a part of

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

-End-

HOUSE STANDING COMMITTEE REPORT

March 24, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 217 (third reading copy -- blue) be concurred in as  
amended .

Signed: Russ Fagg  
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Grimes

1. Page 2, line 20.

Following: "income."

Insert: "The Montana supreme court is urged to consider adopting  
rules that apply [sections 1 through 9] to attorneys."

-END-

HOUSE

Committee Vote:  
Yes 17, No 1.

SB 217  
661628SC.Hpf

## SENATE BILL NO. 217

INTRODUCED BY NATHE, S. RICE, CHRISTIAENS,

WATERMAN, KEATING, BOHLINGER

BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
SUSPENSION OF PROFESSIONAL AND OCCUPATIONAL LICENSES OF  
PERSONS DETERMINED BY A COURT OR BY THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES TO BE DELINQUENT IN THE PAYMENT  
OF CHILD SUPPORT; PROVIDING FOR NOTICE AND AN OPPORTUNITY  
FOR A HEARING PENDING SUSPENSION OF A LICENSE; AND PROVIDING  
FOR A STAY OF SUSPENSION UPON A SHOWING OF HARDSHIP OR AN  
OBLIGOR'S AGREEMENT TO ENTER INTO A PAYMENT PLAN."

## STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 9] requires the department of social and  
rehabilitation services to adopt rules necessary for the  
implementation and administration of [sections 1 through 9].

It is the intent of the legislature that rules adopted  
by the department be consistent with the purpose and policy  
stated in [section 1]. Rules may include rules regarding:

- (1) a notice of intent to suspend a license;
- (2) a hearing to review the cause for suspension of a

license;

(3) approval of a payment plan agreed to by an obligor  
for payment of a support debt;

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

(5) 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. Purpose and policy. The  
purpose of [sections 1 through 9] is to provide a more  
effective and efficient way to ensure the support of the  
dependent children of persons who hold professional or  
occupational licenses issued in this state. Licensees who  
fail to support their children should not enjoy the  
privileges and benefits of licensure granted by the state of  
Montana. It is the policy of this state that the support of  
children receive the highest priority in the allocation of a  
responsible parent's income. THE MONTANA SUPREME COURT IS  
URGED TO CONSIDER ADOPTING RULES THAT APPLY [SECTIONS 1  
THROUGH 9] TO ATTORNEYS.

NEW SECTION. Section 2. Definitions. As used in  
[sections 1 through 9], the following definitions apply:

- (1) (a) "Child" means any person under 18 years of age

1 who is not emancipated, self-supporting, married, or a  
 2 member of the armed forces of the United States, any person  
 3 under 19 years of age who is still in high school, or any  
 4 person who is mentally or physically incapacitated when the  
 5 incapacity began prior to that person reaching 18 years of  
 6 age and, IN IV-D CASES, for whom:

- 7 (i) support rights are assigned under 53-2-613;
- 8 (ii) a public assistance payment has been made;
- 9 (iii) the department is providing support enforcement  
 10 services under 40-5-203; or
- 11 (iv) the department has received a referral for  
 12 interstate services from an agency of another state under  
 13 the provisions of the Uniform Reciprocal Enforcement of  
 14 Support Act or under Title IV-D of the Social Security Act.
- 15 (b) The term may not be construed to limit the ability  
 16 of the department to enforce a support order according to  
 17 its terms when the order provides for support to extend  
 18 beyond the time the child reaches 18 years of age.
- 19 (2) "Delinquency" means a support debt or support  
 20 obligation due under a support order in an amount greater  
 21 than or equal to 6 months' support payments as of the date  
 22 of service of a notice of intent to suspend a license.
- 23 (3) "IV-D case" means a case in which the department of  
 24 social and rehabilitation services is providing support  
 25 enforcement services as a result of:

