

SENATE BILL NO. 392
INTRODUCED BY WATERMAN

IN THE SENATE

FEBRUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 22, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 24, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 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, 87; NOES, 11.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 7, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. 392
2 INTRODUCED BY *Miguel Waters*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE STATE'S
5 ABILITY TO ENFORCE SUPPORT OBLIGATIONS; ALLOWING THE
6 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ISSUE
7 SEEK-WORK ORDERS; PROVIDING FOR A LIEN ON LOTTERY WINNINGS
8 WHEN THE WINNER OWES A DEBT TO OR COLLECTED BY A IV-D
9 AGENCY; REVISING THE CRIME OF NONSUPPORT; AND AMENDING
10 SECTIONS 17-4-105 AND 45-5-621, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Seek-work orders. Whenever in
14 a proceeding under this chapter to establish or enforce a
15 support order it is determined that the obligor is
16 unemployed or underemployed, the department may:

17 (1) order the obligor to seek employment and report
18 periodically to the department with a diary, listing, or
19 other memorandum of the obligor's efforts in accordance with
20 the order; and

21 (2) order the obligor to report to a job service office
22 maintained by the department of labor and industry for job
23 search services or to make application under the job
24 training partnership act or similar programs for
25 participation in training or work programs.

1 NEW SECTION. Section 2. Lien on lottery winnings for
2 debt collected by IV-D agency -- notice to agency -- payment
3 to agency -- procedure. (1) For purposes of this section,
4 "IV-D agency" means the state child support enforcement
5 agency created pursuant to Title IV-D of the Social Security
6 Act and providing services under Title 40, chapter 5.

7 (2) The IV-D agency shall periodically certify to the
8 state lottery the names and social security numbers of
9 persons owing a debt to or collected by the IV-D agency.

10 (3) Prior to the payment of lottery winnings in excess
11 of \$600, the state lottery shall check the name of the
12 winner against the list of names and social security numbers
13 of persons owing a debt to or collected by the IV-D agency.

14 (4) (a) If the winner is on the list of persons owing a
15 debt to or collected by the IV-D agency, the state lottery
16 shall notify the IV-D agency and the agency then has a lien
17 against the winnings in the amount of the debt owed to or
18 collected by the IV-D agency.

19 (b) If the lottery winnings are to be paid through the
20 state auditor, the lottery winner is entitled to notice and
21 opportunity for hearing under Title 17, chapter 4, part 1,
22 prior to any offset of the debt against the winnings.

23 (c) If the lottery winnings are to be paid directly by
24 the state lottery, the amount of the debt owed to or
25 collected by the IV-D agency must be held by the lottery for

a period of 30 days from the lottery's confirmation of the amount of the debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the lottery shall release the payment to the winner.

Section 3. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt -- offsets. (1) Once a debt of a state agency has been transferred to the state auditor, ~~he~~ the state auditor ~~shall have~~ has the authority to collect it. The state auditor may contract with commercial collection agencies for recovery of debts owed the state.

(2) The state auditor shall offset any amount due a state agency from a person or entity against any amount, including refunds or taxes, owing the person or entity by any state agency, provided the state auditor may not exercise this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. ~~No~~ An offset may ~~not~~ be made against any amount paid out as child support collected by the department of social and rehabilitation services. The state auditor shall deduct from the claim and draw his warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of

the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available ~~shall~~ must be applied first to debts owed by reason of the nonpayment of child support and then in ~~such~~ the manner as the state auditor, in ~~his~~ the state auditor's discretion, ~~shall~~ determine ~~determines~~.

(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed the state, provided the department may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result

1 of that proceeding has become final.

2 (4) (a) A debt ~~resulting-from-or-relating-to-a-child~~
3 ~~support-obligation~~ owed to the department of social and
4 rehabilitation services or being collected by the department
5 of social and rehabilitation services on behalf of any
6 person or agency may be offset by the state auditor if:

7 ~~(i) the debt is being enforced or collected by the~~
8 ~~department of social and rehabilitation services under Title~~
9 ~~IV-D of the Social Security Act;~~

10 ~~(ii) the debt is for repayment of child support payments~~
11 ~~retained contrary to the assignment at 53-2-613; or~~

12 ~~(iii) the debt is for costs of fees under any contract,~~
13 ~~judgment, or administrative order entered in the course of~~
14 ~~child support enforcement by the department of social and~~
15 ~~rehabilitation services;~~

16 (b) The debt need not be determined to be uncollectible
17 as provided for in 17-4-104 before being transferred to the
18 state auditor for offset. The debt must have accrued through
19 written contract, court judgment, or administrative order.

