

## 1 HOUSE BILL NO. 168

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT LAWS; CLARIFYING  
 6 THAT HEARINGS BY THE DEPARTMENT MAY BE BY TELECONFERENCING METHODS; ALLOWING  
 7 SERVICE OF CERTAIN NOTICES BY CERTIFIED MAIL; REVISING ADMINISTRATIVE PATERNITY  
 8 PROCESSES; CLARIFYING JUDICIAL REVIEW OF A CHILD SUPPORT ORDER; CHANGING THE DEFINITION  
 9 OF "SUPPORT ORDER" AS IT PERTAINS TO WITHHOLDING; REVISING THE DEFINITION OF MISTAKE OF  
 10 FACT FOR INCOME WITHHOLDING HEARING PURPOSES; CHANGING HEALTH INSURANCE PROVISIONS  
 11 RELATING TO SUPPORT; REVISING PATERNITY PRESUMPTIONS; PROVIDING FOR PRIORITY OF SUPPORT  
 12 OF A DECEDENT'S CHILDREN IN PROBATE OF A DECEDENT'S ESTATE; AMENDING SECTIONS 17-4-105,  
 13 40-5-189, 40-5-201, 40-5-202, 40-5-225, 40-5-226, 40-5-231, 40-5-236, 40-5-253, 40-5-273, 40-5-403,  
 14 40-5-412, 40-5-414, 40-5-703, 40-5-809, 40-5-824, 71-3-302, AND 72-3-807, MCA; AND PROVIDING  
 15 AN IMMEDIATE EFFECTIVE DATE."

16

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

18

19 **Section 1.** Section 17-4-105, MCA, is amended to read:

20 **"17-4-105. Authority to collect debt -- offsets.** (1) Once a debt of an agency has been transferred  
 21 to the department, the department may collect it. The department may contract with commercial collection  
 22 agents for recovery of debts owed to agencies.

23 (2) The department shall, when appropriate, offset any amount due an agency from a person or  
 24 entity against any amount, including refunds of taxes, owing the person or entity by an agency. The  
 25 department may not exercise this right of offset until the debtor has first been notified by the department  
 26 and been given an opportunity for a hearing. An offset may not be made against any amount paid out as  
 27 child support collected by the department of public health and human services. The department shall deduct  
 28 from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the  
 29 debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due  
 30 the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of

1 child support and then in the manner determined appropriate by the department.

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

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

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

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

14 (4) (a) A debt owed to the department of public health and human services or being collected by  
15 the department of public health and human services on behalf of any person or agency may be offset by  
16 the department if the debt is being enforced or collected by the department of public health and human  
17 services under Title IV-D of the Social Security Act.

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

21 (c) Within 30 days following the notification provided for in subsection (2), the person owing a debt  
22 described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the  
23 department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the  
24 subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a  
25 decision made as a result of that proceeding has become final. The hearing must initially be conducted by  
26 teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act.  
27 At the request of a party and upon a showing that the party's case was substantially prejudiced by the lack  
28 of an in-person hearing, the department may, following a teleconferencing hearing, grant a de novo  
29 in-person hearing. The department of public health and human services shall adopt rules governing the  
30 hearing procedures.

1 (5) If the department determines that a person or entity has refused or neglected to file a claim  
2 within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of  
3 the person or entity. If the claim is approved by the department, the claim has the same force and effect  
4 as though filed by the person or entity. The amount due any person or entity from the state or any agency  
5 of the state is the net amount otherwise owing the person or entity after any offset, as provided in this  
6 section."

7

8 **Section 2.** Section 40-5-189, MCA, is amended to read:

9 **"40-5-189. Procedure to contest validity or enforcement of registered order.** (1) A nonregistering  
10 party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing  
11 within 20 days after the date of mailing or personal service of notice of the registration. A court hearing  
12 may be conducted by teleconferencing methods. A department hearing must initially be conducted by  
13 teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of  
14 a party and upon a showing that the party's case was substantially prejudiced by the lack of an in-person  
15 hearing, the department may, following a teleconferencing hearing, grant a de novo in-person hearing. The  
16 nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to  
17 an allegation of noncompliance with the registered order, or to contest the remedies being sought or the  
18 amount of any alleged arrearages.

19 (2) If the nonregistering party fails to contest the validity or enforcement of the registered order  
20 in a timely manner, the order is confirmed by operation of law.

21 (3) If a nonregistering party requests a hearing to contest the validity or enforcement of the  
22 registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties  
23 by first-class mail of the date, time, and place of the hearing."

24

25 **Section 3.** Section 40-5-201, MCA, is amended to read:

26 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

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

30 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,

1 self-supporting, married, or a member of the armed forces of the United States; any person under 19 years  
2 of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity  
3 began prior to the person's 18th birthday and for whom:

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

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

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

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

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

12 (3) "Department" means the department of public health and human services.

13 (4) "Director" means the director of the department of public health and human services or the  
14 director's authorized representative.

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

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

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

20 (8) "Obligee" means:

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

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

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

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

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

1 (12) "Public assistance" means any type of monetary or other assistance for a child, including  
2 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom  
3 the child is living; if assistance has been furnished with respect to the child by a state or county agency  
4 of this state or any other state.

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

6 (a) the failure to provide for the medical, health, and support needs of a child under the laws of  
7 this or any other state or under a support order; or

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

11 (14) "Support order" means an order, whether temporary or final, 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 (i) a district court of this state;

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

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

20 (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 under the act."  
24

25 **Section 4.** Section 40-5-202, MCA, is amended to read:

26 **"40-5-202. Department of public health and human services -- powers and duties regarding**  
27 **collection of support debt.** (1) The department may take action under the provisions of this chapter, the  
28 abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part  
29 1, and other appropriate state and federal statutes to provide IV-D services if the department:

30 (a) receives a referral on behalf of the child from an agency providing services to the child under

1 the provisions of Title 41, Title 52, or Title 53;

2 (b) is providing services under 40-5-203; or

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

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

10 (3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department  
11 and its attorneys serve the public interest in ensuring that children are supported by their parents, rather  
12 than maintained by public assistance. The department does not represent the interests of any individual  
13 person, and its attorneys represent only the department. An attorney-client relationship is not created  
14 between department attorneys and any person or entity other than the department. The obligee, obligor,  
15 and child may obtain the services of a private attorney to represent their interests. The existence or  
16 appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the  
17 department's right to act or provide services under this chapter. This chapter does not require the  
18 department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or  
19 child.

20 (4) The department has the power of attorney to act in the name of any obligee to endorse and  
21 cash any drafts, checks, money orders, or other negotiable instruments received by the department on  
22 behalf of a child.

23 (5) (a) If the department is providing IV-D services, the department must be afforded notice and  
24 an opportunity to participate as an independent party in any proceeding relating to paternity, to termination  
25 of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether  
26 initiated by the obligee, the obligor, or the child.

27 (b) The notice must reasonably inform the department of the issues to be determined in the  
28 proceeding, the names of the parties and the child, and the identity and location of the tribunal in which  
29 the issues will be determined. The notice is for informational purposes only and is not intended as a  
30 substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal

1 jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment,  
2 decree, or order is void as to any interest of the department that is or may be affected by the agreement,  
3 judgment, decree, or order if the department was not joined as a party in the manner provided in the  
4 Montana Rules of Civil Procedure.

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

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

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

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

16 (6) (a) ~~A~~ When the department is providing services, a recipient or former recipient of public  
17 assistance who assigned support rights under ~~53-2-613~~ 42 U.S.C. 602(a)(26) or a collection agency acting  
18 on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that  
19 accrued after termination of public assistance. The recipient, former recipient, or collection agency may not  
20 commence or maintain an action against or make an agreement with the obligor to recover an assigned  
21 delinquent support amount unless the department, in writing:

22 (i) releases or relinquishes its assigned interest;

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

25 (iii) consents to the action or agreement.

26 (b) If a recipient, former recipient, or collection agency collects or receives value for any part of  
27 an assigned delinquent support amount and the department has not given its consent or released or  
28 relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt  
29 and full restitution to the department. If prompt and full restitution is not made, the department may send  
30 a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution

1 is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection  
2 agency is liable for damages equal to double the amount collected or value received. The amount of  
3 damages may be determined and assessed by the department under the contested case provisions of the  
4 Montana Administrative Procedure Act. The damages may be collected by the department by any method  
5 or remedy available for the enforcement of child support owed by an obligor parent.

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

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

11 (8) Unless the department has consented to the agreement in writing, if public assistance is being  
12 or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or  
13 order adopting the agreement does not act to reduce or terminate any rights of the department to establish  
14 a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or  
15 order purports to:

- 16 (a) relieve or terminate the obligor's support duty;
- 17 (b) waive, modify, compromise, or discharge the support debt;
- 18 (c) prepay future support obligations or settle past, present, or future support obligations; or
- 19 (d) permit the obligor to pay past, present, or future support obligations:
- 20 (i) with noncash contributions;
- 21 (ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments;
- 22 or

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

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

27 (10) The department is subrogated to the right of the child or obligee to maintain any civil action  
28 or execute any administrative remedy available under the laws of this or any other state to collect a support  
29 debt. This right of subrogation is in addition to and independent of the assignment under ~~53-2-613~~ 42  
30 U.S.C. 602(a)(26) and the support debt created by 40-5-221.



1 (11) If public assistance is being or has been paid, the department is subrogated to the debt created  
2 by a support order and any money judgment is considered to be in favor of the department. This  
3 subrogation is an addition to any assignment made under ~~53-2-613~~ 42 U.S.C. 602(a)(26) and applies to  
4 the lesser of:

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

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

7 (12) The department may adopt and enforce the rules necessary to carry out the provisions of this  
8 part.

9 (13) While providing services under this chapter and in order to carry out the purposes mentioned  
10 in this chapter, the department, through its director or the director's authorized representatives, may:

11 (a) administer oaths;

12 (b) certify official acts and records;

13 (c) issue investigative and hearing subpoenas;

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

15 (e) hold prehearing and settlement conferences;

16 (f) compel the attendance of witnesses and the production of books, accounts, documents, and  
17 evidence; ~~and~~

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

21 (h) perfect service of investigative and hearing subpoenas by certified mail or in the manner  
22 prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil  
23 Procedure.

24 (14) In addition to any other requirement for service provided by the Montana Rules of Civil  
25 Procedure, if a person is required to give notice to, serve, or provide a written response to the department  
26 under this chapter, the notice, service, or response must be made to the department's child support  
27 enforcement division.

28 (15) The department may collect any funds received under this chapter, and wrongfully retained,  
29 by the obligor through any remedy available for collection of child support."

30

1           **Section 5.** Section 40-5-225, MCA, is amended to read:

2           **"40-5-225. Notice of financial responsibility -- temporary and final support obligations --**  
3 **administrative procedure.** (1) (a) In the absence of a support order, the department may serve an obligor  
4 with a notice of financial responsibility alleging a child's need for support and the amount of the need and  
5 requiring the obligor to appear and show cause at a hearing held by the department why the obligor should  
6 not be finally ordered to pay the amount alleged in the notice.

7           (b) The notice must state:

8           (i) the names of the obligee and child;

9           (ii) the amount of current and future support to be paid each month for the child;

10           (iii) that if the obligor does not file a written answer within 20 days from the date of service or  
11 refusal of service, the amount in the notice must be finally ordered;

12           (iv) that the obligor is entitled to a fair hearing under 40-5-226.

13           (2) If, prior to the service of the notice under this section, the department has information  
14 concerning the obligor's financial condition, the department's allegation of the obligor's monthly support  
15 responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such  
16 information is unknown to the department, the allegations of the obligor's monthly support responsibility  
17 must be based on the greater of:

18           (a) the amount of public assistance payable under Title 53, chapter 4; or

19           (b) the alleged need.

20           (3) If the obligor objects to the notice, the obligor shall file a written answer with the department  
21 within 20 days from the date of service or refusal of service. If the department receives a timely answer,  
22 it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall  
23 order the obligor to pay the amount stated in the notice.

24           (4) (a) If a support action is pending in district court and a temporary or permanent support  
25 obligation has not been ordered, the department may issue to the obligor a notice of temporary support  
26 obligation.

27           (b) The notice must contain:

28           (i) the names of the child and the person or agency having the custodial care of the child;

29           (ii) an amount for temporary monthly support determined as provided in subsection (2);

30           (iii) a statement that the obligor may request a hearing at which the obligor may show that a

1 different support amount is appropriate or that establishment of a support obligation is inappropriate under  
 2 the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.

3 (iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice  
 4 or the order for a temporary support order will be entered in the amount stated in the notice; and

5 (v) a statement that the temporary support order will terminate upon the entry of a district court  
 6 support order. If the district court order is retroactive, any amount paid for a particular period under the  
 7 temporary support order must be credited against the amounts due under the district court order for the  
 8 same period, but excess amounts may not be refunded. If the district court determines that a periodic  
 9 support obligation is not proper, any amount paid under the temporary support order must be refunded to  
 10 the obligor.

11 (5) (a) If a temporary support order is entered or if proceedings are commenced under this section  
 12 for a married obligor, the department shall vacate any support order or dismiss any proceeding under this  
 13 part if it finds that the parties to the marriage have:

14 (i) reconciled without the marriage having been dissolved;

15 (ii) made joint application to the department to vacate the order or dismiss the proceeding; and

16 (iii) provided proof that the marriage has been resumed.

17 (b) The department may not vacate a support order or dismiss a proceeding under this subsection  
 18 (5) if it determines that the rights of a third person or the child are affected. The department may issue a  
 19 new notice under this section if the parties subsequently separate.

20 (6) ~~Any A~~ notice of financial responsibility and the notice of temporary support obligation ~~must~~ may  
 21 be served either by certified mail or in the same manner prescribed for the service of a summons in civil  
 22 action in accordance with the Montana Rules of Civil Procedure."