- 1 (a) an assignment of support rights under 53-2-613;
- 2 (b) a payment of public assistance;
- 3 (c) an application for support enforcement services  
 4 under 40-5-203; or
- 5 (d) a referral for interstate services from an agency  
 6 of another state under the provisions of the Uniform  
 7 Reciprocal Enforcement of Support Act or under Title IV-D of  
 8 the Social Security Act.
- 9 (4) "License" means any license, certificate,  
 10 registration, or authorization issued by a licensing agency  
 11 that allows a person to engage in a business, occupation, or  
 12 profession.
- 13 (5) "Licensing agency" means the department of commerce  
 14 or any other department or board that issues a license under  
 15 Title 37 but does not include the supreme court of Montana.
- 16 (6) "Obligee" means:
- 17 (a) a person to whom a support debt or support  
 18 obligation is owed; or
- 19 (b) a public agency of this or another state that has  
 20 the right to receive current or accrued support payments or  
 21 that is providing support enforcement services under this  
 22 chapter.
- 23 (7) "Obligor" means a person who owes a duty of  
 24 support.
- 25 (8) "Order suspending a license" means an order issued

1 by a support enforcement entity to suspend a license. The  
 2 order must contain the name of the obligor, the type of  
 3 license, and, if known, the social security number of the  
 4 obligor.

5 (9) "Payment plan" includes but is not limited to a  
 6 plan, approved by the support enforcement entity, that  
 7 provides sufficient security to ensure compliance and that  
 8 incorporates voluntary or involuntary income withholding  
 9 under part 3 or 4 of this chapter or a similar plan for  
 10 periodic payment of a support debt and, if applicable,  
 11 current and future support.

12 (10) "Support debt" or "support obligation" means the  
 13 amount created by:

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

16 (b) a support order for spousal maintenance if the  
 17 judgment or order requiring payment of maintenance also  
 18 contains a judgment or order requiring payment of child  
 19 support for a child for whom the person awarded maintenance  
 20 is the custodial parent.

21 (11) "Support enforcement entity" means:

22 (a) in IV-D cases, the department of social and  
 23 rehabilitation services; or

24 (b) in all other cases, the district court that entered  
 25 the support order or a district court in which the support

1 order is registered.

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

5 (a) a district court of this state;

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

8 (c) an administrative agency pursuant to proceedings  
 9 under [sections 1 through 9]; or

10 (d) an administrative agency of another state with a  
 11 hearing function and process similar to those of the  
 12 department of social and rehabilitation services under  
 13 {sections-1-through-9}.

14 NEW SECTION. **Section 3. Notice of intent to suspend**  
 15 **license.** (1) Upon the petition of an obligee alleging the  
 16 existence of a delinquency, a support enforcement entity may  
 17 issue a notice of intent to suspend a license.

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

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

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

25 (3) The notice must state that the obligor's license

1 will be suspended 60 days after service unless, within that  
2 time, the obligor:

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

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

6 (c) appears and shows cause in a hearing before the  
7 support enforcement entity under [section 4] that suspension  
8 of a license is not appropriate.

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

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

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

25 (3) The only issues that may be determined in a hearing

1 under this section are the amount of the support debt or  
2 support obligation, if any, whether or not a delinquency  
3 exists, and whether or not the obligor has entered into a  
4 payment plan.

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

12 (5) If the support enforcement entity determines that  
13 the obligor owes a delinquency and that the obligor has not  
14 entered into a payment plan, the support enforcement entity  
15 shall issue an order suspending the obligor's license. The  
16 support enforcement entity shall send a copy of the order  
17 suspending the license to the licensing agency and the  
18 obligor.

19 (6) The determinations of the department of social and  
20 rehabilitation services under this section are a final  
21 agency decision and are subject to judicial review under  
22 40-5-253 and the Montana Administrative Procedure Act.

23 (7) A determination of the department of social and  
24 rehabilitation services under [sections 1 through 9] does  
25 not affect any disciplinary proceeding of the licensing



agency pursuant to Title 37.