20 (c) Within 30 days following the notification provided
21 in subsection (2), the person owing a debt described in
22 subsection (4)(a) may request a hearing. The person owing a
23 debt is not entitled to a hearing if the amount of the debt
24 has been the subject matter of any proceeding conducted for
25 the purpose of determining the validity of the debt and any

1 decision made as a result of that proceeding has become
2 final. The hearing must be conducted by teleconferencing
3 methods and is subject to the provisions of the Montana
4 Administrative Procedure Act. The department of social and
5 rehabilitation services shall adopt rules necessary to
6 determine the hearing procedures.

7 (5) If, in the discretion of the state auditor, the
8 person or entity refuses or neglects to file ~~his~~ a claim
9 within a reasonable time, the head of the state agency owing
10 the amount shall file the claim on behalf of such the person
11 or entity; if approved by the department of administration,
12 it shall have the same force and effect as though filed by
13 such the person or entity. The amount due any person or
14 entity from the state or any agency thereof of the state is
15 the net amount otherwise owing such the person or entity
16 after any offset as provided in this section provided."

17 **Section 4.** Section 45-5-621, MCA, is amended to read:

18 "45-5-621. **Nonsupport.** (1) A person commits the offense
19 of nonsupport if he the person fails to provide support
20 ~~which-he~~ that the person can provide and ~~which-he~~ that the
21 person knows he the person is legally obliged to provide to
22 a spouse, child, or other dependent.

23 (2) (a) A person commits the offense of aggravated
24 nonsupport if:

25 ~~(a)(i) the offender has left the state to avoid the~~

duty-of-support without making reasonable provisions for the support of a spouse, child, or other dependent; or

(b)(ii) the offender has been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support. In the absence of a support order, no other evidence is required to prove that the person is legally obligated to provide support than is required to prove the facts in a civil action.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for any a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support for 6 months or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to

that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) must be forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the defendant to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if

there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

†††(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the defendant.

(12) When any payment of public assistance money has been made by the department of social and rehabilitation services under the provisions of Title 53 for the support or aid of any person, a representative of the department may sign a criminal complaint against the person obligated by law to support the person who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a

1 community-based prerelease center as provided for in
2 53-1-203. The prerelease center may accept or reject a
3 defendant referred by the sentencing court."

4 NEW SECTION. Section 5. Codification instruction. (1)
5 [Section 1] is intended to be codified as an integral part
6 of Title 40, chapter 5, part 2, and the provisions of Title
7 40, chapter 5, part 2, apply to [section 1].

8 (2) [Section 2] is intended to be codified as an
9 integral part of Title 23, chapter 7, and the provisions of
10 Title 23, chapter 7, apply to [section 2].

11 NEW SECTION. Section 6. Severability. If a part of
12 [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this
14 act] is invalid in one or more of its applications, the part
15 remains in effect in all valid applications that are
16 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 SB0392, Third Reading.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill increases the state's ability to enforce support obligations by: allowing the Department of SRS to issue seek-work orders, providing for a lien on Montana Lottery winnings of Child Support Enforcement (CSE) debtors, and amending MCA §45-5-621 (criminal non-support).

ASSUMPTIONS:

Department of Social and Rehabilitation Services (SRS):

1. Any additional costs to the Child Support Enforcement Division (CSED) are estimated to be negligible and the division will be able to absorb the administrative duties, as funded in the executive budget.
2. Less than 1% of the total CSED caseload will be directly affected by the provision of this bill (230 cases in FY94 and 530 cases in FY95).
3. The primary effect of the criminal non-support changes in this bill will be a deterrent to non-payment of support.

State Auditor:

4. Lottery payments of under \$500 will continue to be paid by vendors.
5. The state auditor's bad debt offset system will continue to function as it currently does.