23

24 **Section 6.** Section 40-5-226, MCA, is amended to read:

25 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**  
 26 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

27 (2) If a hearing is requested, it must be scheduled within 20 days. The hearing must initially be  
 28 conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At  
 29 the request of a party and upon a showing that the party's case was substantially prejudiced by the lack  
 30 of an in-person hearing, the hearings officer may, following a teleconferencing hearing, grant a de novo

1 in-person hearing.

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

5 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title  
6 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

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

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

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

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

30 (6) Within 20 days of the hearing, the hearings officer shall enter a final decision and order. The

1 determination of the hearings officer constitutes a final agency decision, subject to judicial review under  
2 40-5-253 and the provisions of the Montana Administrative Procedure Act.

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

6 (8) A support debt determined pursuant to this section is subject to collection action without  
7 further necessity of action by the hearings officer.

8 (9) A support debt or a support responsibility determined under this part by reason of the obligor's  
9 failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon  
10 the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of  
11 the grounds enumerated in the Montana Rules of Civil Procedure.

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

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

25 (12) The hearings officer may:

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

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

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

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

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

3 (13) A contempt occurs whenever:

4 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer  
5 or of the department;

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

8 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing  
9 fails to do so;

10 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply  
11 with discovery requests; or

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

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

23 (15) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and  
24 take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor  
25 fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings  
26 officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than  
27 \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to  
28 judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

29 (16) An amount imposed as a penalty may be collected by any remedy available to the department  
30 for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247,

1 income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17,  
2 chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs  
3 of administrative hearings conducted under this chapter.

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

7

8 **Section 7.** Section 40-5-231, MCA, is amended to read:

9 **"40-5-231. Jurisdiction and venue.** (1) For purposes of an administrative action brought under this  
10 part, personal jurisdiction is established in the department over any individual or the individual's guardian  
11 or conservator if:

12 (a) the individual is personally or by certified mail served with notice within this state;

13 (b) the individual submits to the jurisdiction of this state by consent, by entering a general  
14 appearance, or by filing a responsive document that has the effect of waiving any contest to personal  
15 jurisdiction;

16 (c) the individual resided with the child in this state;

17 (d) the individual resided in this state and provided prenatal expenses or support for the child;

18 (e) the child resides in this state as a result of the acts or directives of the individual;

19 (f) the individual engaged in sexual intercourse in this state and the child may have been conceived  
20 by the act of intercourse; or

21 (g) there is any other basis consistent with the constitutions of this state and the United States  
22 for the exercise of personal jurisdiction.

23 (2) Personal jurisdiction over the individuals described in subsection (1) may be acquired by  
24 personal service or by service of notice by certified mail.

25 (3) If the child or either parent resides in this state, a hearing under this part may be held in the  
26 county where:

27 (a) the child resides;

28 (b) either parent resides; or

29 (c) the department or any of its regional offices is located."  
30

1           **Section 8.** Section 40-5-236, MCA, is amended to read:

2           **"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other**  
3 **matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the  
4 alleged father and the alleged father continues to deny paternity, the alleged father shall file a written  
5 objection with the department within 20 days after service of the paternity blood test results specifically  
6 requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the  
7 department shall refer the matter to the district court for a determination based on the contents of the  
8 administrative hearing record and any further evidence that may be produced at trial. Except as otherwise  
9 provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to  
10 Title 40, chapter 6, part 1.

11           (2) The administrative record must include:

- 12           (a) a copy of the notice of paternity determination and the return of service of the notice;  
13           (b) the alleged father's written denial of paternity, if any;  
14           (c) the transcript of the administrative hearing;  
15           (d) the paternity blood test results and any report of an expert based on the results; and  
16           (e) any other relevant information.

17           (3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties  
18 as if they had been served with a summons and complaint. The department shall serve written notice upon  
19 the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district  
20 court for determination.

21           (4) In a proceeding in the district court, the department shall appear on the issue of paternity only.  
22 The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that  
23 an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a  
24 necessary party, but either may testify as a witness.

25           (5) No other matter may be joined with an action to determine the existence or nonexistence of  
26 the parent and child relationship under this section. The parties shall institute an independent action to  
27 address other issues, including visitation and custody.

28           (6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees  
29 for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."  
30



1           **Section 9.** Section 40-5-253, MCA, is amended to read:

2           **"40-5-253. Administrative findings and order -- administrative remedies -- judicial review.** (1) It  
3 is the intent of this part that administrative findings and orders be subject to judicial review, but  
4 administrative remedies must be exhausted prior to judicial review. The administrative procedures described  
5 in this part are subject to review in the appropriate district court. ~~Such~~ Except as provided in subsections  
6 (3) through (5), the review must be conducted pursuant to the Montana Administrative Procedure Act.  
7 Upon a showing by the department that administrative remedies have not been exhausted, the district court  
8 shall refuse review until ~~such~~ the remedies are exhausted.

9           (2) ~~Nothing in this~~ This part may not be construed to abridge or in any way affect the obligor's  
10 right to counsel during any and all judicial or administrative proceedings pursuant to this part.

11           (3) A petition for judicial review is an original action and may not be filed under a preexisting cause  
12 number or joined with any other action.

13           (4) A summons must be issued and served under Rule 4, Montana Rules of Civil Procedure, upon  
14 the department and each party along with the petition for judicial review. The district court does not obtain  
15 jurisdiction unless the petition for judicial review is served on all parties within 30 days after the petition  
16 is filed with the district court.

17           (5) The district court shall set a briefing schedule for a petition for judicial review. A reference in  
18 a brief to the administrative record must be to a particular part of the record, suitably designated, and to  
19 specific pages of that part of the record. Intelligible abbreviations may be used. A reference to an exhibit  
20 must be to the pages of the transcript on which the exhibit is identified, offered in evidence, and received  
21 or rejected. After briefs have been filed, and upon motion of a party, the district court may order oral  
22 argument."

23  
24           **Section 10.** Section 40-5-273, MCA, is amended to read:

25           **"40-5-273. Administrative review of child support orders -- modifying orders.** (1) A review  
26 application setting forth facts meeting any of the criteria for review of a child support order established in  
27 40-5-272 must be scheduled for an administrative hearing, ~~and a hearings officer must be appointed by the~~  
28 ~~department~~ review. Unless the ~~hearings officer~~ department determines under rules of the department that  
29 an in-person ~~hearing~~ review is necessary, the ~~hearing~~ review must be conducted by ~~telephone conference~~  
30 teleconferencing methods. ~~The order scheduling the hearing~~ A notice that an administrative review will be

1 conducted must be served on the obligor and the obligee at least 60 days before ~~the~~ a hearing. The ~~order~~  
2 notice must include the following information as an exception to 2-4-601:

3 ~~(a) the date and time for the hearing and, if appropriate, the place for the hearing;~~

4 ~~(b)~~ (a) a statement of the purpose, objectives, and possible consequences of the review;

5 ~~(c)~~ (b) a statement of the right of the obligor and the obligee to request the ~~hearings officer~~  
6 department to issue subpoenas compelling the appearance of witnesses and the production of documents  
7 for ~~the~~ a hearing; and

8 ~~(d)~~ (c) a requirement that the obligor and the obligee provide the ~~hearings officer~~ department with  
9 telephone numbers at which they and their witnesses may be contacted for the hearing review.

10 (2) The ~~hearings officer~~ department may issue an order commanding the obligor or the obligee, or  
11 both, to produce financial information. The order must be personally served with the ~~order scheduling the~~  
12 hearing notice that a review will be conducted. The ~~hearings officer~~ department may also issue subpoenas  
13 ordering the ~~department or other~~ parties to produce information in their possession about the obligor and  
14 the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained  
15 by the ~~hearings officer~~ department must be provided to the ~~department and other~~ parties ~~prior to the~~ before  
16 a hearing.

17 (3) The requested modification of the order must be determined on the evidence submitted to the  
18 ~~hearings officer~~ department under the following conditions:

19 (a) If an applicant other than the department fails to provide a telephone number for the hearing  
20 review or fails to be at the number provided when telephoned for the hearing review, the failure ~~is~~ may be  
21 considered a withdrawal of the application.

22 (b) If a party other than the applicant fails to provide a telephone number for the hearing review  
23 or fails to be at the number provided when telephoned for the hearing review, the failure is considered to  
24 mean that the party does not oppose the modification.

25 (c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide  
26 a telephone number for the hearing review or fails to be at the number provided when telephoned for the  
27 hearing review, the failure ~~is~~ may be considered an admission that the party or parties do not oppose the  
28 modification.

29 (4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c)  
30 becomes final within ~~40~~ 30 days of issuance unless a party provides the hearings officer an affidavit

1 showing good cause for failure to provide a telephone number or failure to be available for the hearing when  
2 telephoned.

3 (5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the  
4 department, and the department is not considered a party to the action.

5 (6) (a) In addition to the powers and duties provided by other law, the ~~hearings officer~~ department  
6 shall, to ensure the equitable determination of a support obligation, during a review hearing:

7 (i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

8 (ii) introduce evidence on behalf of the parties;

9 (iii) apply the guidelines to the facts elicited from the ~~hearing~~ review; and

10 (iv) inquire as to any circumstances that may require variance from the guidelines.

11 (b) If a party is represented by legal counsel, the ~~hearings officer~~ department may allow the counsel  
12 to present that party's case.

13 (7) The ~~hearings officer~~ department shall determine a support obligation in accordance with the  
14 guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section  
15 may not be contested before entry of the final department order. If the ~~hearings officer~~ department  
16 determines that the difference between the existing support order and the amount determined under the  
17 guidelines is negligible under rules issued by the department, the modifying order may not change the  
18 amount of the support obligation. Even though the review may indicate that a modification of the support  
19 obligation is appropriate, the department may not modify the support order if the ~~hearings officer~~  
20 department determines, after the review ~~hearing~~, that to do so would not be in the best interests of the  
21 child under the rules issued by the department. An increase in child support is presumed to be in the best  
22 interests of the child unless, after a review ~~hearing~~, either the obligor or the obligee demonstrates it would  
23 not be in the best interests of the child. The modifying order ~~must~~ may prospectively modify the underlying  
24 support order from the date of service of ~~the order scheduling the hearing~~ a notice that an administrative  
25 review will be conducted under this section.

26 (8) ~~The hearings officer shall make a written determination whether health insurance is available~~  
27 ~~to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer~~  
28 ~~determines health insurance is available to the child of the obligor, the hearings officer shall issue a~~  
29 ~~modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings~~  
30 ~~officer determines that health insurance is not available to the child of the obligor, he shall issue a modifying~~

1 ~~order containing the notices provided in subsection (9). An order to provide health insurance is presumed~~  
 2 ~~to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee~~  
 3 ~~demonstrates it would not be in the best interests of the child. The department shall consider whether or~~  
 4 ~~not health insurance for the child is available and shall include an appropriate requirement for the provision~~  
 5 ~~of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.~~

6 (9) In addition to complying with other requirements of law, the modifying order must include the  
 7 following notices and warnings:

8 (a) that the obligor shall keep the department informed of the name and address of ~~his~~ the obligor's  
 9 current employer and information on health insurance available to the obligor through the obligor's  
 10 employment or other group insurance; and

11 ~~(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it~~  
 12 ~~is available through the obligor's employment or other group insurance; and~~

13 ~~(c)~~ (b) that the modifying order is subject to future administrative review and modification by the  
 14 department upon the request of the department or a party under 40-5-271 through 40-5-273 when the  
 15 department is providing services under IV-D.

16 (10) ~~Orders~~ An order entered under this section ~~are~~ by the department is a final agency decisions  
 17 decision, subject to judicial review pursuant to the Montana Administrative Procedure Act, except as  
 18 provided in 40-5-253. All orders An order entered under this section must notify the parties that the order  
 19 is subject to judicial review under Title 2, chapter 4, part 7. A final order entered under a stipulation of  
 20 parties waives the stipulating parties' right to judicial review.

21 (11) The parties to the support order and the department when it is providing services under IV-D  
 22 may enforce the support order or modify that order independently, as provided in 40-4-208 and  
 23 53-2-613(4)(d)."

24

25 **Section 11.** Section 40-5-403, MCA, is amended to read:

26 **"40-5-403. Definitions.** As used in this part, the following definitions apply:

27 (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and  
 28 signed by the department in the case of an assignment of rights under 53-2-613, that has been approved  
 29 and entered in the record of the court or administrative authority issuing or modifying the support order.

30 (2) "Department" means the department of public health and human services provided for in

1 2-15-2201.

2 (3) "Income" means any form of periodic payment to a person, including earnings and wages.

3 However, income does not include:

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

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

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

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

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

14 (7) "Support order" ~~means an order of the district court of the state of Montana, an order of a~~  
15 ~~court of appropriate jurisdiction of another state, an administrative order established pursuant to~~  
16 ~~proceedings under part 2 of this chapter, or an order established by administrative hearing process of an~~  
17 ~~agency of another state with functions similar to those of the department set forth in part 2 of this chapter,~~  
18 ~~that provides a set and determinable amount for temporary or final periodic payment of funds for the~~  
19 ~~support of a child. Support order further includes the following:~~

20 ~~(a) an order for reimbursement of public assistance money paid by a public agency for the benefit~~  
21 ~~of a minor child;~~

22 ~~(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial~~  
23 ~~parent of a child for whom child support is awarded under the same order; and~~

24 ~~(c) an order requiring payment of interest due on unpaid judgments for child support has the~~  
25 ~~meaning provided in 40-5-201.~~

26

27 **Section 12.** Section 40-5-412, MCA, is amended to read:

28 **"40-5-412. Delinquency income withholding.** (1) In the case of support orders not subject to  
29 immediate income withholding under 40-5-411, including cases in which the court or administrative  
30 authority has made a finding of good cause or determines that an alternative arrangement exists, the

1 income of the obligor is subject to withholding under this part beginning on the date on which the obligor  
2 is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's  
3 support payment. Intervening agreements or orders establishing a schedule for payment of delinquent  
4 support do not prevent income withholding under this part.

