

1 SENATE BILL NO. 29

2 INTRODUCED BY BARTLETT

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD
 6 SUPPORT ENFORCEMENT TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT
 7 ENFORCEMENT SERVICES; CLARIFYING TIME LIMITS FOR LIENS, WRITS OF EXECUTION, AND
 8 COMMENCEMENT OF ACTIONS FOR CHILD SUPPORT COLLECTION; ALLOWING AN OBLIGEE TO RETAIN
 9 AMOUNTS WITHHELD FROM AN OBLIGOR'S INCOME WHEN THE AMOUNT WITHHELD IS A RESULT OF
 10 ANNUALIZED WITHHOLDING; EXPANDING THE DEFINITION OF "SUPPORT ORDER"; ALLOWING THE
 11 DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS FOR HEALTH OR MEDICAL NEEDS OR
 12 FOR ENROLLMENT IN A HEALTH BENEFIT OR MEDICAL INSURANCE PLAN; PROVIDING FOR AMOUNTS
 13 TO BE DEDUCTED FROM INCOME IF WITHHOLDING IS ANNUALIZED; CLARIFYING AN OBLIGOR'S RIGHT
 14 TO CONTEST MODIFICATION OF AN EXISTING INCOME WITHHOLDING ORDER; PROVIDING FOR
 15 CREDITING OF PAYMENTS PAID PURSUANT TO OTHER SUPPORT ORDERS; AND AMENDING SECTIONS
 16 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-201, 40-5-208,
 17 40-5-255, 40-5-309, 40-5-414, 40-5-416, AND 53-2-613, MCA."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 20

21 **Section 1.** Section 25-9-301, MCA, is amended to read:

22 **"25-9-301. Docketing of judgment -- lien -- expiration.** (1) Immediately after the entry of the
 23 judgment in the judgment book, the clerk ~~must~~ shall make ~~the proper~~ entries of the judgment under
 24 appropriate heads in the docket kept by the clerk.

25 (2) From the time the judgment is docketed, it becomes a lien upon all real property of the
 26 judgment debtor that is not exempt from execution in the county, and that is either owned by the judgment
 27 debtor at the time or which afterward acquired by the judgment debtor ~~may afterward acquire until~~ before
 28 the lien ceases. Except as provided in subsection (3), the lien continues for 6 years unless the judgment
 29 is previously satisfied.

30 (3) When the judgment is for the payment of child support, the lien continues for 10 years from

1 the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for
 2 support arrears, whichever is later, unless the judgment is previously satisfied."

3

4 **Section 2.** Section 25-9-302, MCA, is amended to read:

5 **"25-9-302. Filing of transcript of docket in another county -- lien -- expiration.** (1) A transcript
 6 of the original docket, certified by the clerk, may be filed with the district court clerk of any other county;
 7 ~~and from.~~ From the time of the filing, the judgment becomes a lien upon all real property of the judgment
 8 debtor, that is not exempt from execution, in that county, and that is either owned by the judgment debtor
 9 at the time or ~~which~~ afterward acquired by the judgment debtor ~~may afterward~~ and before the lien expires
 10 ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is
 11 previously satisfied.

12 (2) When the judgment is for the payment of child support, the lien continues for 10 years from
 13 the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for
 14 support arrears, whichever is later, unless the judgment is previously satisfied."

15

16 **Section 3.** Section 25-9-303, MCA, is amended to read:

17 **"25-9-303. Filing of transcript of docket of federal court -- lien -- expiration.** (1) A transcript of
 18 the original docket of ~~any~~ a judgment that is rendered in the circuit or district court of the United States,
 19 ninth circuit, district of Montana, and that is certified by the clerk of court, may be filed with the district
 20 court clerk of any county; ~~and from.~~ From the time of the filing, the judgment becomes a lien upon all real
 21 property of the judgment debtor, that is not exempt from execution, in the county, and that is either owned
 22 by the judgment debtor at the time or ~~which~~ afterward acquired by the judgment debtor ~~may afterward~~ and
 23 before the lien expires ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless
 24 the judgment is previously satisfied.

25 (2) When the judgment is for the payment of child support, the lien continues for 10 years from
 26 the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for
 27 support arrears, whichever is later, unless the judgment is previously satisfied."

28

29 **Section 4.** Section 25-13-101, MCA, is amended to read:

30 **"25-13-101. Time limit for issuing execution.** (1) Except as provided in subsection (2), the party

1 in whose favor the judgment is given may, at any time within 6 years after the entry ~~thereof~~ of the
2 judgment, have a writ of execution issued for its enforcement.

3 (2) When the judgment is for the payment of child support, the party in whose favor the judgment
4 is given may, at any time within 10 years after the termination of the support obligation or within 10 years
5 from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution
6 issued for its enforcement."

7

8 **Section 5.** Section 27-2-201, MCA, is amended to read:

9 **"27-2-201. Actions upon judgments.** (1) Except as provided in subsection (3), the period
10 prescribed for the commencement of an action upon a judgment or decree of any court of record of the
11 United States or of any state within the United States is within 10 years.

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

15 (3) The period prescribed for the commencement of an action to collect past-due child support that
16 has accrued after October 1, 1993, under an order entered by a court of record or administrative authority
17 is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum
18 judgment or order for support arrears, whichever is later."

19

20 **Section 6.** Section 27-2-211, MCA, is amended to read:

21 **"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability.** (1) Within 2 years
22 is the period prescribed for the commencement of an action upon:

23 (a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual
24 and the state, except when the statute imposing it prescribes a different limitation;

25 (b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

26 (c) a liability created by statute other than:

27 (i) a penalty or forfeiture; or

28 (ii) a statutory debt created by the payment of public assistance.

29 (2) The period prescribed for the commencement of an action by a municipal corporation for the
30 violation of any city or town ordinance is within 1 year.

1 (3) Notwithstanding any other provision of this chapter, actions against directors or stockholders
 2 of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be
 3 brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of
 4 forfeiture attached or the liability was created.

5 (4) Unless fraud is involved or unless a support obligation has been entered, an action to enforce
 6 a statutory debt created by the payment of public assistance must be brought within 5 years from the date
 7 the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud.
 8 If a support obligation has been entered, an action must be brought within 10 years of the termination of
 9 the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears,
 10 whichever is later."

11

12 **Section 7.** Section 40-4-204, MCA, is amended to read:

13 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1)**
 14 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
 15 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
 16 for the child's support, without regard to marital misconduct.