FISCAL IMPACT:

Expenditures: None

Revenues:

SRS: Increased CSE collections may result in additional revenue to the general fund. Presently, the CSE state special revenue account balance in excess of \$500,000 at fiscal year end (after CSED program costs are paid for) reverts to the general fund. However, at this time it is not possible to estimate what increase in collections will result from this bill, and therefore the possible increase to the general fund.

State Auditor: Currently the bad debt offset system is financed by a 12% charge on collected debt for various government agencies. To the extent debt is collected prior to being turned over to the state auditor for collection, revenue for program operations would decline. Currently, this amount of revenue would be very small. If a big winner who owed substantial money was discovered prior to the auditor's offset system, a one-time loss could be substantial. It is not expected to materially affect the current program.

 3-13-93

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

 3/15/93
MIGNON WATERMAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0392, Third Reading

SB 392

APPROVED BY COMMITTEE
ON JUDICIARYSENATE BILL NO. 392
INTRODUCED BY WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE STATE'S ABILITY TO ENFORCE SUPPORT OBLIGATIONS; ALLOWING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ISSUE SEEK-WORK ORDERS; PROVIDING FOR A LIEN ON LOTTERY WINNINGS WHEN THE WINNER OWES A DEBT TO OR COLLECTED BY A IV-D AGENCY; REVISING THE CRIME OF NONSUPPORT; AND AMENDING SECTIONS 17-4-105 AND 45-5-621, MCA."

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

NEW SECTION. **Section 1.** Seek-work orders. Whenever in a proceeding under this chapter to establish or enforce a support order it is determined that the obligor is unemployed or underemployed, the department may:

(1) order the obligor to seek employment and report periodically to the department with a diary, listing, or other memorandum of the obligor's efforts in accordance with the order; and

(2) order the obligor to report to a job service office maintained by the department of labor and industry for job search services or to make application under the job training partnership act or similar programs for participation in training or work programs.

NEW SECTION. **Section 2.** Lien on lottery winnings for debt collected by IV-D agency -- notice to agency -- payment to agency -- procedure. (1) For purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery winnings in excess of \$600, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall MAKE A GOOD FAITH ATTEMPT TO notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency. THE STATE LOTTERY HAS NO LIABILITY TO THE IV-D AGENCY OR THE INDIVIDUAL ON WHOSE BEHALF THE IV-D AGENCY IS COLLECTING THE DEBT IF, AFTER A GOOD FAITH EFFORT TO DO SO, THE STATE LOTTERY FAILS TO MATCH A WINNER'S NAME TO A NAME ON THE LIST OR IS UNABLE TO NOTIFY THE IV-D AGENCY OF A MATCH. THE IV-D AGENCY SHALL PROVIDE THE STATE LOTTERY WITH WRITTEN NOTICE OF A SUPPORT LIEN PROMPTLY UPON THE STATE LOTTERY'S

1 NOTIFICATION OF A MATCH.

2 (b) If the lottery winnings are to be paid through the
3 state auditor, the lottery winner is entitled to notice and
4 opportunity for hearing under Title 17, chapter 4, part 1,
5 prior to any offset of the debt against the winnings.

6 (c) If the lottery winnings are to be paid directly by
7 the state lottery, the amount of the debt owed to or
8 collected by the IV-D agency must be held by the lottery for
9 a period of 30 days from the lottery's confirmation of the
10 amount of the debt to allow the IV-D agency to institute any
11 necessary garnishment or withholding proceedings. If a
12 garnishment or withholding proceeding is not initiated
13 within the 30-day period, the lottery shall release the
14 payment to the winner.

15 (D) THE IV-D AGENCY, IN ITS DISCRETION, MAY RELEASE OR
16 PARTIALLY RELEASE THE SUPPORT LIEN UPON WRITTEN NOTICE TO
17 THE STATE LOTTERY.

18 (E) A SUPPORT LIEN UNDER THIS SECTION IS IN ADDITION TO
19 ANY OTHER LIEN CREATED BY LAW.

20 **Section 3.** Section 17-4-105, MCA, is amended to read:

21 "17-4-105. Authority to collect debt -- offsets. (1)
22 Once a debt of a state agency has been transferred to the
23 state auditor, ~~he the state auditor shall--have~~ has the
24 authority to collect it. The state auditor may contract with
25 commercial collection agencies for recovery of debts owed

1 the state.

