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Johnson House BILL NO. 385

INTRODUCED BY _____
BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT LAWS AND THE METHOD BY WHICH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES COLLECTS AND ENFORCES SUPPORT; AMENDING SECTIONS 40-5-202, 40-5-206, 40-5-221, 40-5-226, AND 40-5-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of social and rehabilitation services -- powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this ~~part~~ chapter, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

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

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

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

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. ~~The~~ Upon filing, the department may, on behalf of itself or on behalf of the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created

1 between department attorneys and any person or entity other than the department. The obligee, obligor,
2 and child may obtain the services of a private attorney to represent their interests. The existence or
3 appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the
4 department's right to act or provide services under this chapter. This chapter does not require the
5 department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or
6 child.

7 ~~(3)~~(4) The department has the power of attorney to act in the name of any obligee to endorse and
8 cash any ~~and all~~ drafts, checks, money orders, or other negotiable instruments received by the department
9 on behalf of a child.

10 ~~(4)~~(5) (a) ~~The~~ If the department is a party to and is providing IV-D services, the department must
11 be afforded notice and an opportunity to participate as an independent party in any proceeding relating to
12 paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a
13 support obligation, whether initiated by the obligee, the obligor, or the child. A recipient of services may
14 not act to prejudice the rights of the department while the services are being provided.

15 (b) The notice must reasonably inform the department of the issues to be determined in the
16 proceeding, the names of the parties and the child, and the identity and location of the tribunal in which
17 the issues will be determined. The notice is for informational purposes only and is not intended as a
18 substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal
19 jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment,
20 decree, or order is void as to any interest of the department that is or may be affected by the agreement,
21 judgment, decree, or order if the department was not joined as a party in the manner provided in the
22 Montana Rules of Civil Procedure.

23 (c) The notice must be personally served on the department. Within 20 days after service of the
24 notice, the department may:

25 (i) decline to enter the proceeding as a party, in which case the proceeding may continue without
26 the department's participation;

27 (ii) inform the tribunal that a substantial interest of the department could be adversely affected by
28 the proceeding, in which case the proceeding may not continue without joining the department as a
29 necessary party in the manner provided in the Montana Rules of Civil Procedure; or

30 (iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an

1 administrative proceeding under this chapter in which the parties and some or all of the issues are the same
2 as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the
3 common issues until administrative remedies have been exhausted.

4 (6) (a) A recipient or former recipient of public assistance who assigned support rights under
5 53-2-613 or a collection agency acting on behalf of the recipient or former recipient may collect only that
6 part of a delinquent support amount that accrued after termination of public assistance. The recipient,
7 former recipient, or collection agency may not commence or maintain an action against or make an
8 agreement with the obligor to recover an assigned delinquent support amount unless the department, in
9 writing:

10 (i) releases or relinquishes its assigned interest;

11 (ii) declares the support debt owed the department to be satisfied, in which case the balance of
12 the delinquent amount is released; or

13 (iii) consents to the action or agreement.

14 (b) If a recipient, former recipient, or collection agency collects or receives value for any part of
15 an assigned delinquent support amount and the department has not given its consent or released or
16 relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt
17 and full restitution to the department. If prompt and full restitution is not made, the department may send
18 a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution
19 is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection
20 agency is liable for damages equal to double the amount collected or value received. The amount of
21 damages may be determined and assessed by the department under the contested case provisions of the
22 Montana Administrative Procedure Act. The damages may be collected by the department by any method
23 or remedy available for the enforcement of child support owed by an obligor parent.

24 (c) This subsection (6) does not limit the right of a person to recover money not assigned. If there
25 are competing proceedings against an obligor for collection of delinquent support, the collection of support
26 assigned to the department takes priority over the obligor's income and assets.

27 (7) An applicant for or recipient of services may not act to the prejudice of the department's rights
28 while the services are being provided.

29 ~~(5)(8) If child support enforcement services are being or have been provided under this part~~ Unless
30 the department has consented to the agreement in writing, if public assistance is being or has been paid

1 ~~for a child, an agreement between any an obligee and any an obligor either relieving an obligor of any duty~~
 2 ~~of support or purporting to settle past, present, or future support obligations either as settlement or~~
 3 ~~prepayment may or a judgment, decree, or order adopting the agreement does~~ not act to reduce or
 4 terminate any rights of the department to establish a support order or to recover a support debt from the
 5 obligor ~~for support debt provided unless the department has consented to the agreement in writing, even~~
 6 if the agreement, judgment, decree, or order purports to:

7 (a) relieve or terminate the obligor's support duty;

8 (b) waive, modify, compromise, or discharge the support debt;

9 (c) prepay future support obligations or settle past, present, or future support obligations; or

10 (d) permit the obligor to pay past, present, or future support obligations:

11 (i) with noncash contributions;

12 (ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments;

13 or

14 (iii) by making contributions to a trust or other account or payments toward an asset if the
 15 contributed amounts are unavailable to the department.

16 ~~(6)(9)~~ The department may petition a court or an administrative agency for modification of any
 17 order on the same basis as a party to that action is entitled to do.

18 ~~(7)(10)~~ The department is subrogated to the right of the child or obligee to maintain any civil action
 19 or execute any administrative remedy available under the laws of this or any other state to collect a support
 20 debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the
 21 support debt created by 40-5-221.

22 ~~(8)(11)~~ If public assistance is being or has been paid, the department is subrogated to the debt
 23 created by a support order and any money judgment is considered to be in favor of the department. This
 24 subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

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

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

27 ~~(9)(12)~~ The department may adopt and enforce the rules necessary to carry out the provisions of
 28 this part.

29 ~~(10)(13)~~ The department, for While providing services under this chapter and in order to carry out
 30 the purposes mentioned in this part chapter, the department, through its director or the director's

1 authorized representatives, may:

2 (a) administer oaths to;

3 (b) certify official acts and records;

4 (c) issue investigative and hearing subpoenas, and;

5 (d) order discovery before and after a hearing;

6 (e) hold prehearing and settlement conferences;

7 (f) compel the attendance of witnesses and the production of books, accounts, documents, and
8 evidence; and

9 (g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint,
10 including the examination of an obligor or other person in the manner provided for the taking of a deposition
11 in a civil action.