17 (2) The court shall consider all relevant factors, including:

- 18 (a) the financial resources of the child;
 19 (b) the financial resources of the custodial parent;
 20 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
 21 (d) the physical and emotional condition of the child and the child's educational and medical needs;
 22 (e) the financial resources and needs of the noncustodial parent;
 23 (f) the age of the child;
 24 (g) the cost of day care for the child;
 25 (h) any custody arrangement that is ordered or decided upon; and
 26 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

27 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
 28 determine the child support obligation by applying the standards in this section and the uniform child
 29 support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.
 30 The guidelines must be used in all cases, including cases in which the order is entered upon the default of

1 a party and those in which the parties have entered into an agreement regarding the support amount. A
2 verified representation of the defaulting parent's income, based on the best information available, may be
3 used when a parent fails to provide financial information for use in applying the guidelines. The amount
4 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
5 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
6 to the child or to any of the parties or is inappropriate in that particular case.

7 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
8 state its reasons for that finding ~~that the application of the standards and guidelines is unjust to the child~~
9 ~~or a party or is inappropriate in that particular case~~. Similar reasons must also be stated in a case in which
10 the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and
11 vary the guideline amount must include a statement of the amount of support that would have ordinarily
12 been ordered under the guidelines.

13 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
14 the child's support, the court shall state its reasons for not ordering child support.

15 (4) Each district court judgment, decree, or order establishing a final child support obligation under
16 this title and each modification of a final order for child support must include a provision addressing health
17 insurance coverage in the following cases:

18 (a) If either party has available through an employer or other organization health insurance coverage
19 for the child or children for which the premium is partially or entirely paid by the employer or organization,
20 the judgment, decree, or order may contain a provision requiring that coverage for the child or children be
21 continued or obtained.

22 (b) In the event that health insurance required in a child support judgment, decree, or order
23 becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise,
24 that party ~~must~~ shall, in the absence of an agreement to the contrary, obtain comparable insurance or
25 request that the court modify the requirement.

26 (c) All temporary child support orders must contain a provision requiring the party who has health
27 insurance in effect for the child or children of the parties to continue the insurance coverage pending final
28 disposition of the case.

29 (d) The parties may by written agreement provide for the health care coverage required by this
30 section, subject to the approval of the court.

1 (e) Unless otherwise provided in the decree, the health care coverage required by this section is
2 in addition to and not in substitution, in whole or in part, for the child support obligation.

3 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
4 is included in the support order, a support obligation established by judgment, decree, or order under this
5 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
6 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
7 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that
8 provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding
9 for the payment of support without need for an amendment to the support order or for any further action
10 by the court.

11 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
12 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
13 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure
14 to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

15 (c) After October 1, 1993, if a support order subject to income withholding is expressed in terms
16 of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis,
17 corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly
18 or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee
19 when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized
20 withholding.

21 (6) For the purposes of income withholding under subsection (5), ~~every~~ each district court
22 judgment, decree, or order that establishes or modifies a child support obligation must include a provision
23 requiring the parent obligated to pay support to inform the court and, if the department of social and
24 rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement
25 of the judgment, decree, or order, the department, of the following:

26 (a) the name and address of the parent's current employer;

27 (b) whether the parent has access to health insurance through an employer or other group; and

28 (c) if insurance coverage is available, the health insurance policy information.

29 (7) If the department of social and rehabilitation services is providing or later provides support
30 enforcement services under Title IV-D of the Social Security Act, each district court order or modification

1 of an order must contain a statement providing that the noncustodial parent, without further order of the
2 court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to
3 include a warning statement in the judgment or order does not preclude the imposition of sanctions under
4 40-5-208.

5 (8) Each district court judgment, decree, or order establishing a final child support obligation under
6 this part and each modification of a final order for child support must contain a statement that the order
7 is subject to review and modification by the department of social and rehabilitation services upon the
8 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
9 services under Title IV-D of the Social Security Act for the enforcement of the order.

10 (9) (a) A district court judgment, decree, or order that establishes or modifies a child support
11 obligation must include a provision requiring the child support to be paid to:

12 (i) the legal custodian of the minor child;

13 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
14 under a legal assignment of rights; or

15 (B) the court for the benefit of the minor child;

16 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
17 custodian; or

18 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
19 support.

20 (b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject
21 to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order
22 or for any further action by the court."
23

24 **Section 8.** Section 40-5-201, MCA, is amended to read:

25 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

26 (1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a
27 child's mother during a possible time of conception of the child or a man who is presumed to be a child's
28 father under the provisions of 40-6-105.

29 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,
30 self-supporting, married, or a member of the armed forces of the United States; any person under 19 years

1 of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity
2 began prior to the person's 18th birthday and for whom:

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

4 (ii) a public assistance payment has been made;

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

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

9 (b) Child may not be construed to limit the ability of the department to enforce a support order
10 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

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

12 (4) "Director" means the director of the department of social and rehabilitation services or the
13 director's authorized representative.

14 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

15 (6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department
16 for the purposes of this chapter.

17 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support
18 of a child or children.

19 (8) "Obligee" means:

20 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
21 under this part; or

22 (b) a public agency of this or another state having the right to receive current or accrued support
23 payments.

24 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

25 (10) "Parent" means the natural or adoptive parent of a child.

26 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers
27 either that an alleged father is not the natural father of a child or that there is a probability that an alleged
28 father is the natural father of a child. Paternity blood tests may include but are not limited to the human
29 leukocyte antigen test and DNA probe technology.

30 (12) "Public assistance" means any type of monetary or other assistance for a child, including

1 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom
 2 the child is living, if assistance has been furnished with respect to the child by a state or county agency
 3 of this state or any other state.

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

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

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

10 (14) "Support order" means an order, whether temporary or final, providing a determinable amount
 11 for temporary or final periodic payment of funds for the support of a child, that:

12 (a) provides for the payment of a specific amount of money, expressed in periodic increments or
 13 as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical
 14 and health needs, child care, education, recreation, clothing, transportation, and other related expenses and
 15 costs specific to the needs of the child; and

16 (b) is issued by:

17 ~~(a)~~(i) a district court of this state;

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

19 ~~(c)~~(iii) an administrative agency pursuant to proceedings under this part; or

20 ~~(d)~~(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing
 21 function and process similar to those of the department under this part.