2 (2) The state auditor shall offset any amount due a
3 state agency from a person or entity against any amount,
4 including refunds or taxes, owing the person or entity by
5 any state agency, provided the state auditor may not
6 exercise this right of offset until the debtor has first
7 been notified by the state auditor and been given an
8 opportunity for a hearing. ~~No~~ An offset may ~~not~~ be made
9 against any amount paid out as child support collected by
10 the department of social and rehabilitation services. The
11 state auditor shall deduct from the claim and draw ~~his~~
12 warrants for the amounts offset in favor of the respective
13 state agencies to which due and for any balance in favor of
14 the claimant. Whenever insufficient to offset all amounts
15 due state agencies, the amount available ~~shall~~ must be
16 applied first to debts owed by reason of the nonpayment of
17 child support and then in ~~such the~~ manner as the state
18 auditor, in ~~his~~ the state auditor's discretion, ~~shall~~
19 determine determines.

20 (3) (a) The department retains the power to offset tax
21 refunds due individuals against taxes owed the state,
22 provided the department may not exercise this right of
23 offset until the taxpayer has been notified by the
24 department and been given the opportunity to request a
25 review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of that proceeding has become final.

(4) (a) A debt ~~resulting--from-or-relating-to-a-child support-obligation~~ owed to the department of social and rehabilitation services or being collected by the department of social and rehabilitation services on behalf of any person or agency may be offset by the state auditor if:

~~(i) the debt is being enforced or collected by the department of social and rehabilitation services under Title IV-D of the Social Security Act,~~

~~(ii) the debt is for repayment of child support payments retained contrary to the assignment at 53-2-613, or~~

~~(iii) the debt is for costs of fees under any contract,~~

~~judgment, or administrative order entered in the course of child support enforcement by the department of social and rehabilitation services.~~

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of social and rehabilitation services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the state auditor, the person or entity refuses or neglects to file ~~his~~ a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such the person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by

such the person or entity. The amount due any person or entity from the state or any agency thereof of the state is the net amount otherwise owing such the person or entity after any offset as provided in this section provided."

Section 4. Section 45-5-621, MCA, is amended to read:

"45-5-621. **Nonsupport.** (1) A person commits the offense of nonsupport if he the person fails to provide support which--he that the person can provide and which--he that the person knows he the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if:

(a)(i) the offender has left the state to--avoid--the duty-of-support without making reasonable provisions for the support of a spouse, child, or other dependent; or

(b)(ii) the offender has been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is

inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support. In the absence of a support order, no other evidence is required to prove that the person is legally obligated to provide support than is required to prove the facts in a civil action.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for any a

term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support for 6 months or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under

40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) must be forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the defendant to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

††(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the defendant.

(12) When any payment of public assistance money has been made by the department of social and rehabilitation

services under the provisions of Title 53 for the support or aid of any person, a representative of the department may sign a criminal complaint against the person obligated by law to support the person who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court."

NEW SECTION. Section 5. Codification instruction. (1)

[Section 1] is intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 7, and the provisions of Title 23, chapter 7, apply to [section 2].

NEW SECTION. Section 6. 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-

SENATE BILL NO. 392
INTRODUCED BY WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE STATE'S ABILITY TO ENFORCE SUPPORT OBLIGATIONS; ALLOWING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ISSUE SEEK-WORK ORDERS; PROVIDING FOR A LIEN ON LOTTERY WINNINGS WHEN THE WINNER OWES A DEBT TO OR COLLECTED BY A IV-D AGENCY; REVISING THE CRIME OF NONSUPPORT; AND AMENDING SECTIONS 17-4-105 AND 45-5-621, MCA."

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

NEW SECTION. Section 1. Seek-work orders. Whenever in a proceeding under this chapter to establish or enforce a support order it is determined that the obligor is unemployed or underemployed, the department may:

(1) order the obligor to seek employment and report periodically to the department with a diary, listing, or other memorandum of the obligor's efforts in accordance with the order; and

(2) order the obligor to report to a job service office maintained by the department of labor and industry for job search services or to make application under the job training partnership act or similar programs for participation in training or work programs.

NEW SECTION. Section 2. Lien on lottery winnings for debt collected by IV-D agency -- notice to agency -- payment to agency -- procedure. (1) For purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery winnings in excess of \$600, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall MAKE A GOOD FAITH ATTEMPT TO notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency.