12 ~~(14)~~ (14) When in addition to any other requirement for service provided by the Montana Rules of
13 Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the
14 department in a proceeding concerning the establishment or enforcement of child support under this
15 chapter, the notice, service, or response must be made to the department's child support enforcement
16 division."

17
18 **Section 2.** Section 40-5-206, MCA, is amended to read:

19 **"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of**
20 **records.** (1) The department shall establish a central unit to serve as a registry for the receipt of
21 information, for answering interstate inquiries concerning deserting parents, for receiving and answering
22 requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise
23 departmental activities in relation to deserting parents, and to ~~assure~~ ensure effective cooperation with law
24 enforcement agencies.

25 (2) If services are provided to a child under this part, the department may request and,
26 notwithstanding any statute making the information confidential, all state, county, and city agencies,
27 officers, and employees ~~must~~ shall provide on request information, if known, concerning an obligor or
28 obligee, including:

29 (a) name;

30 (b) ~~address of obligor's residence~~ residential and mailing addresses;

- 1 (c) date of birth;
- 2 (d) social security number;
- 3 (e) wages or other income;
- 4 (f) number of dependents claimed for state and federal income tax withholding purposes;
- 5 (g) name and address of employer;
- 6 (h) address, location, and description of any real property ~~owned by the obligor~~; and
- 7 (i) any other asset in which the obligor or obligee may have an interest, including the extent,
- 8 nature, and value of the interest.

9 (3) Any information obtained by the department during the course of a child support investigation

10 that is confidential at the source must be treated by the department as confidential and must be

11 safeguarded accordingly. The department may release information obtained from nonconfidential public

12 and private sources, including information regarding support orders, judgments, and payment records.

13 (4) Use or disclosure of information obtained by the department from confidential sources of and

14 information maintained by the department in its records, including the names, addresses, and social security

15 numbers of obligors and obligees, is limited to:

- 16 (a) purposes directly related to the provision of services under this chapter;
- 17 (b) county attorneys and courts having jurisdiction in support and abandonment proceedings ~~or~~
- 18 ~~actions or~~ and agencies in other states engaged in the enforcement of support of minor children ~~as~~
- 19 ~~authorized by the rules of the department and by the provisions of~~ under the federal Social Security Act;
- 20 and
- 21 (c) any other use permitted or required by the federal Social Security Act."

22

23 **NEW SECTION. Section 3. Confidentiality of paternity hearings and records of proceedings.**

24 Because of the privacy interests involved, a hearing under 40-5-231 through 40-5-237 and this section for

25 the purpose of determining paternity or reasonable cause to pursue paternity blood testing is closed to the

26 public. Attendance of others may be limited by the hearing officer as necessary to protect privacy rights.

27 All papers and records of the proceedings, other than a final adjudication of paternity, are closed to public

28 inspection, except that they may be opened upon consent of the parties and the hearing officer or, in

29 exceptional cases, by order of the hearing officer.

30

1 **Section 4.** Section 40-5-221, MCA, is amended to read:

2 **"40-5-221. Debt to state by obligor -- limitations.** (1) Except as provided in subsection (2), any
3 payment of public assistance money made to or for the benefit of a child creates a debt due and owing the
4 state of Montana by the obligor in an amount equal to the amount of public assistance money ~~so~~ paid. In
5 the case of an obligor who is an adoptive parent, a debt for public assistance paid may not accrue prior to
6 the date of adoption.

7 (2) If a support order has been entered, the support debt created by this section may not exceed
8 the amount of the order.

9 (3) If a child has been placed in foster care and a written agreement for payment of support exists
10 between the obligor and any state agency, the support debt is limited to the amount provided for in the
11 agreement. However, if a support order is or has been entered, the provisions of the order prevail over the
12 agreement.

13 (4) The department shall adopt rules based on ability to pay, with respect to the level of support
14 to be provided for in ~~such the~~ agreements or modifications of ~~such the~~ agreements based on changed
15 circumstances.

16 (5) The department may establish and collect a debt created under this section in a proceeding that
17 is in addition to and independent of the subrogation created by 40-5-202~~(7)~~ and the assignment under
18 53-2-613."

19

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

21 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
22 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

23 (2) If a hearing is requested, it must be scheduled within 20 days.

24 (3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under
25 the notice and shall enter a final decision and order in accordance with the determination. The order may
26 award support from the date of:

27 (a) the child's birth if paternity was established under 40-5-231 through 40-5-237 and [section 3]
28 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

29 (b) the parties' separation if support is initially established under 40-5-225; or

30 (c) notice to the parties of a support modification request under 40-5-273.

1 (4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing
2 officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the
3 notice to be final.

4 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any
5 proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in
6 accordance with the evidence presented and with reference to the uniform child support guidelines adopted
7 by the department under 40-5-209. The hearing officer is not limited to the amounts stated in the notice.
8 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
9 a party and those in which the order is entered upon the parties' consent. A verified representation of a
10 defaulting parent's income, based on the best information available, may be used when a parent fails to
11 provide financial information for use in applying the guidelines. The amount determined under the guidelines
12 is presumed to be an adequate and reasonable support award, unless the hearing officer finds by clear and
13 convincing evidence that the application of the ~~standards and~~ guidelines is unjust to the child or to any of
14 the parties or is inappropriate in a particular case. If the hearing officer finds that the guideline amount is
15 unjust or inappropriate in a particular case, the hearing officer shall state the reasons for finding that the
16 application of the ~~standards and~~ guidelines is unjust to the child or a party or is inappropriate in that
17 particular case. Similar findings must also be made in a case in which the parties have agreed to a support
18 amount that varies from the guideline amount. The hearing officer may vary the application of the
19 guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that
20 the hearing officer considers just. Findings that rebut and vary the guideline amount must include a
21 statement of the amount of support that would have ordinarily been ordered under the guidelines.

22 (6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The
23 determination of the hearing officer constitutes a final agency decision, subject to judicial review under
24 40-5-253 and the provisions of the Montana Administrative Procedure Act.

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

28 (8) A support debt determined pursuant to this section is subject to collection action without
29 further necessity of action by the hearing officer.

30 (9) A support debt or a support responsibility determined under this part by reason of the obligor's

1 failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon
2 the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the
3 grounds enumerated in the Montana Rules of Civil Procedure.