22 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations
 23 promulgated ~~thereunder~~ under the act."

24
 25 **Section 9.** Section 40-5-208, MCA, is amended to read:

26 **"40-5-208. Medical support -- obligation enforcement -- sanctions.** (1) (a) In ~~any~~ a proceeding
 27 initiated pursuant to this part to establish a child support order, whether final or temporary, and in each
 28 modification of an existing order, the department shall require the obligor to obtain and maintain health
 29 insurance coverage for each child if health insurance coverage is available through the obligor's employment
 30 or other group health insurance plan. The order or modification of an order must include a statement that

1 the insurance must be obtained and maintained whenever the department is providing support enforcement
2 services and that the failure to do so may result in the imposition of sanctions under this section.

3 (b) If the support order or modification of an order does not include a provision requiring the obligor
4 to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving
5 support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and
6 maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

7 (i) an order requiring the obligee to maintain health insurance coverage;

8 (ii) an agreement that the obligee will maintain health insurance coverage; or

9 (iii) a failure or omission of the court order or modification of an order to require health insurance
10 coverage.

11 (2) ~~(a) If~~ Whenever the department is providing ~~child support enforcement IV-D services and the~~
12 ~~obligor is required by an existing district court order or an administrative order under this section to provide~~
13 ~~health insurance coverage~~ for a child, the department shall also enforce ~~the health insurance obligation~~ any
14 order issued by a court or administrative agency of competent jurisdiction that:

15 (a) requires the obligor to make periodic payments of an amount expressed in dollars for the health
16 or medical needs of the child. The department shall apply the same enforcement remedies as are available
17 for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

18 (b) requires the obligor to enroll a child in a health benefit or medical insurance plan.

19 ~~(b)(3)~~ To ensure that health insurance coverage is available for the child, the obligor, upon written
20 request by the department, shall provide the name of the insurance carrier, the policy identification name
21 and number, the names of the persons covered, and any other pertinent information regarding coverage.

22 ~~(3)(4)~~ (a) The department may issue a notice commanding the obligor to appear at a hearing held
23 by the department and show cause why a sum of not more than \$100 per month per child should not be
24 assessed for each month health insurance coverage is not secured or maintained if the department
25 determines an obligor has failed to:

26 (i) obtain or maintain health insurance coverage as required under this section; or

27 (ii) provide information required under this section.

28 (b) If the department finds, after hearing or the obligor's failure to appear, that health insurance
29 coverage has not been obtained or maintained or that the obligor has failed to provide the information
30 required, the department may assess against the obligor not more than \$100 per month per child for each

1 month health insurance coverage has not been obtained or maintained or for each month information has
 2 not been provided. The amounts may be enforced by any administrative remedy available to the
 3 department for the enforcement of child support obligations, including warrant for distraint provided for in
 4 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4.

5 ~~(4)~~(5) The health insurance coverage must be provided under this section even though it may
 6 reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as
 7 required.

8 ~~(5)~~(6) Any amounts collected pursuant to this section must be returned to the general fund to help
 9 offset expenditures for medicaid."

10

11 **Section 10.** Section 40-5-255, MCA, is amended to read:

12 **"40-5-255. Charging off child support debts as uncollectible.** (1) Any support debt due the
 13 department from an obligor, which debt the department determines uncollectible, may be transferred from
 14 accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint
 15 has been filed and the support debt has subsequently been charged off as uncollectible, the department
 16 shall issue a release of lien.

17 (2) At any time after 10 years from the date of termination of the support obligation or after 10
 18 years from entry of a lump-sum judgment or order for support arrears, whichever is later, the department
 19 may charge off as uncollectible any support debt upon which the department finds there is no available,
 20 practical, or lawful means by which the support debt may be collected. A proceeding or action under the
 21 provisions of this part may not be begun after expiration of the 10-year period to institute collection of a
 22 support debt. This part may not be construed to render invalid or nonactionable a warrant for distraint
 23 issued by the department prior to the expiration of the 10-year period or an assignment of earnings
 24 executed prior to the expiration of the 10-year period."

25

26 **Section 11.** Section 40-5-309, MCA, is amended to read:

27 **"40-5-309. Amount to be deducted from income.** (1) (a) The amount of money to be deducted
 28 each pay period from the obligor's income ~~shall be~~ is:

29 ~~(a)~~ ~~(i)~~(j) (A) the amount of money necessary to pay current installments of child support as they
 30 become due and payable; plus

1 ~~(ii)(B)~~ the amount of money ~~which that~~, when deducted in equal amounts each ~~payday pay period~~,
2 will pay off all outstanding child support payments delinquent within 2 years; or

3 ~~(b)(ii)~~ not less than 25% of the obligor's disposable earnings.

4 (b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay
5 period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

6 (2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer may
7 deduct from the obligor's wages or salary for the expense of administering the deduction.

8 (3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum
9 amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as
10 amended.

11 (4) Except as provided in 40-5-315, the child support income deduction ~~shall~~ must cease when
12 there is no past-due child support owing, unless the district court orders continued income deductions for
13 payment of child support installments as they become due and payable."

14

15 **Section 12.** Section 40-5-414, MCA, is amended to read:

16 "**40-5-414. Hearing.** (1) To contest the withholding of income initiated under 40-5-412 because
17 of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of
18 being served with notice of intent to withhold income under 40-5-413 file with the department a written
19 request for an administrative hearing to be held pursuant to the contested case provisions of Title 2,
20 chapter 4, part 6.

21 (2) Venue for the administrative hearing may be in the county where the obligor resides if the
22 obligor resides in this state, the county in which the payor or the payor's agent is located, or the county
23 in which the department or any of its regional offices is located.

24 (3) The administrative hearing must be held by teleconferencing methods unless the obligor or the
25 department expressly requests an in-person hearing before the ~~hearing~~ hearings examiner.

26 (4) If the obligor requests a hearing within the 10-day period:

27 (a) the initiation of delinquency income withholding by the department and the modification of an
28 existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the
29 obligor fails to appear at the scheduled hearing. ~~¶~~ However, in a proceeding to initiate income withholding,
30 if the obligor is only contesting an arrearage amount and is not contesting withholding for current support,

1 income withholding for current support is not stayed. In a proceeding to modify an existing order, income
 2 withholding under the existing order to withhold is not stayed.

3 (b) the department shall, within 45 days of the service of the notice of intent to withhold income,
 4 inform the obligor of the hearing results concerning whether income withholding will take place.