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

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 392 (third reading copy -- blue) be concurred in as amended .

Signed: _____

Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. L. Smith

1. Title, lines 5 through 7.

Strike: "ALLOWING" on line 5 through "ORDERS;" on line 7

2. Page 1, lines 13 through 25.

Strike: section 1 in its entirety

Renumber: subsequent sections

3. Page 2, line 21.

Strike: "AFTER A GOOD FAITH EFFORT TO DO SO,"

4. Page 8, lines 10 through 13.

Strike: "In" on line 10 through end of line 13

5. Page 9, line 3.

Following: "support"

Insert: "under a court or administrative order"

Following: "months"

Insert: "or more".

6. Page 10, line 25.

Following: "made"

Insert: "for the benefit of a child"

7. Page 11, lines 1 and 2.

Following: "53" on line 1

Strike: "for the support or aid of any person"

8. Page 11, line 4.

Strike: "person"

Insert: "child"

9. Page 11, lines 17 through 21.

Strike: "(1)" on line 17 through "(2)" on line 21

Committee Vote:
Yes 11, No 7.

HOUSE
SB 392
671621SC.Hss

SENATE BILL NO. 392
INTRODUCED BY WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE STATE'S ABILITY TO ENFORCE SUPPORT OBLIGATIONS; ~~ALLOWING--THE DEPARTMENT-OF-SOCIAL-AND-REHABILITATION--SERVICES--TO--ISSUE SEEK-WORK--ORDERS;~~ PROVIDING FOR A LIEN ON LOTTERY WINNINGS WHEN THE WINNER OWES A DEBT TO OR COLLECTED BY A IV-D AGENCY; REVISING THE CRIME OF NONSUPPORT; AND AMENDING SECTIONS 17-4-105 AND 45-5-621, MCA."

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

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NEW SECTION. Section 1. Lien on lottery winnings for debt collected by IV-D agency -- notice to agency -- payment to agency -- procedure. (1) For purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery winnings in excess of \$600, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall MAKE A GOOD FAITH ATTEMPT TO notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency. THE STATE LOTTERY HAS NO LIABILITY TO THE IV-D AGENCY OR THE INDIVIDUAL ON WHOSE BEHALF THE IV-D AGENCY IS COLLECTING THE DEBT IF, AFTER A GOOD FAITH EFFORT TO DO SO, THE STATE LOTTERY FAILS TO MATCH A WINNER'S NAME TO A NAME ON THE LIST OR IS UNABLE TO NOTIFY THE IV-D AGENCY OF A MATCH. THE IV-D AGENCY SHALL PROVIDE THE STATE LOTTERY WITH WRITTEN NOTICE OF A SUPPORT LIEN PROMPTLY UPON THE STATE LOTTERY'S

1 NOTIFICATION OF A MATCH.

2 (b) If the lottery winnings are to be paid through the
3 state auditor, the lottery winner is entitled to notice and
4 opportunity for hearing under Title 17, chapter 4, part 1,
5 prior to any offset of the debt against the winnings.

6 (c) If the lottery winnings are to be paid directly by
7 the state lottery, the amount of the debt owed to or
8 collected by the IV-D agency must be held by the lottery for
9 a period of 30 days from the lottery's confirmation of the
10 amount of the debt to allow the IV-D agency to institute any
11 necessary garnishment or withholding proceedings. If a
12 garnishment or withholding proceeding is not initiated
13 within the 30-day period, the lottery shall release the
14 payment to the winner.

15 (D) THE IV-D AGENCY, IN ITS DISCRETION, MAY RELEASE OR
16 PARTIALLY RELEASE THE SUPPORT LIEN UPON WRITTEN NOTICE TO
17 THE STATE LOTTERY.

18 (E) A SUPPORT LIEN UNDER THIS SECTION IS IN ADDITION TO
19 ANY OTHER LIEN CREATED BY LAW.

20 **Section 2.** Section 17-4-105, MCA, is amended to read:

21 "17-4-105. Authority to collect debt -- offsets. (1)
22 Once a debt of a state agency has been transferred to the
23 state auditor, he the state auditor shall--have has the
24 authority to collect it. The state auditor may contract with
25 commercial collection agencies for recovery of debts owed

1 the state.