4 (10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the
5 exception is included in the support order, ~~every~~ each order establishing a child support obligation, whether
6 temporary or final, and each modification of an existing child support order under this part is enforceable
7 by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order
8 that omits that provision or that provides for a payment arrangement inconsistent with this section is
9 nevertheless subject to withholding for the payment of support without need for an amendment of the
10 support order or for any further action by the hearing officer.

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

17 (12) The hearing officer may:

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

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

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

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

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

25 (13) A contempt occurs whenever:

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

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

30 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing

1 fails to do so;

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

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

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

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

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

26 (17) The penalties charged and collected under this section must be paid into the state treasury to
27 the credit of the child support enforcement division special revenue fund and must be accompanied by a
28 detailed statement of the amounts collected."

29

30 **Section 6.** Section 40-5-443, MCA, is amended to read:

1 **"40-5-443. Payors to provide information -- exemption from liability.** (1) For the purposes of this
 2 part, upon written request by the department, a payor or former payor and any labor union of which the
 3 obligor or obligee is or may have been a member shall provide the department with the following
 4 information, if known, regarding the obligor or obligee:

5 (a) last-known residential address;
 6 (b) social security number;
 7 (c) dates of employment or union membership;
 8 (d) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts
 9 ~~paid to the obligor during any period when the department provided support enforcement services; and~~
 10 (e) whether health insurance coverage is or was available ~~to the obligor~~ through the payor or union
 11 and, if so:

12 (i) the name of the insurer or health care provider;
 13 (ii) the policy numbers or other identifiers; and
 14 (iii) the persons covered; and
 15 (f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

16 (2) A payor or union ~~who that~~ discloses information to the department in compliance with this
 17 section is exempt from any liability to the obligor or obligee that may result from ~~such~~ the disclosure."
 18

19 **NEW SECTION. Section 7. Codification instruction.** [Section 3] is intended to be codified as an
 20 integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to
 21 [section 3].
 22

23 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
 24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 25 applications, the part remains in effect in all valid applications that are severable from the invalid
 26 applications.
 27

28 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.
 29

-END-

1 HOUSE BILL NO. 385

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT LAWS AND THE
6 METHOD BY WHICH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES COLLECTS AND
7 ENFORCES SUPPORT; AUTHORIZING SALE OF SUPPORT DEBTS; AMENDING SECTIONS 27-2-201,
8 40-5-202, 40-5-206, 40-5-221, 40-5-226, 40-5-255, AND 40-5-443, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12

13 Section 1. Section 40-5-202, MCA, is amended to read:

14 "40-5-202. Department of social and rehabilitation services -- powers and duties regarding
15 collection of support debt. (1) The department may take action under the provisions of this ~~part~~ chapter,
16 the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part
17 1, and other appropriate state and federal statutes to provide IV-D services if the department:

18 (a) receives a referral from the department of social and rehabilitation services or the department
19 of family services on behalf of the child;

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

21 (c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of
22 Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of
23 another state.

24 (2) A verified statement, filed by the department, that it is providing services is prima facie
25 evidence of its authority to act. ~~The~~ Upon filing, the department may, on behalf of itself or on behalf of
26 the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a
27 judicial or an administrative action on the same basis as any other party.

28 (3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department
29 and its attorneys serve the public interest in ensuring that children are supported by their parents, rather
30 than maintained by public assistance. The department does not represent the interests of any individual

1 person, and its attorneys represent only the department. An attorney-client relationship is not created
 2 between department attorneys and any person or entity other than the department. The obligee, obligor,
 3 and child may obtain the services of a private attorney to represent their interests. The existence or
 4 appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the
 5 department's right to act or provide services under this chapter. This chapter does not require the
 6 department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or
 7 child.

8 ~~(3)~~(4) The department has the power of attorney to act in the name of any obligee to endorse and
 9 cash any ~~and all~~ drafts, checks, money orders, or other negotiable instruments received by the department
 10 on behalf of a child.

11 ~~(4)~~(5) (a) ~~The~~ If the department is a party to and is providing IV-D services, the department must
 12 be afforded notice and an opportunity to participate as an independent party in any proceeding relating to
 13 paternity, ~~to termination of parental rights,~~ or to the establishment, enforcement, or modification of a
 14 support obligation, whether initiated by the obligee, the obligor, or the child. ~~A recipient of services may~~
 15 ~~not act to prejudice the rights of the department while the services are being provided.~~

16 (b) The notice must reasonably inform the department of the issues to be determined in the
 17 proceeding, the names of the parties and the child, and the identity and location of the tribunal in which
 18 the issues will be determined. The notice is for informational purposes only and is not intended as a
 19 substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal
 20 jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment,
 21 decree, or order is void as to any interest of the department that is or may be affected by the agreement,
 22 judgment, decree, or order if the department was not joined as a party in the manner provided in the
 23 Montana Rules of Civil Procedure.

24 (c) The notice must be personally served on the department. Within 20 days after service of the
 25 notice, the department may:

26 (i) decline to enter the proceeding as a party, in which case the proceeding may continue without
 27 the department's participation;

28 (ii) inform the tribunal that a substantial interest of the department could be adversely affected by
 29 the proceeding, in which case the proceeding may not continue without joining the department as a
 30 necessary party in the manner provided in the Montana Rules of Civil Procedure; or

1 (iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an
 2 administrative proceeding under this chapter in which the parties and some or all of the issues are the same
 3 as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the
 4 common issues until administrative remedies have been exhausted.

5 (6) (a) A recipient or former recipient of public assistance who assigned support rights under
 6 53-2-613 or a collection agency acting on behalf of the recipient or former recipient may collect only that
 7 part of a delinquent support amount that accrued after termination of public assistance. The recipient,
 8 former recipient, or collection agency may not commence or maintain an action against or make an
 9 agreement with the obligor to recover an assigned delinquent support amount unless the department, in
 10 writing:

11 (i) releases or relinquishes its assigned interest;

12 (ii) declares the support debt owed the department to be satisfied, in which case the balance of
 13 the delinquent amount is released; or

14 (iii) consents to the action or agreement.