5 (5) The department shall issue an order to withhold income or a modified order to withhold in
 6 accordance with 40-5-415 if:

7 (a) the obligor fails to file a written request for hearing with the department within the specified
 8 10-day period;

9 (b) the obligor fails to appear at a scheduled hearing;

10 (c) the ~~hearing officer~~ hearings examiner determines from the evidence that the obligor owes unpaid
 11 support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is
 12 determined and adjudged to be a fixed and certain sum; ~~or~~

13 (d) there is an existing order to withhold and if the hearings examiner determines from the evidence
 14 that the obligor owes new or additional amounts in arrears; or

15 ~~(e)~~ in cases in which income withholding is being initiated at the request of an obligee without
 16 regard to whether there is an arrearage, the ~~hearing~~ hearings examiner determines from the evidence that
 17 the obligor did not meet the terms of the alternative arrangement.

18 (6) For purposes of the hearing process, arrearages of support must be computed on the basis of
 19 the amount owed and unpaid on the date on which the obligor was served with the notice of intent to
 20 withhold income. When the department is enforcing a current support obligation, payment of the arrearage
 21 after service of the notice is not a basis for not initiating income withholding.

22 (7) In a case initiated because an arrearage has accrued or because additional income is being
 23 withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to
 24 withhold income, must be informed of the hearing decision on whether income withholding will take place.

25 (8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing
 26 or if the ~~hearing~~ hearings examiner determines that the obligor owes a combination of unpaid support equal
 27 to or in excess of 1 month's support obligation or determines that a modification of an existing order is
 28 proper, the department shall proceed with the intended action in accordance with 40-5-415."

29

30 **Section 13.** Section 40-5-416, MCA, is amended to read:

1 **"40-5-416. Determination of amount of income to be withheld.** (1) (a) Subject to the limitations
2 provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must
3 be the amount of money necessary to pay current installments of support as they become due and
4 payable.

5 (b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must
6 include the greater of:

7 (i) the amount of money that, when deducted in equal amounts each month, will pay all
8 outstanding support arrearages and interest, if any, within 2 years; or

9 (ii) 25% of the obligor's income.

10 (c) If income is being withheld under this part, the department may allow a fee not to exceed \$5
11 each month, which may be withheld by the payor as compensation for the administrative costs of each
12 withholding.

13 (d) If a support order subject to income withholding is expressed in terms of a monthly obligation,
14 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
15 regular pay period. If withholding is annualized, when deducted in equal amounts, the amount withheld
16 each pay period must be sufficient to pay all installments due in a 12-month period under the order to
17 withhold.

18 (2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not
19 exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act,
20 15 U.S.C. 1673(b), as amended.

21 (3) At any time, if the obligor can show that substantial hardship will result if the maximum
22 permissible withholding is implemented or continued, the department for cause shown may in its discretion
23 determine a lesser amount to be withheld each month in satisfaction of support arrearages."
24

25 **Section 14.** Section 53-2-613, MCA, is amended to read:

26 **"53-2-613. Application for assistance -- assignment of support rights.** (1) Applications for public
27 assistance, including but not limited to aid to families with dependent children and medical assistance, must
28 be made to the county department of public welfare in the county in which the person is residing. The
29 application must be submitted, in the manner and form prescribed by the department of social and
30 rehabilitation services, and must contain information required by the department of social and rehabilitation

1 services.

2 (2) A person by signing an application for public assistance assigns to the state, to the department
3 of social and rehabilitation services, and to the county welfare department all rights that the applicant may
4 have to support and medical payments from any other person in the applicant's own behalf or in behalf of
5 any other family member for whom application is made.

6 (3) The assignment:

7 (a) is effective for both current and accrued support and medical obligations;

8 (b) takes effect upon a determination that the applicant is eligible for public assistance;

9 (c) remains in effect with respect to the amount of any unpaid support and medical obligation
10 accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

11 (4) Whenever a child support or spousal support obligation is assigned to the department of social
12 and rehabilitation services pursuant to this section, the following provisions apply:

13 (a) If the support obligation is based upon a judgment or decree or an order of a court of competent
14 jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse
15 public assistance money expended.

16 (b) A recipient or former recipient of public assistance may not commence or maintain an action
17 to recover or enforce a delinquent support obligation ~~without notifying the department's child support~~
18 ~~enforcement division. The department may then release or relinquish its assigned interest or enter the~~
19 ~~proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned~~
20 ~~or make any agreements with any other person or agency concerning the support obligation, except as~~
21 provided in 40-5-202.

22 (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay
23 over or release for the benefit of any recipient or former recipient of public assistance any amounts received
24 pursuant to a judgment or decree or an order of the court until the department's child support enforcement
25 division has filed a written notice that:

26 (i) the assignment of current support amounts has been terminated; and

27 (ii) all assigned support delinquencies, if any, are satisfied or released.

28 (d) A recipient or former recipient of public assistance may not take action to modify or make any
29 agreement to modify, settle, or release any past, present, or future support obligation unless the
30 department's child support enforcement division is given written notice ~~and an opportunity to participate~~

1 under the provisions of 40-5-202. Any modifications or agreements entered into without the participation
2 of the department are void with respect to the state, the department, and the county welfare department."
3

4 NEW SECTION. Section 15. Credit for payments. An amount collected and credited for a
5 particular period pursuant to a support order issued by a tribunal of another state must be credited against
6 the amount accruing or accrued for the same period under a support order issued by a tribunal of this state.
7

8 NEW SECTION. Section 16. Codification instruction. [Section 15] is intended to be codified as
9 an integral part of Title 40, chapter 5, part 1, and the provisions of Title 40, chapter 5, part 1, apply to
10 [section 15].
11

12 NEW SECTION. Section 17. Coordination instruction. If both [this act] and ___ Bill No. ___ [LC
13 365] are passed and approved and if ___ Bill No. ___ [LC 365] includes a section that amends 40-5-208,
14 then [section 9 of this act], amending 40-5-208, is void.
15

16 NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
18 applications, the part remains in effect in all valid applications that are severable from the invalid
19 applications.
20