5 (2) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without  
6 regard to whether there is an arrearage, on the earlier of:

7 (a) the date the obligor requests that withholding begin; or

8 (b) at the request of the obligee if the obligor is found, after an opportunity for hearing under  
9 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

10 (3) To accomplish the purpose of subsection (1), the department shall monitor all support payments  
11 not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice  
12 to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1  
13 month's support payment to pay all support through the department, notwithstanding a court order  
14 directing payments to be made to the obligee or clerk of court.

15 (4) The only basis for contesting withholding under this section is a mistake of fact, which does  
16 not include a mistake of fact relating to establishment of custody and visitation but includes a mistake:

17 (a) concerning the obligor's identity;

18 (b) concerning the existence of the support obligation;

19 (c) concerning the amount of support to be paid;

20 (d) in the determination that the delinquent support amounts owed are equal to or greater than 1  
21 month's support payment;

22 (e) in computation of delinquent support amounts owed; or

23 (f) in the allegation that the obligor is in default of an alternative agreement."  
24

25 **Section 13.** Section 40-5-414, MCA, is amended to read:

26 **"40-5-414. Hearing.** (1) To contest the withholding of income initiated under 40-5-412 because  
27 of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of  
28 being served with notice of intent to withhold income under 40-5-413 file with the department a written  
29 request for an administrative hearing to be held pursuant to the contested case provisions of Title 2,  
30 chapter 4, part 6.

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

4 (3) The ~~administrative~~ hearing must initially be held by teleconferencing methods ~~unless the obligor~~  
5 ~~or the department expressly requests an in-person hearing before the hearings examiner and is subject to~~  
6 the Montana Administrative Procedure Act. At the request of a party and upon a showing that the party's  
7 case was substantially prejudiced by the lack of an in-person hearing, the hearings officer may, following  
8 a teleconferencing hearing, grant a de novo in-person hearing.

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

10 (a) the initiation of delinquency income withholding by the department and the modification of an  
11 existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the  
12 obligor fails to appear at the scheduled hearing. However, in a proceeding to initiate income withholding,  
13 if the obligor is only contesting an arrearage amount and is not contesting withholding for current support,  
14 income withholding for current support is not stayed. In a proceeding to modify an existing order, income  
15 withholding under the existing order to withhold is not stayed.

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

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

20 (a) the obligor fails to file a written request for hearing with the department within the specified  
21 10-day period;

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

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

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

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

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

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

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

12

13 **Section 14.** Section 40-5-703, MCA, is amended to read:

14 **"40-5-703. Hearing -- order suspending license.** (1) To show cause why suspension of a license  
 15 would not be appropriate, the obligor shall request a hearing from the support enforcement entity that  
 16 issued the notice of intent to suspend the license. The request must be made within 60 days of the date  
 17 of service of the notice.

18 (2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall  
 19 schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. A  
 20 court hearing may be conducted by teleconferencing methods. A department hearing must initially be  
 21 conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At  
 22 the request of a party and upon a showing that the party's case was substantially prejudiced by the lack  
 23 of an in-person hearing, the department may, following a teleconferencing hearing, grant a de novo  
 24 in-person hearing. The support enforcement entity shall stay suspension of the license pending the outcome  
 25 of the hearing.

26 (3) The only issues that may be determined in a hearing under this section are the amount of the  
 27 support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the  
 28 obligor has entered into a payment plan.

29 (4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request  
 30 a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request



1 for a payment plan must be considered to be without merit and the support enforcement entity shall enter  
2 a final decision and order accordingly.

3 (5) If the support enforcement entity determines that the obligor owes a delinquency and that the  
4 obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending  
5 the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support  
6 enforcement entity shall send a copy of the order suspending a license to the licensing authority and the  
7 obligor.

8 (6) The determinations of the department under this section are a final agency decision and are  
9 subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

10 (7) A determination made by the support enforcement entity under this part is independent of any  
11 proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."  
12

13 **Section 15.** Section 40-5-809, MCA, is amended to read:

14 **"40-5-809. Effect of order on health benefit plans.** (1) The duties and responsibilities under a plan  
15 pursuant to this part apply equally to a union or employer that serves as the administrator of a plan for a  
16 parent who is a member or employee.

17 (2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may  
18 be submitted to the plan administrator by either parent, by the department, ~~or~~ by a third-party custodian,  
19 or by an employer-payor of either parent. The party submitting the order shall submit the child's name and  
20 birth date and the names and mailing addresses of the parents. If the child is a recipient of public  
21 assistance, the party submitting the order shall also submit the address of the department. If there is a  
22 third-party custodian of the child, the address of the third-party custodian must also be submitted. A copy  
23 of a medical support order may be served on the plan administrator by certified mail.

24 (3) Presentation of the medical support order to the plan administrator authorizes each parent, the  
25 department, if the department has interest, or the third-party custodian to receive pertinent notices from  
26 the plan administrator and to freely communicate and generally interact with the plan administrator in all  
27 respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so  
28 personally.

29 (4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation  
30 of the order to the plan administrator binds the plan to enroll the child in the plan as provided by this part.

1 (5) If a health benefit plan is available through the obligated parent's employer or other payor of  
2 income, presentation of the medical support order to the payor binds the payor to enrollment of the child  
3 in the plan and to automatically deduct premium payments required by the plan from the obligated parent's  
4 income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

5 (6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily  
6 delay health benefit plan coverage for a child.

7 (b) If more than one plan is available to an obligated parent and the medical support order fails to  
8 specify a plan or combination of benefits to be provided for a child or if there has been a change in plans  
9 due to a change in employment of the obligated parent or for some other reason, the parties and the  
10 department shall apply the medical support order so as to provide the child with coverage under a plan that  
11 has a reasonable cost and that provides the child with benefits closest to those described in the order."  
12

13 **Section 16.** Section 40-5-824, MCA, is amended to read:

14 **"40-5-824. Expedited enforcement procedures.** (1) A parent, the department, or the third-party  
15 custodian may apply to the court for expedited enforcement procedures under this part. If the child receives  
16 medicaid, a parent or third-party custodian may apply to the department for and the department may on  
17 its own motion use expedited enforcement procedures under this part.

18 (2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent  
19 to appear and show cause why an order, penalty, fine, or any combination should not be determined,  
20 assessed, and entered under one or more provisions of this part. The obligated parent may appear at the  
21 hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order  
22 must be issued if the tribunal finds that:

23 (a) a medical support obligation has been established by order of a tribunal or by a court or  
24 administrative agency of another state, territory, or Indian reservation;

25 (b) the obligated parent is liable for medical costs and expenses or premium payments under this  
26 part;

27 (c) a parent receives a reimbursement payment from individual insurance or a health benefit plan  
28 and fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the  
29 health service provider;

30 (d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian

1 the parent's share of:

2 (i) copayments and deductibles required under the individual insurance or plan; or

3 (ii) costs and expenses not covered by individual insurance or a health benefit plan; or

4 (e) there are fines, penalties, or other financial sanctions that may be imposed under this part.

5 (3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice  
6 of the claim under this part. The obligated parent may pay the claim within 30 days after receiving the  
7 notice. A copy of the notice must be given to the other parent, to the department, if the department is not  
8 the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the  
9 third-party custodian. The other parent, the department, or the third-party custodian may participate in the  
10 proceedings as a party.

11 (4) An application for expedited enforcement may be based on any credible statements or evidence  
12 presented to the tribunal, including the sworn affidavit of:

13 (a) a health care provider who has provided care or benefits for the child;

14 (b) an authorized representative of the department, the health benefit plan, or the individual insurer;

15 (c) either parent of the child; or

16 (d) the third-party custodian of the child.

17 (5) The order to show cause must inform the obligated parent and any other party of the party's  
18 right to respond by affidavit. An affidavit may include written proof of payment. A hearing must be  
19 scheduled within 15 days after the date of service of the order on the obligated parent. A court hearing  
20 may be conducted by teleconferencing methods. A department hearing must initially be conducted by  
21 teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of  
22 a party and upon a showing that the party's case was substantially prejudiced by the lack of an in-person  
23 hearing, the department may, following a teleconferencing hearing, grant a de novo in-person hearing. If  
24 an affidavit with written proof of payment is not received by the tribunal within 15 days and the obligated  
25 parent does not appear at the hearing, judgment may be entered for the relief requested. If an affidavit with  
26 written proof of payment is received but the obligated parent does not appear at the hearing, the tribunal  
27 may resolve the issues on the basis of credible documents and affidavits submitted.

28 (6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly  
29 rule upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of  
30 the liability and the amount of the liability is not contested by a party to the proceedings.

1 (7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability  
 2 as an award against the liable parent. If requested to do so, the tribunal may make an award specifically  
 3 in favor of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied  
 4 bill of the health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical  
 5 support liability involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous  
 6 or in bad faith, the tribunal may impose sanctions against the party including an award of costs and  
 7 attorney fees.

8 (8) Awards under this section may be collected by any remedy available for the collection of  
 9 delinquent child support, but claims for current or past-due child support have priority.

10 (9) An award under this section is a final order and may be appealed if the tribunal is a court or  
 11 may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department."

12  
 13 **Section 17.** Section 71-3-302, MCA, is amended to read:

14 **"71-3-302. Priority in case of death of employer.** In case of the death of any employer, the wages  
 15 of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months  
 16 next preceding the death of the employer, in the amount actually owed, are preferred debts under  
 17 72-3-807~~(1)(d)~~(1)(e) and must be paid before other claims against the estate of the deceased person."

18  
 19 **Section 18.** Section 72-3-807, MCA, is amended to read:

20 **"72-3-807. Classification of claims as to priority of payment.** (1) If the applicable assets of the  
 21 estate are insufficient to pay all claims in full, the personal representative shall make payment in the  
 22 following order:

- 23 (a) costs and expenses of administration;
- 24 (b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of  
 25 the last illness of the decedent, including compensation of persons attending ~~him~~ the decedent;
- 26 (c) federal estate and Montana state estate and inheritance taxes;
- 27 (d) debt for a current support obligation and past-due support for decedent's children pursuant to  
 28 a support order as defined in 40-5-201;
- 29 ~~(d)~~(e) debts with preference under federal and Montana law;
- 30 ~~(e)~~(f) other federal and Montana state taxes;

1           ~~†(g)~~ all other claims.

2           (2) ~~No~~ A preference ~~shall~~ may not be given in the payment of any claim over any other claim of  
3 the same class, and a claim due and payable ~~shall~~ may not be entitled to a preference over claims not due."

4

5           NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.

6

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0168, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

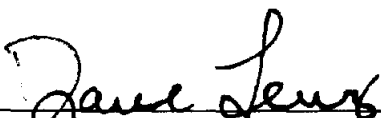
An act generally revising child support laws; clarifying that hearings by the department may be by teleconferencing methods; allowing service of certain notices by certified mail; revising administrative paternity processes; clarifying judicial review of a child support order; changing the definition of "support order" as it pertains to withholding; revising the definition of mistake of fact for income withholding hearing purposes; changing health insurance provisions relating to support; revising paternity presumptions; providing for priority of support of a decedent's children in probate of a decedent's estate.


Assumptions:

1. The Department of Public Health and Human Services anticipates some savings in travel and administrative costs due to the use of teleconferencing and serving certain notices by certified mail. However, without historical experience on how much more teleconferencing would be used, it is not possible to accurately estimate savings.
2. Section 8, part (1)(d) is anticipated to slightly increase collections. Again, without experience regarding the level of additional recoveries, no estimate of increased revenues can be made.

FISCAL IMPACT:

Insignificant impact.

 1-11-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 11/3/07  
ROYAL JOHNSON, PRIMARY SPONSOR      DATE

Fiscal Note for HB0168, as introduced

HB 168

## 1 HOUSE BILL NO. 168

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT LAWS; CLARIFYING  
6 THAT HEARINGS BY THE DEPARTMENT MAY BE BY TELECONFERENCING METHODS; ALLOWING  
7 SERVICE OF CERTAIN NOTICES BY CERTIFIED MAIL; REVISING ADMINISTRATIVE PATERNITY  
8 PROCESSES; CLARIFYING JUDICIAL REVIEW OF A CHILD SUPPORT ORDER; CHANGING THE DEFINITION  
9 OF "SUPPORT ORDER" AS IT PERTAINS TO WITHHOLDING; REVISING THE DEFINITION OF MISTAKE OF  
10 FACT FOR INCOME WITHHOLDING HEARING PURPOSES; CHANGING HEALTH INSURANCE PROVISIONS  
11 RELATING TO SUPPORT; REVISING PATERNITY PRESUMPTIONS; PROVIDING FOR PRIORITY OF SUPPORT  
12 OF A DECEDENT'S CHILDREN IN PROBATE OF A DECEDENT'S ESTATE; AMENDING SECTIONS 17-4-105,  
13 40-5-189, 40-5-201, 40-5-202, 40-5-225, 40-5-226, 40-5-231, 40-5-236, 40-5-253, 40-5-273, 40-5-403,  
14 40-5-412, 40-5-414, 40-5-703, 40-5-809, 40-5-824, 71-3-302, AND 72-3-807, MCA; AND PROVIDING  
15 AN IMMEDIATE EFFECTIVE DATE."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
1819 **Section 1.** Section 17-4-105, MCA, is amended to read:20 **"17-4-105. Authority to collect debt -- offsets.** (1) Once a debt of an agency has been transferred  
21 to the department, the department may collect it. The department may contract with commercial collection  
22 agents for recovery of debts owed to agencies.23 (2) The department shall, when appropriate, offset any amount due an agency from a person or  
24 entity against any amount, including refunds of taxes, owing the person or entity by an agency. The  
25 department may not exercise this right of offset until the debtor has first been notified by the department  
26 and been given an opportunity for a hearing. An offset may not be made against any amount paid out as  
27 child support collected by the department of public health and human services. The department shall deduct  
28 from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the  
29 debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due  
30 the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of**SECOND READING**

1 child support and then in the manner determined appropriate by the department.