15 (b) If a recipient, former recipient, or collection agency collects or receives value for any part of
 16 an assigned delinquent support amount and the department has not given its consent or released or
 17 relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt
 18 and full restitution to the department. If prompt and full restitution is not made, the department may send
 19 a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution
 20 is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection
 21 agency is liable for damages equal to double the amount collected or value received. The amount of
 22 damages may be determined and assessed by the department under the contested case provisions of the
 23 Montana Administrative Procedure Act. The damages may be collected by the department by any method
 24 or remedy available for the enforcement of child support owed by an obligor parent.

25 (c) This subsection (6) does not limit the right of a person to recover money not assigned. If there
 26 are competing proceedings against an obligor for collection of delinquent support, the collection of support
 27 assigned to the department takes priority over the obligor's income and assets.

28 (7) An applicant for or recipient of services may not act to the prejudice of the department's rights
 29 while the services are being provided.

30 ~~(6)(8) If child support enforcement services are being or have been provided under this part Unless~~

1 the department has consented to the agreement in writing, if public assistance is being or has been paid
 2 for a child, an agreement between any an obligee and any an obligor either relieving an obligor of any duty
 3 of support or purporting to settle past, present, or future support obligations either as settlement or
 4 prepayment may or a judgment, decree, or order adopting the agreement does not act to reduce or
 5 terminate any rights of the department to establish a support order or to recover a support debt from the
 6 obligor for support debt ~~provided unless the department has consented to the agreement in writing, even~~
 7 if the agreement, judgment, decree, or order purports to:

8 (a) relieve or terminate the obligor's support duty;

9 (b) waive, modify, compromise, or discharge the support debt;

10 (c) prepay future support obligations or settle past, present, or future support obligations; or

11 (d) permit the obligor to pay past, present, or future support obligations:

12 (i) with noncash contributions;

13 (ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments;

14 or

15 (iii) by making contributions to a trust or other account or payments toward an asset if the
 16 contributed amounts are unavailable to the department.

17 ~~(6)(9)~~ The department may petition a court or an administrative agency for modification of any
 18 order on the same basis as a party to that action is entitled to do.

19 ~~(7)(10)~~ The department is subrogated to the right of the child or obligee to maintain any civil action
 20 or execute any administrative remedy available under the laws of this or any other state to collect a support
 21 debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the
 22 support debt created by 40-5-221.

23 ~~(8)(11)~~ If public assistance is being or has been paid, the department is subrogated to the debt
 24 created by a support order and any money judgment is considered to be in favor of the department. This
 25 subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

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

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

28 ~~(9)(12)~~ The department may adopt and enforce the rules necessary to carry out the provisions of
 29 this part.

30 ~~(10)(13)~~ The department, for While providing services under this chapter and in order to carry out

1 the purposes mentioned in this ~~part~~ chapter, the department, through its director or the director's
2 authorized representatives, may:

3 (a) administer oaths ~~to~~;

4 (b) certify official acts and records;

5 (c) issue investigative and hearing subpoenas, ~~and~~;

6 (d) order discovery before and after a hearing;

7 (e) hold prehearing and settlement conferences;

8 (f) compel the attendance of witnesses and the production of books, accounts, documents, and
9 evidence; and

10 (g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint,
11 including the examination of an obligor or other person in the manner provided for the taking of a deposition
12 in a civil action.

13 ~~(11)~~(14) When In addition to any other requirement for service provided by the Montana Rules of
14 Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the
15 department in a proceeding concerning the establishment or enforcement of child support under this
16 chapter, the notice, service, or response must be made to the department's child support enforcement
17 division."

18
19 **Section 2.** Section 40-5-206, MCA, is amended to read:

20 **"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of**
21 **records.** (1) The department shall establish a central unit to serve as a registry for the receipt of
22 information, for answering interstate inquiries concerning deserting parents, for receiving and answering
23 requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise
24 departmental activities in relation to deserting parents, and to ~~ensure~~ ensure effective cooperation with law
25 enforcement agencies.

26 (2) If services are provided to a child under this part, the department may request and,
27 notwithstanding any statute making the information confidential, all state, county, and city agencies,
28 officers, and employees ~~must~~ shall provide on request information, if known, concerning an obligor or
29 obligee, including:

30 (a) name;

- 1 (b) ~~address of obligor's residence~~ residential and mailing addresses;
- 2 (c) date of birth;
- 3 (d) social security number;
- 4 (e) wages or other income;
- 5 (f) number of dependents claimed for state and federal income tax withholding purposes;
- 6 (g) name and address of employer;
- 7 (h) address, location, and description of any real property ~~owned by the obligor~~; and
- 8 (i) any other asset in which the obligor or obligee may have an interest, including the extent,
- 9 nature, and value of the interest.

10 (3) Any information obtained by the department during the course of a child support investigation

11 that is confidential at the source must be treated by the department as confidential and must be

12 safeguarded accordingly. The department may release information obtained from nonconfidential public

13 and private sources, including information regarding support orders, judgments, and payment records.

14 (4) Use or disclosure of information obtained by the department from confidential sources of and

15 information maintained by the department in its records, including the names, addresses, and social security

16 numbers of obligors and obligees, is limited to:

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

18 (b) county attorneys and courts having jurisdiction in support and abandonment proceedings ~~or~~

19 ~~actions or~~ and agencies in other states engaged in the enforcement of support of minor children ~~as~~

20 ~~authorized by the rules of the department and by the provisions of~~ under the federal Social Security Act;

21 and

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

23

24 **NEW SECTION. Section 3. Confidentiality of paternity hearings and records of proceedings.**

25 Because of the privacy interests involved, a hearing under 40-5-231 through 40-5-237 and this section for

26 the purpose of determining paternity or reasonable cause to pursue paternity blood testing is closed to the

27 public. Attendance of others may be limited by the hearing officer as necessary to protect privacy rights.

28 All papers and records of the proceedings, other than a final adjudication of paternity, are closed to public

29 inspection, except that they may be opened upon consent of the parties and the hearing officer or, in

30 exceptional cases, by order of the hearing officer.

1 **Section 4.** Section 40-5-221, MCA, is amended to read:

2 **"40-5-221. Debt to state by obligor -- limitations.** (1) Except as provided in subsection (2), any
3 payment of public assistance money made to or for the benefit of a child creates a debt due and owing the
4 state of Montana by the obligor in an amount equal to the amount of public assistance money ~~se~~ paid. In
5 the case of an obligor who is an adoptive parent, a debt for public assistance paid may not accrue prior to
6 the date of adoption.