-END-

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 29

2 INTRODUCED BY BARTLETT

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD
6 SUPPORT ENFORCEMENT TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT
7 ENFORCEMENT SERVICES; CLARIFYING TIME LIMITS FOR LIENS, WRITS OF EXECUTION, AND
8 COMMENCEMENT OF ACTIONS FOR CHILD SUPPORT COLLECTION; ALLOWING AN OBLIGEE TO RETAIN
9 AMOUNTS WITHHELD FROM AN OBLIGOR'S INCOME WHEN THE AMOUNT WITHHELD IS A RESULT OF
10 ANNUALIZED WITHHOLDING; EXPANDING THE DEFINITION OF "SUPPORT ORDER"; ALLOWING THE
11 DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS FOR HEALTH OR MEDICAL NEEDS OR
12 FOR ENROLLMENT IN A HEALTH BENEFIT OR MEDICAL INSURANCE PLAN; PROVIDING FOR AMOUNTS
13 TO BE DEDUCTED FROM INCOME IF WITHHOLDING IS ANNUALIZED; CLARIFYING AN OBLIGOR'S RIGHT
14 TO CONTEST MODIFICATION OF AN EXISTING INCOME WITHHOLDING ORDER; PROVIDING FOR
15 CREDITING OF PAYMENTS PAID PURSUANT TO OTHER SUPPORT ORDERS; AND AMENDING SECTIONS
16 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-201, 40-5-208,
17 40-5-255, 40-5-309, 40-5-414, 40-5-416, AND 53-2-613, MCA."

18

THERE ARE NO CHANGES ON THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO INTRODUCED (WHITE) BILL
FOR COMPLETE TEXT.

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HOUSE STANDING COMMITTEE REPORT

January 31, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 29** (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:


Carried by: Rep. Grimes

1. Page 16, line 6.

Following: "issued"

Insert: "for the same obligation"

- END -


Committee Vote:
Yes 19, No 0.

SB 29

HOUSE

1 SENATE BILL NO. 29

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3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD
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16 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-201, 40-5-208,
17 40-5-255, 40-5-309, 40-5-414, 40-5-416, AND 53-2-613, MCA."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2021 **Section 1.** Section 25-9-301, MCA, is amended to read:22 **"25-9-301. Docketing of judgment -- lien -- expiration.** (1) Immediately after the entry of the
23 judgment in the judgment book, the clerk ~~must~~ shall make ~~the proper~~ entries of the judgment under
24 appropriate heads in the docket kept by the clerk.25 (2) From the time the judgment is docketed, it becomes a lien upon all real property of the
26 judgment debtor that is not exempt from execution in the county, and that is either owned by the judgment
27 debtor at the time or which afterward acquired by the judgment debtor ~~may afterward acquire until before~~
28 the lien ceases. Except as provided in subsection (3), the lien continues for 6 years unless the judgment
29 is previously satisfied.

30 (3) When the judgment is for the payment of child support, the lien continues for 10 years from

1 the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for
 2 support arrears, whichever is later, unless the judgment is previously satisfied."

3
 4 **Section 2.** Section 25-9-302, MCA, is amended to read:

5 **"25-9-302. Filing of transcript of docket in another county -- lien -- expiration.** (1) A transcript
 6 of the original docket, certified by the clerk, may be filed with the district court clerk of any other county;
 7 ~~and from.~~ From the time of the filing, the judgment becomes a lien upon all real property of the judgment
 8 debtor, that is not exempt from execution, in that county, and that is either owned by the judgment debtor
 9 at the time or ~~which afterward acquired by~~ the judgment debtor ~~may afterward~~ and before the lien expires
 10 ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is
 11 previously satisfied.

12 (2) When the judgment is for the payment of child support, the lien continues for 10 years from
 13 the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for
 14 support arrears, whichever is later, unless the judgment is previously satisfied."

15
 16 **Section 3.** Section 25-9-303, MCA, is amended to read:

17 **"25-9-303. Filing of transcript of docket of federal court -- lien -- expiration.** (1) A transcript of
 18 the original docket of ~~any a~~ judgment that is rendered in the circuit or district court of the United States,
 19 ninth circuit, district of Montana, and that is certified by the clerk of court, may be filed with the district
 20 court clerk of any county; ~~and from.~~ From the time of the filing, the judgment becomes a lien upon all real
 21 property of the judgment debtor, that is not exempt from execution, in the county, and that is either owned
 22 by the judgment debtor at the time or ~~which afterward acquired by~~ the judgment debtor ~~may afterward~~ and
 23 before the lien expires ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless
 24 the judgment is previously satisfied.

25 (2) When the judgment is for the payment of child support, the lien continues for 10 years from
 26 the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for
 27 support arrears, whichever is later, unless the judgment is previously satisfied."

28
 29 **Section 4.** Section 25-13-101, MCA, is amended to read:

30 **"25-13-101. Time limit for issuing execution.** (1) Except as provided in subsection (2), the party

1 in whose favor the judgment is given may, at any time within 6 years after the entry ~~thereof~~ of the
2 judgment, have a writ of execution issued for its enforcement.

3 (2) When the judgment is for the payment of child support, the party in whose favor the judgment
4 is given may, at any time within 10 years after the termination of the support obligation or within 10 years
5 from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution
6 issued for its enforcement."

7

8 **Section 5.** Section 27-2-201, MCA, is amended to read:

9 **"27-2-201. Actions upon judgments.** (1) Except as provided in subsection (3), the period
10 prescribed for the commencement of an action upon a judgment or decree of any court of record of the
11 United States or of any state within the United States is within 10 years.

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

15 (3) The period prescribed for the commencement of an action to collect past-due child support that
16 has accrued after October 1, 1993, under an order entered by a court of record or administrative authority
17 is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum
18 judgment or order for support arrears, whichever is later."

19

20 **Section 6.** Section 27-2-211, MCA, is amended to read:

21 **"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability.** (1) Within 2 years
22 is the period prescribed for the commencement of an action upon:

23 (a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual
24 and the state, except when the statute imposing it prescribes a different limitation;

25 (b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

26 (c) a liability created by statute other than:

27 (i) a penalty or forfeiture; or

28 (ii) a statutory debt created by the payment of public assistance.

29 (2) The period prescribed for the commencement of an action by a municipal corporation for the
30 violation of any city or town ordinance is within 1 year.

1 (3) Notwithstanding any other provision of this chapter, actions against directors or stockholders
 2 of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be
 3 brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of
 4 forfeiture attached or the liability was created.

