

HOUSE BILL 91

Introduced by Cobb

12/13	Introduced
12/13	Referred to Labor & Employment Relations
12/13	First Reading
12/13	Fiscal Note Requested
12/14	Hearing
12/14	Tabled in Committee
	Died in Committee

1 House BILL NO. 91
2 INTRODUCED BY Cobb
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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING EMPLOYERS,
5 PAYORS, AND UNIONS TO REPORT THE HIRING AND REHIRING OF
6 EMPLOYEES TO THE DEPARTMENT OF SOCIAL AND REHABILITATION
7 SERVICES; PROVIDING FOR THE USE AND DISCLOSURE OF THE
8 INFORMATION REPORTED TO THE DEPARTMENT; PROVIDING A PENALTY;
9 PROVIDING DEFINITIONS; AMENDING SECTIONS 40-5-403 AND
10 40-5-443, MCA; AND PROVIDING EFFECTIVE DATES."

11
12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
14 [section 1] allows and [section 2] requires the department
15 of social and rehabilitation services to adopt rules
16 necessary for the implementation and administration of
17 [sections 1 and 2].

18 The rules adopted by the department may include rules
19 regarding the establishment of exemptions from employer
20 reporting of the hiring and rehiring of employees and the
21 establishment of administrative hearing procedures to be
22 used in sanctioning an employer, payor, former payor, or
23 union for failing to report required information.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



1 NEW SECTION. Section 1. Employer new hire and rehire
2 reporting. (1) An employer doing business in the state shall
3 report to the department the hiring or rehiring of an
4 employee who resides or works in the state and to whom the
5 employer anticipates paying earnings. The reports must be
6 submitted to the department within 14 days of the employee's
7 effective date of hire or rehire.

8 (2) (a) The employer shall report the hiring or
9 rehiring of an employee by submitting a copy of the
10 employee's W-4 form to the department by hand delivery,
11 mail, or facsimile transmission. The employer shall indicate
12 on the bottom of the W-4 form the employee's effective date
13 of hire or rehire. The employer shall also fully complete
14 the employer's portion of the W-4 form.

15 (b) An employer may use alternative means to provide
16 the department with the report required by this section.
17 Alternative means include sending to the department a
18 magnetic tape or diskette in a format prescribed by the
19 department, oral reporting by telephone to a toll-free
20 number maintained for this purpose by the department, and
21 any other alternative means acceptable to the department.
22 Alternative reporting must include:

23 (i) the employee's first name, middle initial, last
24 name, home address, and social security number and the
25 effective date of employment;

(ii) the employer's name and address, any different address of the payroll office, and the employer's federal tax identification number.

(3) As used in [section 2] and this section:

(a) "employee" means an individual who must file a federal withholding W-4 form under the Internal Revenue Code;

(b) "employer" means any:

(i) person;

(ii) firm;

(iii) corporation;

(iv) association;

(v) political subdivision;

(vi) state agency, board, commission, or office; or

(vii) other entity; and

(c) "rehire" means to reemploy an individual who was laid off, separated, furloughed, granted a leave without pay, or terminated from employment.

(4) The department may adopt rules to establish exemptions from the requirements of this section if the department determines that exemptions are needed to reduce unnecessary and burdensome reporting.

(5) Employers required to report under this section may charge each employee on whom a report is filed a fee not to exceed \$5 a report to cover the cost of reporting. The fee

may be withheld from payment of wages or other income to the employee.

NEW SECTION. Section 2. Liability -- use and disclosure of information -- penalties. (1) An employer, payor,^y or union that provides information and reports under the provisions of 40-5-443 and [section 1] is not liable to the employee or to the individual who is the subject of the report for the disclosure of the information contained in the report and is not liable for any subsequent use of that information by the department.

(2) (a) Subject to subsection (2)(b), information received by the department under the provisions of 40-5-443 and [section 1] is confidential and exempt from public disclosure, except that the information may be used by the department in a IV-D case.