7 (2) If a support order has been entered, the support debt created by this section may not exceed
8 the amount of the order.

9 (3) If a child has been placed in foster care and a written agreement for payment of support exists
10 between the obligor and any state agency, the support debt is limited to the amount provided for in the
11 agreement. However, if a support order is or has been entered, the provisions of the order prevail over the
12 agreement.

13 (4) The department shall adopt rules based on ability to pay, with respect to the level of support
14 to be provided for in ~~such~~ the agreements or modifications of ~~such~~ the agreements based on changed
15 circumstances.

16 (5) The department may establish and collect a debt created under this section in a proceeding that
17 is in addition to and independent of the subrogation created by 40-5-202~~77~~ and the assignment under
18 53-2-613."

19

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

21 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
22 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

23 (2) If a hearing is requested, it must be scheduled within 20 days.

24 (3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under
25 the notice and shall enter a final decision and order in accordance with the determination. The order may
26 award support from the date of:

27 (a) the child's birth if paternity was established under 40-5-231 through 40-5-237 and [section 3]
28 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

29 (b) the parties' separation if support is initially established under 40-5-225; or

30 (c) notice to the parties of a support modification request under 40-5-273.

1 (4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing
2 officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the
3 notice to be final.

4 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any
5 proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in
6 accordance with the evidence presented and with reference to the uniform child support guidelines adopted
7 by the department under 40-5-209. The hearing officer is not limited to the amounts stated in the notice.
8 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
9 a party and those in which the order is entered upon the parties' consent. A verified representation of a
10 defaulting parent's income, based on the best information available, may be used when a parent fails to
11 provide financial information for use in applying the guidelines. The amount determined under the guidelines
12 is presumed to be an adequate and reasonable support award, unless the hearing officer finds by clear and
13 convincing evidence that the application of the ~~standards and~~ guidelines is unjust to the child or to any of
14 the parties or is inappropriate in a particular case. If the hearing officer finds that the guideline amount is
15 unjust or inappropriate in a particular case, the hearing officer shall state the reasons for finding that the
16 application of the ~~standards and~~ guidelines is unjust to the child or a party or is inappropriate in that
17 particular case. Similar findings must also be made in a case in which the parties have agreed to a support
18 amount that varies from the guideline amount. The hearing officer may vary the application of the
19 guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that
20 the hearing officer considers just. Findings that rebut and vary the guideline amount must include a
21 statement of the amount of support that would have ordinarily been ordered under the guidelines.

22 (6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The
23 determination of the hearing officer constitutes a final agency decision, subject to judicial review under
24 40-5-253 and the provisions of the Montana Administrative Procedure Act.

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

28 (8) A support debt determined pursuant to this section is subject to collection action without
29 further necessity of action by the hearing officer.

30 (9) A support debt or a support responsibility determined under this part by reason of the obligor's

1 failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon
2 the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the
3 grounds enumerated in the Montana Rules of Civil Procedure.

4 (10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the
5 exception is included in the support order, ~~every~~ each order establishing a child support obligation, whether
6 temporary or final, and each modification of an existing child support order under this part is enforceable
7 by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order
8 that omits that provision or that provides for a payment arrangement inconsistent with this section is
9 nevertheless subject to withholding for the payment of support without need for an amendment of the
10 support order or for any further action by the hearing officer.

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

17 (12) The hearing officer may:

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

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

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

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

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

25 (13) A contempt occurs whenever:

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

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

30 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing

1 fails to do so;

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

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

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

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

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

26 (17) The penalties charged and collected under this section must be paid into the state treasury to
27 the credit of the child support enforcement division special revenue fund and must be accompanied by a
28 detailed statement of the amounts collected."
29

30 **SECTION 6. SECTION 40-5-255, MCA, IS AMENDED TO READ:**

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

6 (2) At any time after 10 years from the date of termination of the support obligation, the
7 department may charge off as uncollectible any support debt upon which the department finds there is no
8 available, practical, or lawful means by which the support debt may be collected. A proceeding or action
9 under the provisions of this part may not be begun after expiration of the 10-year period to institute
10 collection of a support debt. This part may not be construed to render invalid or nonactionable a warrant
11 for distraint issued by the department prior to the expiration of the 10-year period or an assignment of
12 earnings executed prior to the expiration of the 10-year period.

13 (3) The department may discount and sell to a private collection agency, credit bureau, or other
14 private entity any interest that the state and the department may have in the unpaid balance of the support
15 debt created by 40-5-221 and 53-4-248 or assigned to the department under 53-2-613.

16 (a) The sale shall be by sealed bid to the highest bidder provided that the highest bid is not less
17 than 10% of the value of the support debt subject to the sale.

18 (b) The sale shall be subject to conditions and terms which the department may set out in a sales
19 contract.

20 (c) The department shall publish notice of the sale in a newspaper having statewide circulation
21 once a week for 4 successive weeks.

22 (d) Proceeds shall be paid into the state treasury to the credit of the child support enforcement
23 division special revenue fund."

24

25 **Section 7.** Section 40-5-443, MCA, is amended to read:

26 **"40-5-443. Payors to provide information -- exemption from liability.** (1) For the purposes of this
27 part, upon written request by the department, a payor or former payor and any labor union of which the
28 obligor or obligee is or may have been a member shall provide the department with the following
29 information, if known, regarding the obligor or obligee:

30 (a) last-known residential address;

- 1 (b) social security number;
- 2 (c) dates of employment or union membership;
- 3 (d) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts
- 4 ~~paid to the obligor during any period when the department provided support enforcement services; and~~
- 5 (e) whether health insurance coverage is or was available ~~to the obligor~~ through the payor or union
- 6 and, if so:
 - 7 (i) the name of the insurer or health care provider;
 - 8 (ii) the policy numbers or other identifiers; and
 - 9 (iii) the persons covered; and
 - 10 (f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

11 (2) A payor or union ~~who~~ that discloses information to the department in compliance with this
 12 section is exempt from any liability to the obligor or obligee that may result from ~~such~~ the disclosure."
 13

14 **SECTION 8. SECTION 27-2-201, MCA, IS AMENDED TO READ:**

15 **"27-2-201. Actions upon judgments.** (1) Except as provided in ~~subsection~~ subsections (3) and (4),
 16 the period prescribed for the commencement of an action upon a judgment or decree of any court of record
 17 of the United States or of any state within the United States is within 10 years.