5 (4) Unless fraud is involved or unless a support obligation has been entered, an action to enforce
 6 a statutory debt created by the payment of public assistance must be brought within 5 years from the date
 7 the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud.
 8 If a support obligation has been entered, an action must be brought within 10 years of the termination of
 9 the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears,
 10 whichever is later."

11
 12 **Section 7.** Section 40-4-204, MCA, is amended to read:

13 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)
 14 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
 15 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
 16 for the child's support, without regard to marital misconduct.

17 (2) The court shall consider all relevant factors, including:

- 18 (a) the financial resources of the child;
- 19 (b) the financial resources of the custodial parent;
- 20 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- 21 (d) the physical and emotional condition of the child and the child's educational and medical needs;
- 22 (e) the financial resources and needs of the noncustodial parent;
- 23 (f) the age of the child;
- 24 (g) the cost of day care for the child;
- 25 (h) any custody arrangement that is ordered or decided upon; and
- 26 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

27 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
 28 determine the child support obligation by applying the standards in this section and the uniform child
 29 support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.
 30 The guidelines must be used in all cases, including cases in which the order is entered upon the default of

1 a party and those in which the parties have entered into an agreement regarding the support amount. A
2 verified representation of the defaulting parent's income, based on the best information available, may be
3 used when a parent fails to provide financial information for use in applying the guidelines. The amount
4 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
5 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
6 to the child or to any of the parties or is inappropriate in that particular case.

7 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
8 state its reasons for that finding ~~that the application of the standards and guidelines is unjust to the child~~
9 ~~or a party or is inappropriate in that particular case~~. Similar reasons must also be stated in a case in which
10 the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and
11 vary the guideline amount must include a statement of the amount of support that would have ordinarily
12 been ordered under the guidelines.

13 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
14 the child's support, the court shall state its reasons for not ordering child support.

15 (4) Each district court judgment, decree, or order establishing a final child support obligation under
16 this title and each modification of a final order for child support must include a provision addressing health
17 insurance coverage in the following cases:

18 (a) If either party has available through an employer or other organization health insurance coverage
19 for the child or children for which the premium is partially or entirely paid by the employer or organization,
20 the judgment, decree, or order may contain a provision requiring that coverage for the child or children be
21 continued or obtained.

22 (b) In the event that health insurance required in a child support judgment, decree, or order
23 becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise,
24 that party ~~must~~ shall, in the absence of an agreement to the contrary, obtain comparable insurance or
25 request that the court modify the requirement.

26 (c) All temporary child support orders must contain a provision requiring the party who has health
27 insurance in effect for the child or children of the parties to continue the insurance coverage pending final
28 disposition of the case.

29 (d) The parties may by written agreement provide for the health care coverage required by this
30 section, subject to the approval of the court.

1 (e) Unless otherwise provided in the decree, the health care coverage required by this section is
2 in addition to and not in substitution, in whole or in part, for the child support obligation.

3 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
4 is included in the support order, a support obligation established by judgment, decree, or order under this
5 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
6 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
7 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that
8 provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding
9 for the payment of support without need for an amendment to the support order or for any further action
10 by the court.

11 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
12 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
13 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure
14 to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

15 (c) After October 1, 1993, if a support order subject to income withholding is expressed in terms
16 of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis,
17 corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly
18 or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee
19 when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized
20 withholding.

21 (6) For the purposes of income withholding under subsection (5), ~~every~~ each district court
22 judgment, decree, or order that establishes or modifies a child support obligation must include a provision
23 requiring the parent obligated to pay support to inform the court and, if the department of social and
24 rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement
25 of the judgment, decree, or order, the department, of the following:

26 (a) the name and address of the parent's current employer;

27 (b) whether the parent has access to health insurance through an employer or other group; and

28 (c) if insurance coverage is available, the health insurance policy information.

29 (7) If the department of social and rehabilitation services is providing or later provides support
30 enforcement services under Title IV-D of the Social Security Act, each district court order or modification

1 of an order must contain a statement providing that the noncustodial parent, without further order of the
2 court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to
3 include a warning statement in the judgment or order does not preclude the imposition of sanctions under
4 40-5-208.

5 (8) Each district court judgment, decree, or order establishing a final child support obligation under
6 this part and each modification of a final order for child support must contain a statement that the order
7 is subject to review and modification by the department of social and rehabilitation services upon the
8 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
9 services under Title IV-D of the Social Security Act for the enforcement of the order.

10 (9) (a) A district court judgment, decree, or order that establishes or modifies a child support
11 obligation must include a provision requiring the child support to be paid to:

12 (i) the legal custodian of the minor child;

13 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
14 under a legal assignment of rights; or

15 (B) the court for the benefit of the minor child;

16 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
17 custodian; or

18 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
19 support.

20 (b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject
21 to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order
22 or for any further action by the court."
23

24 **Section 8.** Section 40-5-201, MCA, is amended to read:

25 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

26 (1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a
27 child's mother during a possible time of conception of the child or a man who is presumed to be a child's
28 father under the provisions of 40-6-105.

29 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,
30 self-supporting, married, or a member of the armed forces of the United States; any person under 19 years

1 of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity
2 began prior to the person's 18th birthday and for whom:

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

9 (b) Child may not be construed to limit the ability of the department to enforce a support order
10 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

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

12 (4) "Director" means the director of the department of social and rehabilitation services or the
13 director's authorized representative.

14 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

15 (6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department
16 for the purposes of this chapter.

17 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support
18 of a child or children.

19 (8) "Obligee" means:

20 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
21 under this part; or

22 (b) a public agency of this or another state having the right to receive current or accrued support
23 payments.

24 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

25 (10) "Parent" means the natural or adoptive parent of a child.

26 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers
27 either that an alleged father is not the natural father of a child or that there is a probability that an alleged
28 father is the natural father of a child. Paternity blood tests may include but are not limited to the human
29 leukocyte antigen test and DNA probe technology.

30 (12) "Public assistance" means any type of monetary or other assistance for a child, including

1 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom
 2 the child is living, if assistance has been furnished with respect to the child by a state or county agency
 3 of this state or any other state.

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

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

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

10 (14) "Support order" means an order, whether temporary or final, providing a determinable amount
 11 for temporary or final periodic payment of funds for the support of a child, that:

12 (a) provides for the payment of a specific amount of money, expressed in periodic increments or
 13 as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical
 14 and health needs, child care, education, recreation, clothing, transportation, and other related expenses and
 15 costs specific to the needs of the child; and

16 (b) is issued by:

17 ~~(a)~~(i) a district court of this state;

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

19 ~~(c)~~(iii) an administrative agency pursuant to proceedings under this part; or

20 ~~(d)~~(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing
 21 function and process similar to those of the department under this part.