(b) The department may release the information contained in a report to other public agencies and to district courts, upon request of those agencies or courts, in connection with the administration of public assistance, enforcement of child support laws, or administration of workers' compensation or unemployment insurance.

(3) The department shall give a written warning of a violation to an employer, payor, or union that fails to report, as required under the provisions of 40-5-443 or [section 1], for the first violation committed by that

1 employer, payor, or union. After a first violation and after
 2 the warning has been given, an employer, payor, or union
 3 that fails to report in accordance with the provisions of
 4 40-5-443 or [section 1] is subject to a civil penalty of up
 5 to \$250 a month for each violation. Penalties assessed
 6 against an employer, payor, or union pursuant to this
 7 section may not exceed \$1,000 a month. Amounts imposed as
 8 penalties may be collected by any remedy available to the
 9 department for the enforcement of child support obligations.

10 (4) The department shall retain the information
 11 reported to it pursuant to the provisions of 40-5-443 and
 12 [section 1] only if the department has an open IV-D case. If
 13 the department does not have an open IV-D case involving the
 14 employee, the department may not create a record regarding
 15 the employee and the information contained in the report
 16 must be promptly destroyed.

17 (5) The department shall adopt rules in accordance with
 18 Title 2, chapter 4, to provide administrative hearing
 19 procedures to implement subsection (3).

20 **Section 3.** Section 40-5-403, MCA, is amended to read:

21 **"40-5-403. Definitions.** As used in this part, the
 22 following definitions apply:

23 (1) "Alternative arrangement" means a written agreement
 24 signed by the obligor and obligee, and signed by the
 25 department in the case of an assignment of rights under

1 53-2-613, that has been approved and entered in the record
 2 of the court or administrative authority issuing or
 3 modifying the support order.

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

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

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

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

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

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

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

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

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

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

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

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

23 (9) "IV-D" means the provisions of Title IV-D of the
 24 Social Security Act and the implementing regulations.

25 (10) "IV-D case" means that an application or referral

1 for services pursuant to IV-D has been received by the
 2 department."

3 **Section 4.** Section 40-5-443, MCA, is amended to read:

4 "**40-5-443. Payors and unions to provide information --**
 5 **exemption from liability.** (1) For the purposes of this part,
 6 upon written request by the department, a payor or former
 7 payor and any labor union of which ~~the obligor~~ an individual
 8 is or may have been a member shall provide the department
 9 with the following information, if known, regarding ~~the~~
 10 obligor an individual for whom the department has an open
 11 IV-D case:

12 (a) last-known residential address;

13 (b) social security number;

14 (c) verification of current employment or union
 15 membership and dates of past employment or union membership;

16 (d) amounts due the individual under contract or
 17 subcontract for services, manner of payment, and terms of
 18 the contract;

19 ~~(d)(e)~~ (e) amounts of wages, salaries, commissions, and
 20 other earnings paid or payable to the ~~obligor individual~~
 21 during any period when specified by the department provided
 22 support-enforcement-services;-and;

23 ~~(e)(f)~~ (f) whether health insurance coverage is or was
 24 available to the ~~obligor individual and the individual's~~
 25 children through the payor or union and, if so:

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

(ii) the policy numbers or other identifiers; and

(iii) the persons covered;

(g) location or job site at which the individual is or was employed or is or was providing services under a contract or subcontract; and

(h) any occupational or professional affiliation of the individual or a description of any license required for employment of or contract with the individual.

(2) A payor who discloses information to the department in compliance with this section is exempt from any liability to the obligor that may result from such disclosure. The information required under subsection (1) is in addition to the information required under [section 1]."

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

NEW SECTION. Section 6. Effective dates. (1) [Sections 1(4), 2(5), 5, and this section] are effective on passage and approval.

(2) [Sections 1(1) through (3) and (5), 2(1) through (4), 3, and 4] are effective July 1, 1994.

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