2 (2) The state auditor shall offset any amount due a
3 state agency from a person or entity against any amount,
4 including refunds or taxes, owing the person or entity by
5 any state agency, provided the state auditor may not
6 exercise this right of offset until the debtor has first
7 been notified by the state auditor and been given an
8 opportunity for a hearing. No An offset may not be made
9 against any amount paid out as child support collected by
10 the department of social and rehabilitation services. The
11 state auditor shall deduct from the claim and draw his
12 warrants for the amounts offset in favor of the respective
13 state agencies to which due and for any balance in favor of
14 the claimant. Whenever insufficient to offset all amounts
15 due state agencies, the amount available shall must be
16 applied first to debts owed by reason of the nonpayment of
17 child support and then in such the manner as the state
18 auditor, in his the state auditor's discretion, shall
19 determine determines.

20 (3) (a) The department retains the power to offset tax
21 refunds due individuals against taxes owed the state,
22 provided the department may not exercise this right of
23 offset until the taxpayer has been notified by the
24 department and been given the opportunity to request a
25 review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of that proceeding has become final.

(4) (a) A debt ~~resulting--from-or-relating-to-a-child support-obligation~~ owed to the department of social and rehabilitation services or being collected by the department of social and rehabilitation services on behalf of any person or agency may be offset by the state auditor if:

~~(i)~~ the debt is being enforced or collected by the department of social and rehabilitation services under Title IV-D of the Social Security Act;

~~(ii)-the-debt-is-for-repayment-of-child-support-payments retained-contrary-to-the-assignment-at-53-2-613;-or~~

~~(iii)-the--debt-is-for-costs-of-fees-under-any-contract,~~

~~judgment,-or-administrative-order-entered-in-the--course--of child--support--enforcement--by-the-department-of-social-and rehabilitation-services-~~

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of social and rehabilitation services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the state auditor, the person or entity refuses or neglects to file his a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such the person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by

such the person or entity. The amount due any person or entity from the state or any agency thereof of the state is the net amount otherwise owing such the person or entity after any offset as provided in this section provided."

Section 3. Section 45-5-621, MCA, is amended to read:

"45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if he the person fails to provide support ~~which--he~~ that the person can provide and ~~which-he~~ that the person knows he the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if:

~~(a)(i)~~ (i) the offender has left the state ~~to--avoid--the~~ duty-of-support without making reasonable provisions for the support of a spouse, child, or other dependent; or

~~(b)(ii)~~ (ii) the offender has been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is

inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support. ~~In the absence of a support order, no other evidence is required to prove that the person is legally obligated to provide support than is required to prove the facts in a civil action.~~

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

~~(3)(7)~~ (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for any a

term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support UNDER A COURT OR ADMINISTRATIVE ORDER for 6 months OR MORE or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under

40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) must be forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the defendant to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the defendant.

(12) When any payment of public assistance money has been made FOR THE BENEFIT OF A CHILD by the department of

1 social and rehabilitation services under the provisions of
 2 Title 53 for--the--support--or--aid--of--any--person, a
 3 representative of the department may sign a criminal
 4 complaint against the person obligated by law to support the
 5 person CHILD who received the public assistance.

6 (13) The court may order that a term of imprisonment
 7 imposed under this section be served in another facility
 8 made available by the county and approved by the sentencing
 9 court. The defendant, if financially able, shall bear the
 10 expense of the imprisonment. The court may impose
 11 restrictions on the defendant's ability to leave the
 12 premises of the facility and require that the defendant
 13 follow the rules of that facility. The facility may be a
 14 community-based prerelease center as provided for in
 15 53-1-203. The prerelease center may accept or reject a
 16 defendant referred by the sentencing court."

17 NEW SECTION. Section 4. Codification instruction.~(1)
 18 {Section-1}-is-intended-to-be-codified-as-an--integral--part
 19 of--Title-40, chapter-5, part-2, and the provisions of Title
 20 40, chapter-5, part-2, apply to {section-1}.

21 {2} [Section 2 1] is intended to be codified as an
 22 integral part of Title 23, chapter 7, and the provisions of
 23 Title 23, chapter 7, apply to [section 2 1].

24 NEW SECTION. Section 5. 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-