22 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations
 23 promulgated ~~thereunder~~ under the act."

24

25 **Section 9.** Section 40-5-208, MCA, is amended to read:

26 **"40-5-208. Medical support -- obligation enforcement -- sanctions.** (1) (a) In ~~any~~ a proceeding
 27 initiated pursuant to this part to establish a child support order, whether final or temporary, and in each
 28 modification of an existing order, the department shall require the obligor to obtain and maintain health
 29 insurance coverage for each child if health insurance coverage is available through the obligor's employment
 30 or other group health insurance plan. The order or modification of an order must include a statement that

1 the insurance must be obtained and maintained whenever the department is providing support enforcement
2 services and that the failure to do so may result in the imposition of sanctions under this section.

3 (b) If the support order or modification of an order does not include a provision requiring the obligor
4 to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving
5 support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and
6 maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

7 (i) an order requiring the obligee to maintain health insurance coverage;

8 (ii) an agreement that the obligee will maintain health insurance coverage; or

9 (iii) a failure or omission of the court order or modification of an order to require health insurance
10 coverage.

11 (2) ~~(a) If~~ Whenever the department is providing ~~child support enforcement~~ IV-D services and the
12 ~~obligor is required by an existing district court order or an administrative order under this section to provide~~
13 ~~health insurance coverage~~ for a child, the department shall also enforce ~~the health insurance obligation~~ any
14 order issued by a court or administrative agency of competent jurisdiction that:

15 (a) requires the obligor to make periodic payments of an amount expressed in dollars for the health
16 or medical needs of the child. The department shall apply the same enforcement remedies as are available
17 for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

18 (b) requires the obligor to enroll a child in a health benefit or medical insurance plan.

19 ~~(b)(3)~~ To ensure that health insurance coverage is available for the child, the obligor, upon written
20 request by the department, shall provide the name of the insurance carrier, the policy identification name
21 and number, the names of the persons covered, and any other pertinent information regarding coverage.

22 ~~(3)(4)~~ (a) The department may issue a notice commanding the obligor to appear at a hearing held
23 by the department and show cause why a sum of not more than \$100 per month per child should not be
24 assessed for each month health insurance coverage is not secured or maintained if the department
25 determines an obligor has failed to:

26 (i) obtain or maintain health insurance coverage as required under this section; or

27 (ii) provide information required under this section.

28 (b) If the department finds, after hearing or the obligor's failure to appear, that health insurance
29 coverage has not been obtained or maintained or that the obligor has failed to provide the information
30 required, the department may assess against the obligor not more than \$100 per month per child for each

1 month health insurance coverage has not been obtained or maintained or for each month information has
 2 not been provided. The amounts may be enforced by any administrative remedy available to the
 3 department for the enforcement of child support obligations, including warrant for distraint provided for in
 4 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4.

5 ~~(4)~~(5) The health insurance coverage must be provided under this section even though it may
 6 reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as
 7 required.

8 ~~(5)~~(6) Any amounts collected pursuant to this section must be returned to the general fund to help
 9 offset expenditures for medicaid."
 10

11 **Section 10.** Section 40-5-255, MCA, is amended to read:

12 **"40-5-255. Charging off child support debts as uncollectible.** (1) Any support debt due the
 13 department from an obligor, which debt the department determines uncollectible, may be transferred from
 14 accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint
 15 has been filed and the support debt has subsequently been charged off as uncollectible, the department
 16 shall issue a release of lien.

17 (2) At any time after 10 years from the date of termination of the support obligation or after 10
 18 years from entry of a lump-sum judgment or order for support arrears, whichever is later, the department
 19 may charge off as uncollectible any support debt upon which the department finds there is no available,
 20 practical, or lawful means by which the support debt may be collected. A proceeding or action under the
 21 provisions of this part may not be begun after expiration of the 10-year period to institute collection of a
 22 support debt. This part may not be construed to render invalid or nonactionable a warrant for distraint
 23 issued by the department prior to the expiration of the 10-year period or an assignment of earnings
 24 executed prior to the expiration of the 10-year period."
 25

26 **Section 11.** Section 40-5-309, MCA, is amended to read:

27 **"40-5-309. Amount to be deducted from income.** (1) (a) The amount of money to be deducted
 28 each pay period from the obligor's income ~~shall be~~ is:

29 ~~(a)~~ ~~(i)~~(j) (A) the amount of money necessary to pay current installments of child support as they
 30 become due and payable; plus

1 ~~(ii)~~(B) the amount of money ~~which that~~, when deducted in equal amounts each ~~payday~~ pay period,
2 will pay off all outstanding child support payments delinquent within 2 years; or

3 ~~(b)~~(ii) not less than 25% of the obligor's disposable earnings.

4 (b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay
5 period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

6 (2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer may
7 deduct from the obligor's wages or salary for the expense of administering the deduction.

8 (3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum
9 amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as
10 amended.

11 (4) Except as provided in 40-5-315, the child support income deduction ~~shall~~ must cease when
12 there is no past-due child support owing, unless the district court orders continued income deductions for
13 payment of child support installments as they become due and payable."

14
15 **Section 12.** Section 40-5-414, MCA, is amended to read:

16 "**40-5-414. Hearing.** (1) To contest the withholding of income initiated under 40-5-412 because
17 of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of
18 being served with notice of intent to withhold income under 40-5-413 file with the department a written
19 request for an administrative hearing to be held pursuant to the contested case provisions of Title 2,
20 chapter 4, part 6.

21 (2) Venue for the administrative hearing may be in the county where the obligor resides if the
22 obligor resides in this state, the county in which the payor or the payor's agent is located, or the county
23 in which the department or any of its regional offices is located.

24 (3) The administrative hearing must be held by teleconferencing methods unless the obligor or the
25 department expressly requests an in-person hearing before the ~~hearing~~ hearings examiner.

26 (4) If the obligor requests a hearing within the 10-day period:

27 (a) the initiation of delinquency income withholding by the department and the modification of an
28 existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the
29 obligor fails to appear at the scheduled hearing. ~~¶~~ However, in a proceeding to initiate income withholding,
30 if the obligor is only contesting an arrearage amount and is not contesting withholding for current support,

1 income withholding for current support is not stayed. In a proceeding to modify an existing order, income
 2 withholding under the existing order to withhold is not stayed.