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

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

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

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

14 (4) (a) A debt owed to the department of public health and human services or being collected by  
15 the department of public health and human services on behalf of any person or agency may be offset by  
16 the department if the debt is being enforced or collected by the department of public health and human  
17 services under Title IV-D of the Social Security Act.

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

21 (c) Within 30 days following the notification provided for in subsection (2), the person owing a debt  
22 described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the  
23 department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the  
24 subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a  
25 decision made as a result of that proceeding has become final. The hearing must initially be conducted by  
26 teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act.  
27 At the request of a party and upon a showing that the party's case was substantially prejudiced by the lack  
28 of an in-person hearing, the department may SHALL, following a teleconferencing hearing, grant a de novo  
29 in-person hearing. The department of public health and human services shall adopt rules governing the  
30 hearing procedures.



1 (5) If the department determines that a person or entity has refused or neglected to file a claim  
2 within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of  
3 the person or entity. If the claim is approved by the department, the claim has the same force and effect  
4 as though filed by the person or entity. The amount due any person or entity from the state or any agency  
5 of the state is the net amount otherwise owing the person or entity after any offset, as provided in this  
6 section."

7

8 **Section 2.** Section 40-5-189, MCA, is amended to read:

9 **"40-5-189. Procedure to contest validity or enforcement of registered order.** (1) A nonregistering  
10 party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing  
11 within 20 days after the date of mailing or personal service of notice of the registration. A court hearing  
12 may be conducted by teleconferencing methods. A department hearing must initially be conducted by  
13 teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of  
14 a party and upon a showing that the party's case was substantially prejudiced by the lack of an in-person  
15 hearing, the department may SHALL, following a teleconferencing hearing, grant a de novo in-person  
16 hearing. The nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to assert any  
17 defense to an allegation of noncompliance with the registered order, or to contest the remedies being  
18 sought or the amount of any alleged arrearages.

19 (2) If the nonregistering party fails to contest the validity or enforcement of the registered order  
20 in a timely manner, the order is confirmed by operation of law.

21 (3) If a nonregistering party requests a hearing to contest the validity or enforcement of the  
22 registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties  
23 by first-class mail of the date, time, and place of the hearing."

24

25 **Section 3.** Section 40-5-201, MCA, is amended to read:

26 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

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

30 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,

1 self-supporting, married, or a member of the armed forces of the United States; any person under 19 years  
2 of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity  
3 began prior to the person's 18th birthday and for whom:

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

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

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

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

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

12 (3) "Department" means the department of public health and human services.

13 (4) "Director" means the director of the department of public health and human services or the  
14 director's authorized representative.

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

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

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

20 (8) "Obligee" means:

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

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

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

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

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

1 (12) "Public assistance" means any type of monetary or other assistance for a child, including  
2 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom  
3 the child is living, if assistance has been furnished with respect to the child by a state or county agency  
4 of this state or any other state.

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

6 (a) the failure to provide for the medical, health, and support needs of a child under the laws of  
7 this or any other state or under a support order; or

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

11 (14) "Support order" means an order, whether temporary or final, 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 (i) a district court of this state;

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

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

20 (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 under the act."  
24

25 **Section 4.** Section 40-5-202, MCA, is amended to read:

26 **"40-5-202. Department of public health and human services -- powers and duties regarding**  
27 **collection of support debt.** (1) The department may take action under the provisions of this chapter, the  
28 abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part  
29 1, and other appropriate state and federal statutes to provide IV-D services if the department:

30 (a) receives a referral on behalf of the child from an agency providing services to the child under

1 the provisions of Title 41, Title 52, or Title 53;

2 (b) is providing services under 40-5-203; or

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

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

10 (3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department  
11 and its attorneys serve the public interest in ensuring that children are supported by their parents, rather  
12 than maintained by public assistance. The department does not represent the interests of any individual  
13 person, and its attorneys represent only the department. An attorney-client relationship is not created  
14 between department attorneys and any person or entity other than the department. The obligee, obligor,  
15 and child may obtain the services of a private attorney to represent their interests. The existence or  
16 appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the  
17 department's right to act or provide services under this chapter. This chapter does not require the  
18 department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or  
19 child.

20 (4) The department has the power of attorney to act in the name of any obligee to endorse and  
21 cash any drafts, checks, money orders, or other negotiable instruments received by the department on  
22 behalf of a child.

23 (5) (a) If the department is providing IV-D services, the department must be afforded notice and  
24 an opportunity to participate as an independent party in any proceeding relating to paternity, to termination  
25 of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether  
26 initiated by the obligee, the obligor, or the child.

27 (b) The notice must reasonably inform the department of the issues to be determined in the  
28 proceeding, the names of the parties and the child, and the identity and location of the tribunal in which  
29 the issues will be determined. The notice is for informational purposes only and is not intended as a  
30 substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal

1 jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment,  
2 decree, or order is void as to any interest of the department that is or may be affected by the agreement,  
3 judgment, decree, or order if the department was not joined as a party in the manner provided in the  
4 Montana Rules of Civil Procedure.

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

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

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

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

16 (6) (a) A When the department is providing services, a recipient or former recipient of public  
17 assistance who assigned support rights under ~~53-2-613~~ 42 U.S.C. 602(a)(26) or a collection agency acting  
18 on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that  
19 accrued after termination of public assistance. The recipient, former recipient, or collection agency may not  
20 commence or maintain an action against or make an agreement with the obligor to recover an assigned  
21 delinquent support amount unless the department, in writing:

22 (i) releases or relinquishes its assigned interest;

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

25 (iii) consents to the action or agreement.

26 (b) If a recipient, former recipient, or collection agency collects or receives value for any part of  
27 an assigned delinquent support amount and the department has not given its consent or released or  
28 relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt  
29 and full restitution to the department. If prompt and full restitution is not made, the department may send  
30 a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution

1 is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection  
 2 agency is liable for damages equal to double the amount collected or value received. The amount of  
 3 damages may be determined and assessed by the department under the contested case provisions of the  
 4 Montana Administrative Procedure Act. The damages may be collected by the department by any method  
 5 or remedy available for the enforcement of child support owed by an obligor parent.

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

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

11 (8) Unless the department has consented to the agreement in writing, if public assistance is being  
 12 or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or  
 13 order adopting the agreement does not act to reduce or terminate any rights of the department to establish  
 14 a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or  
 15 order purports to:

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

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

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

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

20 (i) with noncash contributions;

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

22 or

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

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

27 (10) The department is subrogated to the right of the child or obligee to maintain any civil action  
 28 or execute any administrative remedy available under the laws of this or any other state to collect a support  
 29 debt. This right of subrogation is in addition to and independent of the assignment under ~~53-2-613~~ 42  
 30 U.S.C. 602(a)(26) and the support debt created by 40-5-221.

1 (11) If public assistance is being or has been paid, the department is subrogated to the debt created  
2 by a support order and any money judgment is considered to be in favor of the department. This  
3 subrogation is an addition to any assignment made under ~~53-2-613~~ 42 U.S.C. 602(a)(26) and applies to  
4 the lesser of:

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

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

7 (12) The department may adopt and enforce the rules necessary to carry out the provisions of this  
8 part.

9 (13) While providing services under this chapter and in order to carry out the purposes mentioned  
10 in this chapter, the department, through its director or the director's authorized representatives, may:

11 (a) administer oaths;

12 (b) certify official acts and records;

13 (c) issue investigative and hearing subpoenas;

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

15 (e) hold prehearing and settlement conferences;

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

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

21 (h) perfect service of investigative and hearing subpoenas by certified mail or in the manner  
22 prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil  
23 Procedure.

24 (14) In addition to any other requirement for service provided by the Montana Rules of Civil  
25 Procedure, if a person is required to give notice to, serve, or provide a written response to the department  
26 under this chapter, the notice, service, or response must be made to the department's child support  
27 enforcement division.

28 (15) The department may collect any funds received under this chapter, and wrongfully retained,  
29 by the obligor through any remedy available for collection of child support."

30

1           **Section 5.** Section 40-5-225, MCA, is amended to read:

2           **"40-5-225. Notice of financial responsibility -- temporary and final support obligations --**  
3 **administrative procedure.** (1) (a) In the absence of a support order, the department may serve an obligor  
4 with a notice of financial responsibility alleging a child's need for support and the amount of the need and  
5 requiring the obligor to appear and show cause at a hearing held by the department why the obligor should  
6 not be finally ordered to pay the amount alleged in the notice.

7           (b) The notice must state:

8           (i) the names of the obligee and child;

9           (ii) the amount of current and future support to be paid each month for the child;

10           (iii) that if the obligor does not file a written answer within 20 days from the date of service or  
11 refusal of service, the amount in the notice must be finally ordered;

12           (iv) that the obligor is entitled to a fair hearing under 40-5-226.

13           (2) If, prior to the service of the notice under this section, the department has information  
14 concerning the obligor's financial condition, the department's allegation of the obligor's monthly support  
15 responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such  
16 information is unknown to the department, the allegations of the obligor's monthly support responsibility  
17 must be based on the greater of:

18           (a) the amount of public assistance payable under Title 53, chapter 4; or

19           (b) the alleged need.

20           (3) If the obligor objects to the notice, the obligor shall file a written answer with the department  
21 within 20 days from the date of service or refusal of service. If the department receives a timely answer,  
22 it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall  
23 order the obligor to pay the amount stated in the notice.

24           (4) (a) If a support action is pending in district court and a temporary or permanent support  
25 obligation has not been ordered, the department may issue to the obligor a notice of temporary support  
26 obligation.

27           (b) The notice must contain:

28           (i) the names of the child and the person or agency having the custodial care of the child;

29           (ii) an amount for temporary monthly support determined as provided in subsection (2);

30           (iii) a statement that the obligor may request a hearing at which the obligor may show that a



1 different support amount is appropriate or that establishment of a support obligation is inappropriate under  
 2 the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.

3 (iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice  
 4 or the order for a temporary support order will be entered in the amount stated in the notice; and

5 (v) a statement that the temporary support order will terminate upon the entry of a district court  
 6 support order. If the district court order is retroactive, any amount paid for a particular period under the  
 7 temporary support order must be credited against the amounts due under the district court order for the  
 8 same period, but excess amounts may not be refunded. If the district court determines that a periodic  
 9 support obligation is not proper, any amount paid under the temporary support order must be refunded to  
 10 the obligor.

11 (5) (a) If a temporary support order is entered or if proceedings are commenced under this section  
 12 for a married obligor, the department shall vacate any support order or dismiss any proceeding under this  
 13 part if it finds that the parties to the marriage have:

14 (i) reconciled without the marriage having been dissolved;

15 (ii) made joint application to the department to vacate the order or dismiss the proceeding; and

16 (iii) provided proof that the marriage has been resumed.

17 (b) The department may not vacate a support order or dismiss a proceeding under this subsection  
 18 (5) if it determines that the rights of a third person or the child are affected. The department may issue a  
 19 new notice under this section if the parties subsequently separate.

20 (6) ~~Any~~ A notice of financial responsibility and the notice of temporary support obligation ~~must~~ may  
 21 be served either by certified mail or in the same manner prescribed for the service of a summons in civil  
 22 action in accordance with the Montana Rules of Civil Procedure."

23  
 24 **Section 6.** Section 40-5-226, MCA, is amended to read:

25 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**  
 26 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

27 (2) If a hearing is requested, it must ~~be scheduled within 20 days. The hearing must initially be~~  
 28 conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At  
 29 the request of a party and upon a showing that the party's case was substantially prejudiced by the lack  
 30 of an in-person hearing, the hearings officer may SHALL, following a teleconferencing hearing, grant a de

1 novo in-person hearing.

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

5 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title  
6 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

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

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

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

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

30 (6) ~~Within 20 days of the hearing, the~~ THE hearings officer shall enter a final decision and order.

1 The determination of the hearings officer constitutes a final agency decision, subject to judicial review under  
2 40-5-253 and the provisions of the Montana Administrative Procedure Act.

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

6 (8) A support debt determined pursuant to this section is subject to collection action without  
7 further necessity of action by the hearings officer.

8 (9) A support debt or a support responsibility determined under this part by reason of the obligor's  
9 failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon  
10 the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of  
11 the grounds enumerated in the Montana Rules of Civil Procedure.

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

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

25 (12) The hearings officer may:

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

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

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

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

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

3 (13) A contempt occurs whenever:

4 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer  
5 or of the department;

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

8 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing  
9 fails to do so;

10 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply  
11 with discovery requests; or

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

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

23 (15) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and  
24 take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor  
25 fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings  
26 officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than  
27 \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to  
28 judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

29 (16) An amount imposed as a penalty may be collected by any remedy available to the department  
30 for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247,

1 income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17,  
2 chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs  
3 of administrative hearings conducted under this chapter.