18 (2) The period prescribed for the commencement of an action upon a judgment or decree rendered
 19 in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued
 20 when final judgment was rendered.

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

24 (4) The period prescribed for the commencement of an action to collect past-due child support that
 25 has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as
 26 provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer."
 27

28 **NEW SECTION. Section 9. Codification instruction.** [Section 3] is intended to be codified as an
 29 integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to
 30 [section 3].

1 NEW SECTION. **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5

6 NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

7

-END-

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HOUSE BILL NO. 385
INTRODUCED BY R. JOHNSON
BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT LAWS AND THE
METHOD BY WHICH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES COLLECTS AND
ENFORCES SUPPORT; AUTHORIZING SALE OF SUPPORT DEBTS; AMENDING SECTIONS 27-2-201,
40-5-202, 40-5-206, 40-5-221, 40-5-226, 40-5-255, AND 40-5-443, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

1 HOUSE BILL NO. 385

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT LAWS AND THE
6 METHOD BY WHICH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES COLLECTS AND
7 ENFORCES SUPPORT; AUTHORIZING SALE OF SUPPORT DEBTS; AMENDING SECTIONS 27-2-201,
8 40-5-202, 40-5-206, 40-5-221, 40-5-226, 40-5-255, AND 40-5-443, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 40-5-202, MCA, is amended to read:

14 **"40-5-202. Department of social and rehabilitation services -- powers and duties regarding**
15 **collection of support debt.** (1) The department may take action under the provisions of this ~~part~~ chapter,
16 the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part
17 1, and other appropriate state and federal statutes to provide IV-D services if the department:

18 (a) receives a referral from the department of social and rehabilitation services or the department
19 of family services on behalf of the child;

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

21 (c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of
22 Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of
23 another state.

24 (2) A verified statement, filed by the department, that it is providing services is prima facie
25 evidence of its authority to act. ~~The~~ Upon filing, the department may, on behalf of itself or on behalf of
26 the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a
27 judicial or an administrative action on the same basis as any other party.

28 (3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department
29 and its attorneys serve the public interest in ensuring that children are supported by their parents, rather
30 than maintained by public assistance. The department does not represent the interests of any individual

1 person, and its attorneys represent only the department. An attorney-client relationship is not created
2 between department attorneys and any person or entity other than the department. The obligee, obligor,
3 and child may obtain the services of a private attorney to represent their interests. The existence or
4 appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the
5 department's right to act or provide services under this chapter. This chapter does not require the
6 department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or
7 child.

8 ~~(3)(4)~~ The department has the power of attorney to act in the name of any obligee to endorse and
9 cash any ~~and all~~ drafts, checks, money orders, or other negotiable instruments received by the department
10 on behalf of a child.

11 ~~(4)(5) (a)~~ The If the department is a party to and is providing IV-D services, the department must
12 be afforded notice and an opportunity to participate as an independent party in any proceeding relating to
13 paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a
14 support obligation, whether initiated by the obligee, the obligor, or the child. A recipient of services may
15 not act to prejudice the rights of the department while the services are being provided.

16 (b) The notice must reasonably inform the department of the issues to be determined in the
17 proceeding, the names of the parties and the child, and the identity and location of the tribunal in which
18 the issues will be determined. The notice is for informational purposes only and is not intended as a
19 substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal
20 jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment,
21 decree, or order is void as to any interest of the department that is or may be affected by the agreement,
22 judgment, decree, or order if the department was not joined as a party in the manner provided in the
23 Montana Rules of Civil Procedure.

24 (c) The notice must be personally served on the department. Within 20 days after service of the
25 notice, the department may:

26 (i) decline to enter the proceeding as a party, in which case the proceeding may continue without
27 the department's participation;

28 (ii) inform the tribunal that a substantial interest of the department could be adversely affected by
29 the proceeding, in which case the proceeding may not continue without joining the department as a
30 necessary party in the manner provided in the Montana Rules of Civil Procedure; or

1 (iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an
 2 administrative proceeding under this chapter in which the parties and some or all of the issues are the same
 3 as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the
 4 common issues until administrative remedies have been exhausted.

5 (6) (a) A recipient or former recipient of public assistance who assigned support rights under
 6 53-2-613 or a collection agency acting on behalf of the recipient or former recipient may collect only that
 7 part of a delinquent support amount that accrued after termination of public assistance. The recipient,
 8 former recipient, or collection agency may not commence or maintain an action against or make an
 9 agreement with the obligor to recover an assigned delinquent support amount unless the department, in
 10 writing:

11 (i) releases or relinquishes its assigned interest;

12 (ii) declares the support debt owed the department to be satisfied, in which case the balance of
 13 the delinquent amount is released; or

14 (iii) consents to the action or agreement.

15 (b) If a recipient, former recipient, or collection agency collects or receives value for any part of
 16 an assigned delinquent support amount and the department has not given its consent or released or
 17 relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt
 18 and full restitution to the department. If prompt and full restitution is not made, the department may send
 19 a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution
 20 is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection
 21 agency is liable for damages equal to double the amount collected or value received. The amount of
 22 damages may be determined and assessed by the department under the contested case provisions of the
 23 Montana Administrative Procedure Act. The damages may be collected by the department by any method
 24 or remedy available for the enforcement of child support owed by an obligor parent.

25 (c) This subsection (6) does not limit the right of a person to recover money not assigned. If there
 26 are competing proceedings against an obligor for collection of delinquent support, the collection of support
 27 assigned to the department takes priority over the obligor's income and assets.

28 (7) An applicant for or recipient of services may not act to the prejudice of the department's rights
 29 while the services are being provided.