**NEW SECTION. Section 5. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license, a licensing agency shall:

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

(b) enter the suspension on the appropriate records; and

(c) report the suspension as appropriate.

(2) Further action by the licensing agency is not necessary to implement the suspension of the license.

~~{3}--During--the--term--of--a--suspension--under--{sections--1 through--9},--the--licensing--agency--may--not--issue--the--obligor--a notice--of--renewal--of--the--license--}~~

~~{4}{3}~~ In the event that a license is suspended, any funds paid by the obligor to the licensing agency for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

~~{5}{4}~~ Unless an order staying suspension of a license is in effect, an obligor who continues to practice an occupation or profession while the license is suspended is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$500, by imprisonment for a term not to exceed 6 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, by imprisonment for a term not to exceed 1 year, or both.

**NEW SECTION. Section 6. Stay of suspension of license -- payment plan -- hardship.** (1) An obligor may at the time of the hearing conducted under [section 4] 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 agency 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 agency and the obligor.

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

(i) enter the information on appropriate records; and

(ii) report the action as appropriate.

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

**NEW SECTION. Section 7. 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 agency 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 8. Fees.** (1) Notwithstanding any

other provisions of law, the licensing agencies subject to [sections 1 through 9] may charge the obligor a fee to cover the administrative costs incurred by the licensing agency under [sections 1 through 9].

(2) Fees collected pursuant to this section must be deposited in the state special revenue fund for the use of the licensing agency to pay the costs of administering [sections 1 through 9] subject to 37-1-101(6).

**NEW SECTION. Section 9. Rulemaking authority.** The department of social and rehabilitation services shall adopt rules as may be necessary for the implementation and administration of [sections 1 through 9].

**NEW SECTION. Section 10. Nondisciplinary suspension for failure to pay child support.** (1) Notwithstanding any other provisions of this title, the department of social and rehabilitation services has the authority to suspend a license under [sections 1 through 9] without action by the department of commerce, any other department, or any board issuing a license under this title. The department of commerce and any of its licensing boards or any other department issuing a license under this title shall, upon receipt of an order issued by the support enforcement entity under [sections 1 through 9], suspend the professional or occupational license of the named individual. The suspension must be nondisciplinary and the provisions of 2-4-631 do not

1 apply.

2 (2) An order of nondisciplinary suspension continues  
3 until the support enforcement entity advises the appropriate  
4 department or licensing board that the nondisciplinary  
5 suspension has been stayed or terminated. The department or  
6 board shall advise the licensee that the licensee's license  
7 is-effective HAS BEEN REINSTATED.

8 (3) An order of a support enforcement entity must be  
9 processed by the appropriate department or licensing board  
10 pursuant to the hearing process provided in [sections 3 and  
11 4] but without an administrative hearing authorized or  
12 required under 37-1-131 or any other hearing for suspension,  
13 revocation, denial, or renewal of a license under this  
14 title.

15 (4) The department of commerce, any other department,  
16 or any board issuing a license under this title is exempt  
17 from any liability for activities conducted in compliance  
18 with [sections 1 through 9] or this section.

19 NEW SECTION. Section 11. Codification instruction. (1)  
20 [Sections 1 through 9] are intended to be codified as an  
21 integral part of Title 40, chapter 5, and the provisions of  
22 Title 40, chapter 5, apply to [sections 1 through 9].

23 (2) [Section 10] is intended to be codified as an  
24 integral part of Title 37, chapter 1, part 1, and the  
25 provisions of Title 37, chapter 1, part 1, apply to [section

1 10].

2 NEW SECTION. Section 12. Severability. If a part of  
3 [this act] is invalid, all valid parts that are severable  
4 from the invalid part remain in effect. If a part of [this  
5 act] is invalid in one or more of its applications, the part  
6 remains in effect in all valid applications that are  
7 severable from the invalid applications.

-End-