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

7

8 **Section 7.** Section 40-5-231, MCA, is amended to read:

9 **"40-5-231. Jurisdiction and venue.** (1) For purposes of an administrative action brought under this  
10 part, personal jurisdiction is established in the department over any individual or the individual's guardian  
11 or conservator if:

12 (a) the individual is personally or by certified mail served with notice within this state;

13 (b) the individual submits to the jurisdiction of this state by consent, by entering a general  
14 appearance, or by filing a responsive document that has the effect of waiving any contest to personal  
15 jurisdiction;

16 (c) the individual resided with the child in this state;

17 (d) the individual resided in this state and provided prenatal expenses or support for the child;

18 (e) the child resides in this state as a result of the acts or directives of the individual;

19 (f) the individual engaged in sexual intercourse in this state and the child may have been conceived  
20 by the act of intercourse; or

21 (g) there is any other basis consistent with the constitutions of this state and the United States  
22 for the exercise of personal jurisdiction.

23 (2) Personal jurisdiction over the individuals described in subsection (1) may be acquired by  
24 personal service or by service of notice by certified mail.

25 (3) If the child or either parent resides in this state, a hearing under this part may be held in the  
26 county where:

27 (a) the child resides;

28 (b) either parent resides; or

29 (c) the department or any of its regional offices is located."  
30

1           **Section 8.** Section 40-5-236, MCA, is amended to read:

2           **"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other**  
3 **matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the  
4 alleged father and the alleged father continues to deny paternity, the alleged father shall file a written  
5 objection with the department within 20 days after service of the paternity blood test results specifically  
6 requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the  
7 department shall refer the matter to the district court for a determination based on the contents of the  
8 administrative hearing record and any further evidence that may be produced at trial. Except as otherwise  
9 provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to  
10 Title 40, chapter 6, part 1.

11           (2) The administrative record must include:

- 12           (a) a copy of the notice of paternity determination and the return of service of the notice;  
13           (b) the alleged father's written denial of paternity, if any;  
14           (c) the transcript of the administrative hearing;  
15           (d) the paternity blood test results and any report of an expert based on the results; and  
16           (e) any other relevant information.

17           (3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties  
18 as if they had been served with a summons and complaint. The department shall serve written notice upon  
19 the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district  
20 court for determination.

21           (4) In a proceeding in the district court, the department shall appear on the issue of paternity only.  
22 The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that  
23 an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a  
24 necessary party, but either may testify as a witness.

25           (5) No other matter may be joined with an action to determine the existence or nonexistence of  
26 the parent and child relationship under this section. The parties shall institute an independent action to  
27 address other issues, including visitation and custody.

28           (6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees  
29 for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."  
30

1           **Section 9.** Section 40-5-253, MCA, is amended to read:

2           **"40-5-253. Administrative findings and order -- administrative remedies -- judicial review.** (1) It  
3 is the intent of this part that administrative findings and orders be subject to judicial review, but  
4 administrative remedies must be exhausted prior to judicial review. The administrative procedures described  
5 in this part are subject to review in the appropriate district court. ~~Such~~ Except as provided in subsections  
6 (3) through (5), the review must be conducted pursuant to the Montana Administrative Procedure Act.  
7 Upon a showing by the department that administrative remedies have not been exhausted, the district court  
8 shall refuse review until ~~such~~ the remedies are exhausted.

9           (2) ~~Nothing in this~~ This part may not be construed to abridge or in any way affect the obligor's  
10 right to counsel during any and all judicial or administrative proceedings pursuant to this part.

11           (3) A petition for judicial review is an original action and may not be filed under a preexisting cause  
12 number or joined with any other action.

13           (4) A summons must be issued and served under Rule 4, Montana Rules of Civil Procedure, upon  
14 the department and each party along with the petition for judicial review. The district court does not obtain  
15 jurisdiction unless the petition for judicial review is served on all parties within 30 days after the petition  
16 is filed with the district court.

17           (5) The district court shall set a briefing schedule for a petition for judicial review. A reference in  
18 a brief to the administrative record must be to a particular part of the record, suitably designated, and to  
19 specific pages of that part of the record. Intelligible abbreviations may be used. A reference to an exhibit  
20 must be to the pages of the transcript on which the exhibit is identified, offered in evidence, and received  
21 or rejected. After briefs have been filed, and upon motion of a party, the district court may order oral  
22 argument."

23

24           **Section 10.** Section 40-5-273, MCA, is amended to read:

25           **"40-5-273. Administrative review of child support orders -- modifying orders.** (1) A review  
26 application setting forth facts meeting any of the criteria for review of a child support order established in  
27 40-5-272 must be scheduled for an administrative hearing, ~~and a hearings officer must be appointed by the~~  
28 ~~department~~ review. Unless the ~~hearings officer~~ department determines under rules of the department that  
29 an in-person ~~hearing~~ review is necessary, the ~~hearing~~ review must be conducted by ~~telephone conference~~  
30 ~~teleconferencing methods. The order scheduling the hearing~~ A notice that an administrative review will be

1 conducted must be served on the obligor and the obligee ~~at least 60 days before the a hearing~~. The order  
2 notice must include the following information as an exception to 2-4-601:

3 ~~(a) the date and time for the hearing and, if appropriate, the place for the hearing;~~

4 ~~(b)(a)~~ a statement of the purpose, objectives, and possible consequences of the review;

5 ~~(c)(b)~~ a statement of the right of the obligor and the obligee to request the ~~hearings officer~~  
6 department to issue subpoenas compelling the appearance of witnesses and the production of documents  
7 for ~~the a~~ hearing; and

8 ~~(d)(c)~~ a requirement that the obligor and the obligee provide the ~~hearings officer~~ department with  
9 telephone numbers at which they and their witnesses may be contacted for the ~~hearing~~ review.

10 (2) The ~~hearings officer~~ department may issue an order commanding the obligor or the obligee, or  
11 both, to produce financial information. The order must be personally served with the ~~order scheduling the~~  
12 hearing notice that a review will be conducted. The ~~hearings officer~~ department may also issue subpoenas  
13 ordering the ~~department or other~~ parties to produce information in their possession about the obligor and  
14 the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained  
15 by the ~~hearings officer~~ department must be provided to the ~~department and other~~ parties ~~prior to the~~ before  
16 a hearing.

17 (3) The requested modification of the order must be determined on the evidence submitted to the  
18 ~~hearings officer~~ department under the following conditions:

19 (a) If an applicant other than the department fails to provide a telephone number for the ~~hearing~~  
20 review or fails to be at the number provided when telephoned for the ~~hearing~~ review, the failure ~~is~~ may be  
21 considered a withdrawal of the application.

22 (b) If a party other than the applicant fails to provide a telephone number for the ~~hearing~~ review  
23 or fails to be at the number provided when telephoned for the ~~hearing~~ review, the failure is considered to  
24 mean that the party does not oppose the modification.

25 (c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide  
26 a telephone number for the ~~hearing~~ review or fails to be at the number provided when telephoned for the  
27 ~~hearing~~ review, the failure ~~is~~ may be considered an admission that the party or parties do not oppose the  
28 modification.

29 (4) (A) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c)  
30 becomes final within ~~40~~ 30 days of issuance unless a party provides the hearings officer an affidavit



1 showing good cause for failure to provide a telephone number or failure to be available ~~for the hearing~~ when  
2 telephoned.

3 (B) A PROPOSED MODIFICATION CONSENT ORDER OR NOTICE OF PROPOSED MODIFICATION  
4 BECOMES FINAL 30 DAYS AFTER ISSUANCE UNLESS DURING THAT PERIOD A PARTY FILES WITH THE  
5 DEPARTMENT A WRITTEN REQUEST FOR FURTHER ADMINISTRATIVE PROCEEDINGS.

6 (C) THE DEPARTMENT SHALL GRANT A MODIFICATION HEARING IF IT RECEIVES A TIMELY  
7 WRITTEN REQUEST BY A PARTY AGGRIEVED BY THE DEPARTMENT'S DETERMINATION. THE HEARING  
8 IS SUBJECT TO THE PROVISIONS OF THIS SECTION RELATING TO A REVIEW. THE DEPARTMENT MAY  
9 ADOPT RULES REGULATING THE FAIR AND EFFICIENT CONDUCT OF THE HEARING. UNLESS THE  
10 DEPARTMENT DETERMINES UNDER DEPARTMENT RULES THAT AN IN-PERSON HEARING IS  
11 NECESSARY, THE HEARING MUST BE CONDUCTED BY TELECONFERENCING METHODS.

12 (5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the  
13 department, and the department is not considered a party to the action.

14 (6) (a) In addition to the powers and duties provided by other law, the ~~hearings officer~~ department  
15 shall, to ensure the equitable determination of a support obligation, during a review hearing:

16 (i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

17 (ii) introduce evidence on behalf of the parties;

18 (iii) apply the guidelines to the facts elicited from the ~~hearing review~~; and

19 (iv) inquire as to any circumstances that may require variance from the guidelines.

20 (b) If a party is represented by legal counsel, the ~~hearings officer~~ department may allow the counsel  
21 to present that party's case.

22 (7) The ~~hearings officer~~ department shall determine a support obligation in accordance with the  
23 guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section  
24 may not be contested before entry of the final department order. If the ~~hearings officer~~ department  
25 determines that the difference between the existing support order and the amount determined under the  
26 guidelines is negligible under rules issued by the department, the modifying order may not change the  
27 amount of the support obligation. Even though the review may indicate that a modification of the support  
28 obligation is appropriate, the department may not modify the support order if the ~~hearings officer~~  
29 department determines, after the review ~~hearing~~, that to do so would not be in the best interests of the  
30 child under the rules issued by the department. An increase in child support is presumed to be in the best

1 interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would  
 2 not be in the best interests of the child. The modifying order ~~must~~ may prospectively modify the underlying  
 3 support order from the date of service of ~~the order scheduling the hearing~~ a notice that an administrative  
 4 review will be conducted under this section.

5 (8) ~~The hearings officer shall make a written determination whether health insurance is available~~  
 6 ~~to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer~~  
 7 ~~determines health insurance is available to the child of the obligor, the hearings officer shall issue a~~  
 8 ~~modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings~~  
 9 ~~officer determines that health insurance is not available to the child of the obligor, he shall issue a modifying~~  
 10 ~~order containing the notices provided in subsection (9). An order to provide health insurance is presumed~~  
 11 ~~to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee~~  
 12 ~~demonstrates it would not be in the best interests of the child. The department shall consider whether or~~  
 13 ~~not health insurance for the child is available and shall include an appropriate requirement for the provision~~  
 14 ~~of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.~~

15 (9) In addition to complying with other requirements of law, the modifying order must include the  
 16 following notices and warnings:

17 (a) that the obligor shall keep the department informed of the name and address of ~~his~~ the obligor's  
 18 current employer and information on health insurance available to the obligor through the obligor's  
 19 employment or other group insurance; and

20 ~~(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it~~  
 21 ~~is available through the obligor's employment or other group insurance; and~~

22 ~~(c)~~ (b) that the modifying order is subject to future administrative review and modification by the  
 23 department upon the request of the department or a party under 40-5-271 through 40-5-273 when the  
 24 department is providing services under IV-D.

25 (10) ~~Orders~~ An order entered under this section ~~are~~ by the department is a final agency ~~decisions~~  
 26 ~~decision~~, subject to judicial review pursuant to the Montana Administrative Procedure Act, except as  
 27 provided in 40-5-253. ~~All orders~~ An order entered under this section must notify the parties that the order  
 28 is subject to judicial review under Title 2, chapter 4, part 7. A final order entered under a stipulation of  
 29 parties waives the stipulating parties' right to judicial review.

30 (11) The parties to the support order and the department when it is providing services under IV-D

1 may enforce the support order or modify that order independently, as provided in 40-4-208 and  
2 53-2-613(4)(d)."

3

4 **Section 11.** Section 40-5-403, MCA, is amended to read:

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

6 (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and  
7 signed by the department in the case of an assignment of rights under 53-2-613, that has been approved  
8 and entered in the record of the court or administrative authority issuing or modifying the support order.

9 (2) "Department" means the department of public health and human services provided for in  
10 2-15-2201.

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

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

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

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

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

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

23 (7) ~~"Support order" means an order of the district court of the state of Montana, an order of a~~  
24 ~~court of appropriate jurisdiction of another state, an administrative order established pursuant to~~  
25 ~~proceedings under part 2 of this chapter, or an order established by administrative hearing process of an~~  
26 ~~agency of another state with functions similar to those of the department set forth in part 2 of this chapter,~~  
27 ~~that provides a set and determinable amount for temporary or final periodic payment of funds for the~~  
28 ~~support of a child. Support order further includes the following:~~

29 ~~(a) an order for reimbursement of public assistance money paid by a public agency for the benefit~~  
30 ~~of a minor child;~~

1 ~~(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial~~  
 2 ~~parent of a child for whom child support is awarded under the same order; and~~

3 ~~(c) an order requiring payment of interest due on unpaid judgments for child support~~ has the  
 4 meaning provided in 40-5-201."

5  
 6 **Section 12.** Section 40-5-412, MCA, is amended to read:

7 **"40-5-412. Delinquency income withholding.** (1) In the case of support orders not subject to  
 8 immediate income withholding under 40-5-411, including cases in which the court or administrative  
 9 authority has made a finding of good cause or determines that an alternative arrangement exists, the  
 10 income of the obligor is subject to withholding under this part beginning on the date on which the obligor  
 11 is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's  
 12 support payment. Intervening agreements or orders establishing a schedule for payment of delinquent  
 13 support do not prevent income withholding under this part.

14 (2) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without  
 15 regard to whether there is an arrearage, on the earlier of:

16 (a) the date the obligor requests that withholding begin; or

17 (b) at the request of the obligee if the obligor is found, after an opportunity for hearing under  
 18 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

19 (3) To accomplish the purpose of subsection (1), the department shall monitor all support payments  
 20 not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice  
 21 to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1  
 22 month's support payment to pay all support through the department, notwithstanding a court order  
 23 directing payments to be made to the obligee or clerk of court.