30 ~~(5)(8) If child support enforcement services are being or have been provided under this part Unless~~

1 the department has consented to the agreement in writing, if public assistance is being or has been paid
 2 for a child, an agreement between any an obligee and any an obligor either relieving an obligor of any duty
 3 of support or purporting to settle past, present, or future support obligations either as settlement or
 4 prepayment may or a judgment, decree, or order adopting the agreement does not act to reduce or
 5 terminate any rights of the department to establish a support order or to recover a support debt from the
 6 obligor for support debt provided unless the department has consented to the agreement in writing, even
 7 if the agreement, judgment, decree, or order purports to:

- 8 (a) relieve or terminate the obligor's support duty;
 9 (b) waive, modify, compromise, or discharge the support debt;
 10 (c) prepay future support obligations or settle past, present, or future support obligations; or
 11 (d) permit the obligor to pay past, present, or future support obligations:
 12 (i) with noncash contributions;
 13 (ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments;
 14 or
 15 (iii) by making contributions to a trust or other account or payments toward an asset if the
 16 contributed amounts are unavailable to the department.

17 ~~{6}~~(9) The department may petition a court or an administrative agency for modification of any
 18 order on the same basis as a party to that action is entitled to do.

19 ~~{7}~~(10) The department is subrogated to the right of the child or obligee to maintain any civil action
 20 or execute any administrative remedy available under the laws of this or any other state to collect a support
 21 debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the
 22 support debt created by 40-5-221.

23 ~~{8}~~(11) If public assistance is being or has been paid, the department is subrogated to the debt
 24 created by a support order and any money judgment is considered to be in favor of the department. This
 25 subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

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

28 ~~{9}~~(12) The department may adopt and enforce the rules necessary to carry out the provisions of
 29 this part.

30 ~~{10}~~(13) The department, for While providing services under this chapter and in order to carry out

1 the purposes mentioned in this ~~part~~ chapter, the department, through its director or the director's
2 authorized representatives, may:

3 (a) administer oaths to;

4 (b) certify official acts and records;

5 (c) issue investigative and hearing subpoenas, ~~and;~~

6 (d) order discovery before and after a hearing;

7 (e) hold prehearing and settlement conferences;

8 (f) compel the attendance of witnesses and the production of books, accounts, documents, and

9 evidence; and

10 (g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint,
11 including the examination of an obligor or other person in the manner provided for the taking of a deposition
12 in a civil action.

13 ~~(11)(14) When~~ In addition to any other requirement for service provided by the Montana Rules of
14 Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the
15 department in a proceeding concerning the establishment or enforcement of child support under this
16 chapter, the notice, service, or response must be made to the department's child support enforcement
17 division."

18
19 **Section 2.** Section 40-5-206, MCA, is amended to read:

20 **"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of**
21 **records.** (1) The department shall establish a central unit to serve as a registry for the receipt of
22 information, for answering interstate inquiries concerning deserting parents, for receiving and answering
23 requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise
24 departmental activities in relation to deserting parents, and to ~~assure~~ ensure effective cooperation with law
25 enforcement agencies.

26 (2) If services are provided to a child under this part, the department may request and,
27 notwithstanding any statute making the information confidential, all state, county, and city agencies,
28 officers, and employees ~~must~~ shall provide on request information, if known, concerning an obligor or
29 obligee, including:

30 (a) name;

- 1 (b) ~~address of obligor's residence~~ residential and mailing addresses;
- 2 (c) date of birth;
- 3 (d) social security number;
- 4 (e) wages or other income;
- 5 (f) number of dependents claimed for state and federal income tax withholding purposes;
- 6 (g) name and address of employer;
- 7 (h) address, location, and description of any real property ~~owned by the obligor~~; and
- 8 (i) any other asset in which the obligor or obligee may have an interest, including the extent,
- 9 nature, and value of the interest.

10 (3) Any information obtained by the department during the course of a child support investigation

11 that is confidential at the source must be treated by the department as confidential and must be

12 safeguarded accordingly. The department may release information obtained from nonconfidential public

13 and private sources, including information regarding support orders, judgments, and payment records.

14 (4) Use or disclosure of information obtained by the department from confidential sources of and

15 information maintained by the department in its records, including the names, addresses, and social security

16 numbers of obligors and obligees, is limited to:

- 17 (a) purposes directly related to the provision of services under this chapter;
- 18 (b) county attorneys and courts having jurisdiction in support and abandonment proceedings ~~or~~
- 19 ~~actions or~~ and agencies in other states engaged in the enforcement of support of minor children ~~as~~
- 20 ~~authorized by the rules of the department and by the provisions of~~ under the federal Social Security Act;
- 21 and
- 22 (c) any other use permitted or required by the federal Social Security Act."

23

24 **NEW SECTION. Section 3. Confidentiality of paternity hearings and records of proceedings.**

25 Because of the privacy interests involved, a hearing under 40-5-231 through 40-5-237 and this section for

26 the purpose of determining paternity or reasonable cause to pursue paternity blood testing is closed to the

27 public. Attendance of others may be limited by the hearing officer as necessary to protect privacy rights.

28 All papers and records of the proceedings, other than a final adjudication of paternity, are closed to public

29 inspection, except that they may be opened upon consent of the parties and the hearing officer or, in

30 exceptional cases, by order of the hearing officer.

1 **Section 4.** Section 40-5-221, MCA, is amended to read:

2 **"40-5-221. Debt to state by obligor -- limitations.** (1) Except as provided in subsection (2), any
3 payment of public assistance money made to or for the benefit of a child creates a debt due and owing the
4 state of Montana by the obligor in an amount equal to the amount of public assistance money ~~ee~~ paid. In
5 the case of an obligor who is an adoptive parent, a debt for public assistance paid may not accrue prior to
6 the date of adoption.

7 (2) If a support order has been entered, the support debt created by this section may not exceed
8 the amount of the order.

9 (3) If a child has been placed in foster care and a written agreement for payment of support exists
10 between the obligor and any state agency, the support debt is limited to the amount provided for in the
11 agreement. However, if a support order is or has been entered, the provisions of the order prevail over the
12 agreement.

13 (4) The department shall adopt rules based on ability to pay, with respect to the level of support
14 to be provided for in ~~such the~~ agreements or modifications of ~~such the~~ agreements based on changed
15 circumstances.

16 (5) The department may establish and collect a debt created under this section in a proceeding that
17 is in addition to and independent of the subrogation created by 40-5-202~~(7)~~ and the assignment under
18 53-2-613."

19

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

21 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
22 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

23 (2) If a hearing is requested, it must be scheduled within 20 days.