3 (b) the department shall, within 45 days of the service of the notice of intent to withhold income,
 4 inform the obligor of the hearing results concerning whether income withholding will take place.

5 (5) The department shall issue an order to withhold income or a modified order to withhold in
 6 accordance with 40-5-415 if:

7 (a) the obligor fails to file a written request for hearing with the department within the specified
 8 10-day period;

9 (b) the obligor fails to appear at a scheduled hearing;

10 (c) ~~the hearing officer~~ hearings examiner determines from the evidence that the obligor owes unpaid
 11 support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is
 12 determined and adjudged to be a fixed and certain sum; ~~or~~

13 (d) there is an existing order to withhold and if the hearings examiner determines from the evidence
 14 that the obligor owes new or additional amounts in arrears; or

15 ~~(e)~~ (e) in cases in which income withholding is being initiated at the request of an obligee without
 16 regard to whether there is an arrearage, the ~~hearing~~ hearings examiner determines from the evidence that
 17 the obligor did not meet the terms of the alternative arrangement.

18 (6) For purposes of the hearing process, arrearages of support must be computed on the basis of
 19 the amount owed and unpaid on the date on which the obligor was served with the notice of intent to
 20 withhold income. When the department is enforcing a current support obligation, payment of the arrearage
 21 after service of the notice is not a basis for not initiating income withholding.

22 (7) In a case initiated because an arrearage has accrued or because additional income is being
 23 withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to
 24 withhold income, must be informed of the hearing decision on whether income withholding will take place.

25 (8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing
 26 or if the ~~hearing~~ hearings examiner determines that the obligor owes a combination of unpaid support equal
 27 to or in excess of 1 month's support obligation or determines that a modification of an existing order is
 28 proper, the department shall proceed with the intended action in accordance with 40-5-415."

29

30 **Section 13.** Section 40-5-416, MCA, is amended to read:

1 **"40-5-416. Determination of amount of income to be withheld.** (1) (a) Subject to the limitations
2 provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must
3 be the amount of money necessary to pay current installments of support as they become due and
4 payable.

5 (b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must
6 include the greater of:

7 (i) the amount of money that, when deducted in equal amounts each month, will pay all
8 outstanding support arrearages and interest, if any, within 2 years; or

9 (ii) 25% of the obligor's income.

10 (c) If income is being withheld under this part, the department may allow a fee not to exceed \$5
11 each month, which may be withheld by the payor as compensation for the administrative costs of each
12 withholding.

13 (d) If a support order subject to income withholding is expressed in terms of a monthly obligation,
14 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
15 regular pay period. If withholding is annualized, when deducted in equal amounts, the amount withheld
16 each pay period must be sufficient to pay all installments due in a 12-month period under the order to
17 withhold.

18 (2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not
19 exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act,
20 15 U.S.C. 1673(b), as amended.

21 (3) At any time, if the obligor can show that substantial hardship will result if the maximum
22 permissible withholding is implemented or continued, the department for cause shown may in its discretion
23 determine a lesser amount to be withheld each month in satisfaction of support arrearages."
24

25 **Section 14.** Section 53-2-613, MCA, is amended to read:

26 **"53-2-613. Application for assistance -- assignment of support rights.** (1) Applications for public
27 assistance, including but not limited to aid to families with dependent children and medical assistance, must
28 be made to the county department of public welfare in the county in which the person is residing. The
29 application must be submitted, in the manner and form prescribed by the department of social and
30 rehabilitation services, and must contain information required by the department of social and rehabilitation

1 services.

2 (2) A person by signing an application for public assistance assigns to the state, to the department
3 of social and rehabilitation services, and to the county welfare department all rights that the applicant may
4 have to support and medical payments from any other person in the applicant's own behalf or in behalf of
5 any other family member for whom application is made.

6 (3) The assignment:

7 (a) is effective for both current and accrued support and medical obligations;

8 (b) takes effect upon a determination that the applicant is eligible for public assistance;

9 (c) remains in effect with respect to the amount of any unpaid support and medical obligation
10 accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

11 (4) Whenever a child support or spousal support obligation is assigned to the department of social
12 and rehabilitation services pursuant to this section, the following provisions apply:

13 (a) If the support obligation is based upon a judgment or decree or an order of a court of competent
14 jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse
15 public assistance money expended.

16 (b) A recipient or former recipient of public assistance may not commence or maintain an action
17 to recover or enforce a delinquent support obligation ~~without notifying the department's child support~~
18 ~~enforcement division. The department may then release or relinquish its assigned interest or enter the~~
19 ~~proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.~~
20 or make any agreements with any other person or agency concerning the support obligation, except as
21 provided in 40-5-202.

22 (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay
23 over or release for the benefit of any recipient or former recipient of public assistance any amounts received
24 pursuant to a judgment or decree or an order of the court until the department's child support enforcement
25 division has filed a written notice that:

26 (i) the assignment of current support amounts has been terminated; and

27 (ii) all assigned support delinquencies, if any, are satisfied or released.

28 (d) A recipient or former recipient of public assistance may not take action to modify or make any
29 agreement to modify, settle, or release any past, present, or future support obligation unless the
30 department's child support enforcement division is given written notice ~~and an opportunity to participate~~

1 under the provisions of 40-5-202. Any modifications or agreements entered into without the participation
2 of the department are void with respect to the state, the department, and the county welfare department.”
3

4 NEW SECTION. Section 15. Credit for payments. An amount collected and credited for a
5 particular period pursuant to a support order issued by a tribunal of another state must be credited against
6 the amount accruing or accrued for the same period under a support order issued FOR THE SAME
7 OBLIGATION by a tribunal of this state.
8

9 NEW SECTION. Section 16. Codification instruction. [Section 15] is intended to be codified as
10 an integral part of Title 40, chapter 5, part 1, and the provisions of Title 40, chapter 5, part 1, apply to
11 [section 15].
12

13 NEW SECTION. Section 17. Coordination instruction. If both [this act] and ___ Bill No. ___ [LC
14 365] are passed and approved and if ___ Bill No. ___ [LC 365] includes a section that amends 40-5-208,
15 then [section 9 of this act], amending 40-5-208, is void.
16

17 NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.
21

-END-