24 (4) The only basis for contesting withholding under this section is a mistake of fact, which does  
 25 not include a mistake of fact relating to establishment of custody and visitation but includes a mistake:

26 (a) concerning the obligor's identity;

27 (b) concerning the existence of the support obligation;

28 (c) concerning the amount of support to be paid;

29 (d) in the determination that the delinquent support amounts owed are equal to or greater than 1  
 30 month's support payment;

1 (e) in computation of delinquent support amounts owed; or

2 (f) in the allegation that the obligor is in default of an alternative agreement."

3  
4 **Section 13.** Section 40-5-414, MCA, is amended to read:

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

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

13 (3) ~~The administrative hearing must initially be held by teleconferencing methods unless the obligor~~  
14 ~~or the department expressly requests an in-person hearing before the hearings examiner and is subject to~~  
15 the Montana Administrative Procedure Act. At the request of a party and upon a showing that the party's  
16 case was substantially prejudiced by the lack of an in-person hearing, the hearings officer may SHALL,  
17 following a teleconferencing hearing, grant a de novo in-person hearing.

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

19 (a) the initiation of delinquency income withholding by the department and the modification of an  
20 existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the  
21 obligor fails to appear at the scheduled hearing. However, in a proceeding to initiate income withholding,  
22 if the obligor is only contesting an arrearage amount and is not contesting withholding for current support,  
23 income withholding for current support is not stayed. In a proceeding to modify an existing order, income  
24 withholding under the existing order to withhold is not stayed.

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

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

29 (a) the obligor fails to file a written request for hearing with the department within the specified  
30 10-day period;

- 1 (b) the obligor fails to appear at a scheduled hearing;
- 2 (c) the hearings examiner determines from the evidence that the obligor owes unpaid support equal  
3 to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and  
4 adjudged to be a fixed and certain sum;
- 5 (d) there is an existing order to withhold and if the hearings examiner determines from the evidence  
6 that the obligor owes new or additional amounts in arrears; or
- 7 (e) in cases in which income withholding is being initiated at the request of an obligee without  
8 regard to whether there is an arrearage, the hearings examiner determines from the evidence that the  
9 obligor did not meet the terms of the alternative arrangement.
- 10 (6) For purposes of the hearing process, arrearages of support must be computed on the basis of  
11 the amount owed and unpaid on the date on which the obligor was served with the notice of intent to  
12 withhold income. When the department is enforcing a current support obligation, payment of the arrearage  
13 after service of the notice is not a basis for not initiating income withholding.
- 14 (7) In a case initiated because an arrearage has accrued or because additional income is being  
15 withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to  
16 withhold income, must be informed of the hearing decision on whether income withholding will take place.
- 17 (8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing  
18 or if the hearings examiner determines that the obligor owes a combination of unpaid support equal to or  
19 in excess of 1 month's support obligation or determines that a modification of an existing order is proper,  
20 the department shall proceed with the intended action in accordance with 40-5-415."

21

22 **Section 14.** Section 40-5-703, MCA, is amended to read:

23 **"40-5-703. Hearing -- order suspending license.** (1) To show cause why suspension of a license  
24 would not be appropriate, the obligor shall request a hearing from the support enforcement entity that  
25 issued the notice of intent to suspend the license. The request must be made within 60 days of the date  
26 of service of the notice.

27 (2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall  
28 schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. A  
29 court hearing may be conducted by teleconferencing methods. A department hearing must initially be  
30 conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At

1 the request of a party and upon a showing that the party's case was substantially prejudiced by the lack  
2 of an in-person hearing, the department ~~may~~ SHALL, following a teleconferencing hearing, grant a de novo  
3 in-person hearing. The support enforcement entity shall stay suspension of the license pending the outcome  
4 of the hearing.

5 (3) The only issues that may be determined in a hearing under this section are the amount of the  
6 support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the  
7 obligor has entered into a payment plan.

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

12 (5) If the support enforcement entity determines that the obligor owes a delinquency and that the  
13 obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending  
14 the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support  
15 enforcement entity shall send a copy of the order suspending a license to the licensing authority and the  
16 obligor.

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

19 (7) A determination made by the support enforcement entity under this part is independent of any  
20 proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."

21

22 **Section 15.** Section 40-5-809, MCA, is amended to read:

23 **"40-5-809. Effect of order on health benefit plans.** (1) The duties and responsibilities under a plan  
24 pursuant to this part apply equally to a union or employer that serves as the administrator of a plan for a  
25 parent who is a member or employee.

26 (2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may  
27 be submitted to the plan administrator by either parent, by the department, ~~or~~ by a third-party custodian,  
28 or by an employer-payor of either parent. The party submitting the order shall submit the child's name and  
29 birth date and the names and mailing addresses of the parents. If the child is a recipient of public  
30 assistance, the party submitting the order shall also submit the address of the department. If there is a

1 third-party custodian of the child, the address of the third-party custodian must also be submitted. A copy  
2 of a medical support order may be served on the plan administrator by certified mail.

3 (3) Presentation of the medical support order to the plan administrator authorizes each parent, the  
4 department, if the department has interest, or the third-party custodian to receive pertinent notices from  
5 the plan administrator and to freely communicate and generally interact with the plan administrator in all  
6 respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so  
7 personally.

8 (4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation  
9 of the order to the plan administrator binds the plan to enroll the child in the plan as provided by this part.

10 (5) If a health benefit plan is available through the obligated parent's employer or other payor of  
11 income, presentation of the medical support order to the payor binds the payor to enrollment of the child  
12 in the plan and to automatically deduct premium payments required by the plan from the obligated parent's  
13 income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

14 (6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily  
15 delay health benefit plan coverage for a child.

16 (b) If more than one plan is available to an obligated parent and the medical support order fails to  
17 specify a plan or combination of benefits to be provided for a child or if there has been a change in plans  
18 due to a change in employment of the obligated parent or for some other reason, the parties and the  
19 department shall apply the medical support order so as to provide the child with coverage under a plan that  
20 has a reasonable cost and that provides the child with benefits closest to those described in the order."  
21

22 **Section 16.** Section 40-5-824, MCA, is amended to read:

23 **"40-5-824. Expedited enforcement procedures.** (1) A parent, the department, or the third-party  
24 custodian may apply to the court for expedited enforcement procedures under this part. If the child receives  
25 medicaid, a parent or third-party custodian may apply to the department for and the department may on  
26 its own motion use expedited enforcement procedures under this part.

27 (2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent  
28 to appear and show cause why an order, penalty, fine, or any combination should not be determined,  
29 assessed, and entered under one or more provisions of this part. The obligated parent may appear at the  
30 hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order



1 must be issued if the tribunal finds that:

2 (a) a medical support obligation has been established by order of a tribunal or by a court or  
3 administrative agency of another state, territory, or Indian reservation;

4 (b) the obligated parent is liable for medical costs and expenses or premium payments under this  
5 part;

6 (c) a parent receives a reimbursement payment from individual insurance or a health benefit plan  
7 and fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the  
8 health service provider;

9 (d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian  
10 the parent's share of:

11 (i) copayments and deductibles required under the individual insurance or plan; or

12 (ii) costs and expenses not covered by individual insurance or a health benefit plan; or

13 (e) there are fines, penalties, or other financial sanctions that may be imposed under this part.

14 (3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice  
15 of the claim under this part. The obligated parent may pay the claim within 30 days after receiving the  
16 notice. A copy of the notice must be given to the other parent, to the department, if the department is not  
17 the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the  
18 third-party custodian. The other parent, the department, or the third-party custodian may participate in the  
19 proceedings as a party.

20 (4) An application for expedited enforcement may be based on any credible statements or evidence  
21 presented to the tribunal, including the sworn affidavit of:

22 (a) a health care provider who has provided care or benefits for the child;

23 (b) an authorized representative of the department, the health benefit plan, or the individual insurer;

24 (c) either parent of the child; or

25 (d) the third-party custodian of the child.

26 (5) The order to show cause must inform the obligated parent and any other party of the party's  
27 right to respond by affidavit. An affidavit may include written proof of payment. A hearing must be  
28 scheduled ~~within 15 days after the date of service of the order on the obligated parent.~~ A court hearing  
29 may be conducted by teleconferencing methods. A department hearing must initially be conducted by  
30 teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of

1 a party and upon a showing that the party's case was substantially prejudiced by the lack of an in-person  
 2 hearing, the department ~~may~~ SHALL, following a teleconferencing hearing, grant a de novo in-person  
 3 hearing. If an affidavit with written proof of payment is not received by the tribunal within 15 days and the  
 4 obligated parent does not appear at the hearing, judgment may be entered for the relief requested. If an  
 5 affidavit with written proof of payment is received but the obligated parent does not appear at the hearing,  
 6 the tribunal may resolve the issues on the basis of credible documents and affidavits submitted.

7 (6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly  
 8 rule upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of  
 9 the liability and the amount of the liability is not contested by a party to the proceedings.

10 (7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability  
 11 as an award against the liable parent. If requested to do so, the tribunal may make an award specifically  
 12 in favor of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied  
 13 bill of the health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical  
 14 support liability involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous  
 15 or in bad faith, the tribunal may impose sanctions against the party including an award of costs and  
 16 attorney fees.

17 (8) Awards under this section may be collected by any remedy available for the collection of  
 18 delinquent child support, but claims for current or past-due child support have priority.

19 (9) An award under this section is a final order and may be appealed if the tribunal is a court or  
 20 may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department."

21  
 22 **Section 17.** Section 71-3-302, MCA, is amended to read:

23 **"71-3-302. Priority in case of death of employer.** In case of the death of any employer, the wages  
 24 of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months  
 25 next preceding the death of the employer, in the amount actually owed, are preferred debts under  
 26 ~~72-3-807(1)(d)~~ (1)(e) and must be paid before other claims against the estate of the deceased person."

27  
 28 **Section 18.** Section 72-3-807, MCA, is amended to read:

29 **"72-3-807. Classification of claims as to priority of payment.** (1) If the applicable assets of the  
 30 estate are insufficient to pay all claims in full, the personal representative shall make payment in the

1 following order:

2 (a) costs and expenses of administration;

3 (b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of  
4 the last illness of the decedent, including compensation of persons attending ~~him~~ the decedent;

5 (c) federal estate and Montana state estate and inheritance taxes;

6 (d) debt for a current support obligation and past-due support for decedent's children pursuant to  
7 a support order as defined in 40-5-201;

8 ~~(e)~~ (e) debts with preference under federal and Montana law;

9 ~~(f)~~ (f) other federal and Montana state taxes;

10 ~~(g)~~ (g) all other claims.

11 (2) ~~No~~ A preference ~~shall~~ may not be given in the payment of any claim over any other claim of  
12 the same class, and a claim due and payable ~~shall~~ may not be entitled to a preference over claims not due."

13  
14 NEW SECTION. Section 19. Effective date. [This act] is effective on passage and approval.

15 -END-

## 1 HOUSE BILL NO. 168

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT LAWS; CLARIFYING  
6 THAT HEARINGS BY THE DEPARTMENT MAY BE BY TELECONFERENCING METHODS; ALLOWING  
7 SERVICE OF CERTAIN NOTICES BY CERTIFIED MAIL; REVISING ADMINISTRATIVE PATERNITY  
8 PROCESSES; CLARIFYING JUDICIAL REVIEW OF A CHILD SUPPORT ORDER; CHANGING THE DEFINITION  
9 OF "SUPPORT ORDER" AS IT PERTAINS TO WITHHOLDING; REVISING THE DEFINITION OF MISTAKE OF  
10 FACT FOR INCOME WITHHOLDING HEARING PURPOSES; CHANGING HEALTH INSURANCE PROVISIONS  
11 RELATING TO SUPPORT; REVISING PATERNITY PRESUMPTIONS; PROVIDING FOR PRIORITY OF SUPPORT  
12 OF A DECEDENT'S CHILDREN IN PROBATE OF A DECEDENT'S ESTATE; AMENDING SECTIONS 17-4-105,  
13 40-5-189, 40-5-201, 40-5-202, 40-5-225, 40-5-226, 40-5-231, 40-5-236, 40-5-253, 40-5-273, 40-5-403,  
14 40-5-412, 40-5-414, 40-5-703, 40-5-809, 40-5-824, 71-3-302, AND 72-3-807, MCA; AND PROVIDING  
15 AN IMMEDIATE EFFECTIVE DATE."

16  
17 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.**

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12 OF A DECEDENT'S CHILDREN IN PROBATE OF A DECEDENT'S ESTATE; AMENDING SECTIONS 17-4-105,  
13 40-5-189, 40-5-201, 40-5-202, 40-5-225, 40-5-226, 40-5-231, 40-5-236, 40-5-253, 40-5-273, 40-5-403,  
14 40-5-412, 40-5-414, 40-5-703, 40-5-809, 40-5-824, 71-3-302, AND 72-3-807, MCA; AND PROVIDING  
15 AN IMMEDIATE EFFECTIVE DATE."  
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
1819 **Section 1.** Section 17-4-105, MCA, is amended to read:

20 **"17-4-105. Authority to collect debt -- offsets.** (1) Once a debt of an agency has been transferred  
21 to the department, the department may collect it. The department may contract with commercial collection  
22 agents for recovery of debts owed to agencies.

23 (2) The department shall, when appropriate, offset any amount due an agency from a person or  
24 entity against any amount, including refunds of taxes, owing the person or entity by an agency. The  
25 department may not exercise this right of offset until the debtor has first been notified by the department  
26 and been given an opportunity for a hearing. An offset may not be made against any amount paid out as  
27 child support collected by the department of public health and human services. The department shall deduct  
28 from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the  
29 debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due  
30 the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of

1 child support and then in the manner determined appropriate by the department.