24 (3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under
25 the notice and shall enter a final decision and order in accordance with the determination. The order may
26 award support from the date of:

27 (a) the child's birth if paternity was established under 40-5-231 through 40-5-237 and [section 3]
28 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

29 (b) the parties' separation if support is initially established under 40-5-225; or

30 (c) notice to the parties of a support modification request under 40-5-273.

1 (4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing
2 officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the
3 notice to be final.

4 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any
5 proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in
6 accordance with the evidence presented and with reference to the uniform child support guidelines adopted
7 by the department under 40-5-209. The hearing officer is not limited to the amounts stated in the notice.
8 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
9 a party and those in which the order is entered upon the parties' consent. A verified representation of a
10 defaulting parent's income, based on the best information available, may be used when a parent fails to
11 provide financial information for use in applying the guidelines. The amount determined under the guidelines
12 is presumed to be an adequate and reasonable support award, unless the hearing officer finds by clear and
13 convincing evidence that the application of the ~~standards and~~ guidelines is unjust to the child or to any of
14 the parties or is inappropriate in a particular case. If the hearing officer finds that the guideline amount is
15 unjust or inappropriate in a particular case, the hearing officer shall state the reasons for finding that the
16 application of the ~~standards and~~ guidelines is unjust to the child or a party or is inappropriate in that
17 particular case. Similar findings must also be made in a case in which the parties have agreed to a support
18 amount that varies from the guideline amount. The hearing officer may vary the application of the
19 guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that
20 the hearing officer considers just. Findings that rebut and vary the guideline amount must include a
21 statement of the amount of support that would have ordinarily been ordered under the guidelines.

22 (6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The
23 determination of the hearing officer constitutes a final agency decision, subject to judicial review under
24 40-5-253 and the provisions of the Montana Administrative Procedure Act.

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

28 (8) A support debt determined pursuant to this section is subject to collection action without
29 further necessity of action by the hearing officer.

30 (9) A support debt or a support responsibility determined under this part by reason of the obligor's

1 failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon
2 the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the
3 grounds enumerated in the Montana Rules of Civil Procedure.

4 (10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the
5 exception is included in the support order, ~~every~~ each order establishing a child support obligation, whether
6 temporary or final, and each modification of an existing child support order under this part is enforceable
7 by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order
8 that omits that provision or that provides for a payment arrangement inconsistent with this section is
9 nevertheless subject to withholding for the payment of support without need for an amendment of the
10 support order or for any further action by the hearing officer.

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

17 (12) The hearing officer may:

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

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

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

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

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

25 (13) A contempt occurs whenever:

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

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

30 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing

1 fails to do so;

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

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

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

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

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

26 (17) The penalties charged and collected under this section must be paid into the state treasury to
27 the credit of the child support enforcement division special revenue fund and must be accompanied by a
28 detailed statement of the amounts collected."

29

30 **SECTION 6. SECTION 40-5-255, MCA, IS AMENDED TO READ:**

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

6 (2) At any time after 10 years from the date of termination of the support obligation, the
7 department may charge off as uncollectible any support debt upon which the department finds there is no
8 available, practical, or lawful means by which the support debt may be collected. A proceeding or action
9 under the provisions of this part may not be begun after expiration of the 10-year period to institute
10 collection of a support debt. This part may not be construed to render invalid or nonactionable a warrant
11 for distraint issued by the department prior to the expiration of the 10-year period or an assignment of
12 earnings executed prior to the expiration of the 10-year period.

13 (3) The department may discount and sell to a private collection agency, credit bureau, or other
14 private entity any interest that the state and the department may have in the unpaid balance of the support
15 debt created by 40-5-221 and 53-4-248 or assigned to the department under 53-2-613.

16 (a) The sale must be by sealed bid to the highest bidder provided that the highest bid is not less
17 than 10% of the value of the support debt subject to the sale.

18 (b) The sale must be subject to conditions and terms that the department may set out in a sales
19 contract.

20 (c) The department shall publish notice of the sale in a newspaper having statewide circulation
21 once a week for 4 successive weeks.

22 (d) Proceeds must be paid into the state treasury to the credit of the child support enforcement
23 division special revenue fund."

24
25 **Section 7.** Section 40-5-443, MCA, is amended to read:

26 **"40-5-443. Payors to provide information -- exemption from liability.** (1) For the purposes of this
27 part, upon written request by the department, a payor or former payor and any labor union of which the
28 obligor or obligee is or may have been a member shall provide the department with the following
29 information, if known, regarding the obligor or obligee:

30 (a) last-known residential address;

- 1 (b) social security number;
- 2 (c) dates of employment or union membership;
- 3 (d) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts
- 4 ~~paid to the obligor during any period when the department provided support enforcement services; and~~
- 5 (e) whether health insurance coverage is or was available ~~to the obligor~~ through the payor or union
- 6 and, if so:
- 7 (i) the name of the insurer or health care provider;
- 8 (ii) the policy numbers or other identifiers; and
- 9 (iii) the persons covered; and
- 10 (f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

11 (2) A payor or union ~~who~~ that discloses information to the department in compliance with this

12 section is exempt from any liability to the obligor or obligee that may result from ~~such~~ the disclosure."

13

14 **SECTION 8. SECTION 27-2-201, MCA, IS AMENDED TO READ:**

15 "**27-2-201. Actions upon judgments.** (1) Except as provided in ~~subsection~~ subsections (3) and (4),

16 the period prescribed for the commencement of an action upon a judgment or decree of any court of record

17 of the United States or of any state within the United States is within 10 years.

18 (2) The period prescribed for the commencement of an action upon a judgment or decree rendered

19 in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued

20 when final judgment was rendered.

21 (3) The period prescribed for the commencement of an action to collect past-due child support that

22 has accrued after October 1, 1993, under an order entered by a court of record or administrative authority

23 is within 10 years of the termination of support obligation.

24 (4) The period prescribed for the commencement of an action to collect past-due child support that

25 has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as

26 provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer."

27

28 **NEW SECTION. Section 9. Codification instruction.** [Section 3] is intended to be codified as an

29 integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to

30 [section 3].

1 **NEW SECTION.** **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5

6 **NEW SECTION.** **Section 11. Effective date.** [This act] is effective on passage and approval.

7

-END-