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

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

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

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

14 (4) (a) A debt owed to the department of public health and human services or being collected by  
15 the department of public health and human services on behalf of any person or agency may be offset by  
16 the department if the debt is being enforced or collected by the department of public health and human  
17 services under Title IV-D of the Social Security Act.

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

21 (c) Within 30 days following the notification provided for in subsection (2), the person owing a debt  
22 described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the  
23 department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the  
24 subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a  
25 decision made as a result of that proceeding has become final. The hearing must initially be conducted by  
26 teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act.  
27 At the request of a party and OR upon a showing that the party's case was substantially prejudiced by the  
28 lack of an in-person hearing, the department may SHALL, following a teleconferencing hearing, grant a de  
29 novo in-person hearing. The department of public health and human services shall adopt rules governing  
30 the hearing procedures.

1 (5) If the department determines that a person or entity has refused or neglected to file a claim  
2 within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of  
3 the person or entity. If the claim is approved by the department, the claim has the same force and effect  
4 as though filed by the person or entity. The amount due any person or entity from the state or any agency  
5 of the state is the net amount otherwise owing the person or entity after any offset, as provided in this  
6 section."

7  
8 **Section 2.** Section 40-5-189, MCA, is amended to read:

9 **"40-5-189. Procedure to contest validity or enforcement of registered order.** (1) A nonregistering  
10 party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing  
11 within 20 days after the date of mailing or personal service of notice of the registration. A court hearing  
12 may be conducted by teleconferencing methods. A department hearing must initially be conducted by  
13 teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of  
14 a party ~~and~~ OR upon a showing that the party's case was substantially prejudiced by the lack of an  
15 in-person hearing, the department ~~may~~ SHALL, following a teleconferencing hearing, grant a de novo  
16 in-person hearing. The nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to  
17 assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies  
18 being sought or the amount of any alleged arrearages.

19 (2) If the nonregistering party fails to contest the validity or enforcement of the registered order  
20 in a timely manner, the order is confirmed by operation of law.

21 (3) If a nonregistering party requests a hearing to contest the validity or enforcement of the  
22 registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties  
23 by first-class mail of the date, time, and place of the hearing."  
24

25 **Section 3.** Section 40-5-201, MCA, is amended to read:

26 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

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

30 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,



1 self-supporting, married, or a member of the armed forces of the United States; any person under 19 years  
2 of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity  
3 began prior to the person's 18th birthday and for whom:

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

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

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

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

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

12 (3) "Department" means the department of public health and human services.

13 (4) "Director" means the director of the department of public health and human services or the  
14 director's authorized representative.

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

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

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

20 (8) "Obligee" means:

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

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

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

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

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

1 (12) "Public assistance" means any type of monetary or other assistance for a child, including  
2 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom  
3 the child is living, if assistance has been furnished with respect to the child by a state or county agency  
4 of this state or any other state.

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

6 (a) the failure to provide for the medical, health, and support needs of a child under the laws of  
7 this or any other state or under a support order; or

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

11 (14) "Support order" means an order, whether temporary or final, 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 (i) a district court of this state;

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

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

20 (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 under the act."  
24

25 **Section 4.** Section 40-5-202, MCA, is amended to read:

26 **"40-5-202. Department of public health and human services -- powers and duties regarding**  
27 **collection of support debt.** (1) The department may take action under the provisions of this chapter, the  
28 abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part  
29 1, and other appropriate state and federal statutes to provide IV-D services if the department:

30 (a) receives a referral on behalf of the child from an agency providing services to the child under

1 the provisions of Title 41, Title 52, or Title 53;

2 (b) is providing services under 40-5-203; or

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

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

10 (3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department  
11 and its attorneys serve the public interest in ensuring that children are supported by their parents, rather  
12 than maintained by public assistance. The department does not represent the interests of any individual  
13 person, and its attorneys represent only the department. An attorney-client relationship is not created  
14 between department attorneys and any person or entity other than the department. The obligee, obligor,  
15 and child may obtain the services of a private attorney to represent their interests. The existence or  
16 appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the  
17 department's right to act or provide services under this chapter. This chapter does not require the  
18 department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or  
19 child.

20 (4) The department has the power of attorney to act in the name of any obligee to endorse and  
21 cash any drafts, checks, money orders, or other negotiable instruments received by the department on  
22 behalf of a child.

23 (5) (a) If the department is providing IV-D services, the department must be afforded notice and  
24 an opportunity to participate as an independent party in any proceeding relating to paternity, to termination  
25 of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether  
26 initiated by the obligee, the obligor, or the child.

27 (b) The notice must reasonably inform the department of the issues to be determined in the  
28 proceeding, the names of the parties and the child, and the identity and location of the tribunal in which  
29 the issues will be determined. The notice is for informational purposes only and is not intended as a  
30 substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal

1 jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment,  
2 decree, or order is void as to any interest of the department that is or may be affected by the agreement,  
3 judgment, decree, or order if the department was not joined as a party in the manner provided in the  
4 Montana Rules of Civil Procedure.

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

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

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

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

16 (6) (a) A When the department is providing services, a recipient or former recipient of public  
17 assistance who assigned support rights under ~~53-2-613~~ 42 U.S.C. 602(a)(26) or a collection agency acting  
18 on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that  
19 accrued after termination of public assistance. The recipient, former recipient, or collection agency may not  
20 commence or maintain an action against or make an agreement with the obligor to recover an assigned  
21 delinquent support amount unless the department, in writing:

22 (i) releases or relinquishes its assigned interest;

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

25 (iii) consents to the action or agreement.

26 (b) If a recipient, former recipient, or collection agency collects or receives value for any part of  
27 an assigned delinquent support amount and the department has not given its consent or released or  
28 relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt  
29 and full restitution to the department. If prompt and full restitution is not made, the department may send  
30 a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution

1 is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection  
2 agency is liable for damages equal to double the amount collected or value received. The amount of  
3 damages may be determined and assessed by the department under the contested case provisions of the  
4 Montana Administrative Procedure Act. The damages may be collected by the department by any method  
5 or remedy available for the enforcement of child support owed by an obligor parent.

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

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

11 (8) Unless the department has consented to the agreement in writing, if public assistance is being  
12 or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or  
13 order adopting the agreement does not act to reduce or terminate any rights of the department to establish  
14 a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or  
15 order purports to:

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

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

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

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

20 (i) with noncash contributions;

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

22 or

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

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

27 (10) The department is subrogated to the right of the child or obligee to maintain any civil action  
28 or execute any administrative remedy available under the laws of this or any other state to collect a support  
29 debt. This right of subrogation is in addition to and independent of the assignment under ~~53-2-613~~ 42  
30 U.S.C. 602(a)(26) and the support debt created by 40-5-221.

1 (11) If public assistance is being or has been paid, the department is subrogated to the debt created  
2 by a support order and any money judgment is considered to be in favor of the department. This  
3 subrogation is an addition to any assignment made under ~~53-2-613~~ 42 U.S.C. 602(a)(26) and applies to  
4 the lesser of:

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

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

7 (12) The department may adopt and enforce the rules necessary to carry out the provisions of this  
8 part.

9 (13) While providing services under this chapter and in order to carry out the purposes mentioned  
10 in this chapter, the department, through its director or the director's authorized representatives, may:

11 (a) administer oaths;

12 (b) certify official acts and records;

13 (c) issue investigative and hearing subpoenas;

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

15 (e) hold prehearing and settlement conferences;

16 (f) compel the attendance of witnesses and the production of books, accounts, documents, and  
17 evidence; ~~and~~

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

21 (h) perfect service of investigative and hearing subpoenas by certified mail or in the manner  
22 prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil  
23 Procedure.

24 (14) In addition to any other requirement for service provided by the Montana Rules of Civil  
25 Procedure, if a person is required to give notice to, serve, or provide a written response to the department  
26 under this chapter, the notice, service, or response must be made to the department's child support  
27 enforcement division.

28 (15) The department may collect any funds received under this chapter, and wrongfully retained,  
29 by the obligor through any remedy available for collection of child support."

30

1           **Section 5.** Section 40-5-225, MCA, is amended to read:

2           **"40-5-225. Notice of financial responsibility -- temporary and final support obligations --**  
3 **administrative procedure.** (1) (a) In the absence of a support order, the department may serve an obligor  
4 with a notice of financial responsibility alleging a child's need for support and the amount of the need and  
5 requiring the obligor to appear and show cause at a hearing held by the department why the obligor should  
6 not be finally ordered to pay the amount alleged in the notice.

7           (b) The notice must state:

8           (i) the names of the obligee and child;

9           (ii) the amount of current and future support to be paid each month for the child;

10           (iii) that if the obligor does not file a written answer within 20 days from the date of service or  
11 refusal of service, the amount in the notice must be finally ordered;

12           (iv) that the obligor is entitled to a fair hearing under 40-5-226.

13           (2) If, prior to the service of the notice under this section, the department has information  
14 concerning the obligor's financial condition, the department's allegation of the obligor's monthly support  
15 responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such  
16 information is unknown to the department, the allegations of the obligor's monthly support responsibility  
17 must be based on the greater of:

18           (a) the amount of public assistance payable under Title 53, chapter 4; or

19           (b) the alleged need.

20           (3) If the obligor objects to the notice, the obligor shall file a written answer with the department  
21 within 20 days from the date of service or refusal of service. If the department receives a timely answer,  
22 it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall  
23 order the obligor to pay the amount stated in the notice.

24           (4) (a) If a support action is pending in district court and a temporary or permanent support  
25 obligation has not been ordered, the department may issue to the obligor a notice of temporary support  
26 obligation.

27           (b) The notice must contain:

28           (i) the names of the child and the person or agency having the custodial care of the child;

29           (ii) an amount for temporary monthly support determined as provided in subsection (2);

30           (iii) a statement that the obligor may request a hearing at which the obligor may show that a

1 different support amount is appropriate or that establishment of a support obligation is inappropriate under  
 2 the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.

3 (iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice  
 4 or the order for a temporary support order will be entered in the amount stated in the notice; and

5 (v) a statement that the temporary support order will terminate upon the entry of a district court  
 6 support order. If the district court order is retroactive, any amount paid for a particular period under the  
 7 temporary support order must be credited against the amounts due under the district court order for the  
 8 same period, but excess amounts may not be refunded. If the district court determines that a periodic  
 9 support obligation is not proper, any amount paid under the temporary support order must be refunded to  
 10 the obligor.

11 (5) (a) If a temporary support order is entered or if proceedings are commenced under this section  
 12 for a married obligor, the department shall vacate any support order or dismiss any proceeding under this  
 13 part if it finds that the parties to the marriage have:

14 (i) reconciled without the marriage having been dissolved;

15 (ii) made joint application to the department to vacate the order or dismiss the proceeding; and

16 (iii) provided proof that the marriage has been resumed.

17 (b) The department may not vacate a support order or dismiss a proceeding under this subsection  
 18 (5) if it determines that the rights of a third person or the child are affected. The department may issue a  
 19 new notice under this section if the parties subsequently separate.

20 (6) ~~Any A~~ notice of financial responsibility and the notice of temporary support obligation ~~must~~ may  
 21 be served either by certified mail or in the same manner prescribed for the service of a summons in civil  
 22 action in accordance with the Montana Rules of Civil Procedure."

23

24 **Section 6.** Section 40-5-226, MCA, is amended to read:

25 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**  
 26 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

27 (2) If a hearing is requested, it must ~~be scheduled within 20 days. The hearing must initially be~~  
 28 conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At  
 29 the request of a party and OR upon a showing that the party's case was substantially prejudiced by the  
 30 lack of an in-person hearing, the hearings officer may SHALL, following a teleconferencing hearing, grant



1 a de novo in-person hearing.

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

5 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title  
6 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

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

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

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

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

30 (6) ~~Within 20 days of the hearing, the~~ THE hearings officer shall enter a final decision and order.

1 The determination of the hearings officer constitutes a final agency decision, subject to judicial review under  
2 40-5-253 and the provisions of the Montana Administrative Procedure Act.

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

6 (8) A support debt determined pursuant to this section is subject to collection action without  
7 further necessity of action by the hearings officer.

8 (9) A support debt or a support responsibility determined under this part by reason of the obligor's  
9 failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon  
10 the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of  
11 the grounds enumerated in the Montana Rules of Civil Procedure.

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

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

25 (12) The hearings officer may:

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

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

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

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

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

3 (13) A contempt occurs whenever:

4 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer  
5 or of the department;

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

8 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing  
9 fails to do so;

10 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply  
11 with discovery requests; or

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

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

23 (15) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and  
24 take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor  
25 fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings  
26 officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than  
27 \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to  
28 judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

29 (16) An amount imposed as a penalty may be collected by any remedy available to the department  
30 for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247,

1 income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17,  
2 chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs  
3 of administrative hearings conducted under this chapter.

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

7  
8 **Section 7.** Section 40-5-231, MCA, is amended to read:

9 **"40-5-231. Jurisdiction and venue.** (1) For purposes of an administrative action brought under this  
10 part, personal jurisdiction is established in the department over any individual or the individual's guardian  
11 or conservator if:

12 (a) the individual is personally or by certified mail served with notice within this state;

13 (b) the individual submits to the jurisdiction of this state by consent, by entering a general  
14 appearance, or by filing a responsive document that has the effect of waiving any contest to personal  
15 jurisdiction;

16 (c) the individual resided with the child in this state;

17 (d) the individual resided in this state and provided prenatal expenses or support for the child;

18 (e) the child resides in this state as a result of the acts or directives of the individual;

19 (f) the individual engaged in sexual intercourse in this state and the child may have been conceived  
20 by the act of intercourse; or

21 (g) there is any other basis consistent with the constitutions of this state and the United States  
22 for the exercise of personal jurisdiction.

23 (2) Personal jurisdiction over the individuals described in subsection (1) may be acquired by  
24 personal service or by service of notice by certified mail.

25 (3) If the child or either parent resides in this state, a hearing under this part may be held in the  
26 county where:

27 (a) the child resides;

28 (b) either parent resides; or

29 (c) the department or any of its regional offices is located."  
30

1           **Section 8.** Section 40-5-236, MCA, is amended to read:

2           **"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other**  
3 **matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the  
4 alleged father and the alleged father continues to deny paternity, the alleged father shall file a written  
5 objection with the department within 20 days after service of the paternity blood test results specifically  
6 requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the  
7 department shall refer the matter to the district court for a determination based on the contents of the  
8 administrative hearing record and any further evidence that may be produced at trial. Except as otherwise  
9 provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to  
10 Title 40, chapter 6, part 1.

11           (2) The administrative record must include:

12           (a) a copy of the notice of paternity determination and the return of service of the notice;

13           (b) the alleged father's written denial of paternity, if any;

14           (c) the transcript of the administrative hearing;

15           (d) the paternity blood test results and any report of an expert based on the results; and

16           (e) any other relevant information.

17           (3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties  
18 as if they had been served with a summons and complaint. The department shall serve written notice upon  
19 the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district  
20 court for determination.

21           (4) In a proceeding in the district court, the department shall appear on the issue of paternity only.  
22 The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that  
23 an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a  
24 necessary party, but either may testify as a witness.

25           (5) No other matter may be joined with an action to determine the existence or nonexistence of  
26 the parent and child relationship under this section. The parties shall institute an independent action to  
27 address other issues, including visitation and custody.

28           (6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees  
29 for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."  
30

1           **Section 9.** Section 40-5-253, MCA, is amended to read:

2           **"40-5-253. Administrative findings and order -- administrative remedies -- judicial review.** (1) It  
3 is the intent of this part that administrative findings and orders be subject to judicial review, but  
4 administrative remedies must be exhausted prior to judicial review. The administrative procedures described  
5 in this part are subject to review in the appropriate district court. ~~Such~~ Except as provided in subsections  
6 (3) through (5), the review must be conducted pursuant to the Montana Administrative Procedure Act.  
7 Upon a showing by the department that administrative remedies have not been exhausted, the district court  
8 shall refuse review until ~~such~~ the remedies are exhausted.

9           (2) ~~Nothing in this~~ This part may not be construed to abridge or in any way affect the obligor's  
10 right to counsel during any and all judicial or administrative proceedings pursuant to this part.

11           (3) A petition for judicial review is an original action and may not be filed under a preexisting cause  
12 number or joined with any other action.

13           (4) A summons must be issued and served under Rule 4, Montana Rules of Civil Procedure, upon  
14 the department and each party along with the petition for judicial review. The district court does not obtain  
15 jurisdiction unless the petition for judicial review is served on all parties within 30 days after the petition  
16 is filed with the district court.

17           (5) The district court shall set a briefing schedule for a petition for judicial review. A reference in  
18 a brief to the administrative record must be to a particular part of the record, suitably designated, and to  
19 specific pages of that part of the record. Intelligible abbreviations may be used. A reference to an exhibit  
20 must be to the pages of the transcript on which the exhibit is identified, offered in evidence, and received  
21 or rejected. After briefs have been filed, and upon motion of a party, the district court may order oral  
22 argument."

23

24           **Section 10.** Section 40-5-273, MCA, is amended to read:

25           **"40-5-273. Administrative review of child support orders -- modifying orders.** (1) A review  
26 application setting forth facts meeting any of the criteria for review of a child support order established in  
27 40-5-272 must be scheduled for an administrative hearing, ~~and a hearings officer must be appointed by the~~  
28 ~~department~~ review. Unless the ~~hearings officer~~ department determines under rules of the department that  
29 an in-person ~~hearing~~ review is necessary, the ~~hearing~~ review must be conducted by ~~telephone conference~~  
30 teleconferencing methods. ~~The order scheduling the hearing~~ A notice that an administrative review will be

1 ~~conducted~~ must be served on the obligor and the obligee ~~at least 60 days before the a hearing~~. The order  
2 notice must include the following information as an exception to 2-4-601:

3 ~~(a) the date and time for the hearing and, if appropriate, the place for the hearing;~~

4 ~~(b)(a)~~ a statement of the purpose, objectives, and possible consequences of the review;

5 ~~(c)(b)~~ a statement of the right of the obligor and the obligee to request the ~~hearings officer~~  
6 department to issue subpoenas compelling the appearance of witnesses and the production of documents  
7 for ~~the a~~ hearing; and

8 ~~(d)(c)~~ a requirement that the obligor and the obligee provide the ~~hearings officer~~ department with  
9 telephone numbers at which they and their witnesses may be contacted for the hearing review.

10 (2) The ~~hearings officer~~ department may issue an order commanding the obligor or the obligee, or  
11 both, to produce financial information. The order must be personally served with the ~~order scheduling the~~  
12 hearing notice that a review will be conducted. The ~~hearings officer~~ department may also issue subpoenas  
13 ordering the ~~department or other~~ parties to produce information in their possession about the obligor and  
14 the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained  
15 by the ~~hearings officer~~ department must be provided to the ~~department and other parties prior to the~~ before  
16 a hearing.

17 (3) The requested modification of the order must be determined on the evidence submitted to the  
18 ~~hearings officer~~ department under the following conditions:

19 (a) If an applicant other than the department fails to provide a telephone number for the hearing  
20 review or fails to be at the number provided when telephoned for the hearing review, the failure ~~is~~ may be  
21 considered a withdrawal of the application.

22 (b) If a party other than the applicant fails to provide a telephone number for the hearing review  
23 or fails to be at the number provided when telephoned for the hearing review, the failure is considered to  
24 mean that the party does not oppose the modification.

25 (c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide  
26 a telephone number for the hearing review or fails to be at the number provided when telephoned for the  
27 hearing review, the failure ~~is~~ may be considered an admission that the party or parties do not oppose the  
28 modification.

29 (4) (A) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c)  
30 becomes final within ~~40~~ 30 days of issuance unless a party provides the hearings officer an affidavit

1 showing good cause for failure to provide a telephone number or failure to be available for the hearing when  
2 telephoned.

3 (B) A PROPOSED MODIFICATION CONSENT ORDER OR NOTICE OF PROPOSED MODIFICATION  
4 BECOMES FINAL 30 DAYS AFTER ISSUANCE UNLESS DURING THAT PERIOD A PARTY FILES WITH THE  
5 DEPARTMENT A WRITTEN REQUEST FOR FURTHER ADMINISTRATIVE PROCEEDINGS.

6 (C) THE DEPARTMENT SHALL GRANT A MODIFICATION HEARING IF IT RECEIVES A TIMELY  
7 WRITTEN REQUEST BY A PARTY AGGRIEVED BY THE DEPARTMENT'S DETERMINATION. THE HEARING  
8 IS SUBJECT TO THE PROVISIONS OF THIS SECTION RELATING TO A REVIEW. THE DEPARTMENT MAY  
9 ADOPT RULES REGULATING THE FAIR AND EFFICIENT CONDUCT OF THE HEARING. UNLESS THE  
10 DEPARTMENT DETERMINES UNDER DEPARTMENT RULES THAT AN IN-PERSON HEARING IS  
11 NECESSARY, THE HEARING MUST BE CONDUCTED BY TELECONFERENCING METHODS.

12 (5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the  
13 department, and the department is not considered a party to the action.

14 (6) (a) In addition to the powers and duties provided by other law, the ~~hearings officer~~ department  
15 shall, to ensure the equitable determination of a support obligation, during a review hearing:

- 16 (i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;  
17 (ii) introduce evidence on behalf of the parties;  
18 (iii) apply the guidelines to the facts elicited from the ~~hearing review~~; and  
19 (iv) inquire as to any circumstances that may require variance from the guidelines.

20 (b) If a party is represented by legal counsel, the ~~hearings officer~~ department may allow the counsel  
21 to present that party's case.

22 (7) The ~~hearings officer~~ department shall determine a support obligation in accordance with the  
23 guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section  
24 may not be contested before entry of the final department order. If the ~~hearings officer~~ department  
25 determines that the difference between the existing support order and the amount determined under the  
26 guidelines is negligible under rules issued by the department, the modifying order may not change the  
27 amount of the support obligation. Even though the review may indicate that a modification of the support  
28 obligation is appropriate, the department may not modify the support order if the ~~hearings officer~~  
29 department determines, after the review ~~hearing~~, that to do so would not be in the best interests of the  
30 child under the rules issued by the department. An increase in child support is presumed to be in the best



1 interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would  
 2 not be in the best interests of the child. The modifying order ~~must~~ may prospectively modify the underlying  
 3 support order from the date of service of ~~the order scheduling the hearing~~ a notice that an administrative  
 4 review will be conducted under this section.

5 (8) ~~The hearings officer shall make a written determination whether health insurance is available~~  
 6 ~~to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer~~  
 7 ~~determines health insurance is available to the child of the obligor, the hearings officer shall issue a~~  
 8 ~~modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearings~~  
 9 ~~officer determines that health insurance is not available to the child of the obligor, he shall issue a modifying~~  
 10 ~~order containing the notices provided in subsection (9). An order to provide health insurance is presumed~~  
 11 ~~to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee~~  
 12 ~~demonstrates it would not be in the best interests of the child. The department shall consider whether or~~  
 13 ~~not health insurance for the child is available and shall include an appropriate requirement for the provision~~  
 14 ~~of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.~~

15 (9) In addition to complying with other requirements of law, the modifying order must include the  
 16 following notices and warnings:

17 (a) that the obligor shall keep the department informed of the name and address of ~~his~~ the obligor's  
 18 current employer and information on health insurance available to the obligor through the obligor's  
 19 employment or other group insurance; and

20 ~~(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it~~  
 21 ~~is available through the obligor's employment or other group insurance; and~~

22 ~~(c)~~ (b) that the modifying order is subject to future administrative review and modification by the  
 23 department upon the request of the department or a party under 40-5-271 through 40-5-273 when the  
 24 department is providing services under IV-D.

25 (10) ~~Orders~~ An order entered under this section ~~are~~ by the department is a final agency decision  
 26 decision, subject to judicial review pursuant to the Montana Administrative Procedure Act, except as  
 27 provided in 40-5-253. All orders An order entered under this section must notify the parties that the order  
 28 is subject to judicial review under Title 2, chapter 4, part 7. A final order entered under a stipulation of  
 29 parties waives the stipulating parties' right to judicial review.

30 (11) The parties to the support order and the department when it is providing services under IV-D

1 may enforce the support order or modify that order independently, as provided in 40-4-208 and  
2 53-2-613(4)(d)."

3

4 **Section 11.** Section 40-5-403, MCA, is amended to read:

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

6 (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and  
7 signed by the department in the case of an assignment of rights under 53-2-613, that has been approved  
8 and entered in the record of the court or administrative authority issuing or modifying the support order.

9 (2) "Department" means the department of public health and human services provided for in  
10 2-15-2201.

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

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

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

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

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

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

23 (7) "Support order" ~~means an order of the district court of the state of Montana, an order of a~~  
24 ~~court of appropriate jurisdiction of another state, an administrative order established pursuant to~~  
25 ~~proceedings under part 2 of this chapter, or an order established by administrative hearing process of an~~  
26 ~~agency of another state with functions similar to those of the department set forth in part 2 of this chapter,~~  
27 ~~that provides a set and determinable amount for temporary or final periodic payment of funds for the~~  
28 ~~support of a child. Support order further includes the following:~~

29 (a) ~~an order for reimbursement of public assistance money paid by a public agency for the benefit~~  
30 ~~of a minor child;~~

1 ~~(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial~~  
 2 ~~parent of a child for whom child support is awarded under the same order; and~~

3 ~~(c) an order requiring payment of interest due on unpaid judgments for child support~~ has the  
 4 meaning provided in 40-5-201."

5  
 6 **Section 12.** Section 40-5-412, MCA, is amended to read:

7 **"40-5-412. Delinquency income withholding.** (1) In the case of support orders not subject to  
 8 immediate income withholding under 40-5-411, including cases in which the court or administrative  
 9 authority has made a finding of good cause or determines that an alternative arrangement exists, the  
 10 income of the obligor is subject to withholding under this part beginning on the date on which the obligor  
 11 is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's  
 12 support payment. Intervening agreements or orders establishing a schedule for payment of delinquent  
 13 support do not prevent income withholding under this part.

14 (2) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without  
 15 regard to whether there is an arrearage, on the earlier of:

16 (a) the date the obligor requests that withholding begin; or

17 (b) at the request of the obligee if the obligor is found, after an opportunity for hearing under  
 18 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

19 (3) To accomplish the purpose of subsection (1), the department shall monitor all support payments  
 20 not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice  
 21 to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1  
 22 month's support payment to pay all support through the department, notwithstanding a court order  
 23 directing payments to be made to the obligee or clerk of court.

24 (4) The only basis for contesting withholding under this section is a mistake of fact, which does  
 25 not include a mistake of fact relating to establishment of custody and visitation but includes a mistake:

26 (a) concerning the obligor's identity;

27 (b) concerning the existence of the support obligation;

28 (c) concerning the amount of support to be paid;

29 (d) in the determination that the delinquent support amounts owed are equal to or greater than 1  
 30 month's support payment;

- 1 (e) in computation of delinquent support amounts owed; or  
2 (f) in the allegation that the obligor is in default of an alternative agreement."

3

4 **Section 13.** Section 40-5-414, MCA, is amended to read:

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

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

13 (3) ~~The administrative hearing must initially be held by teleconferencing methods unless the obligor~~  
14 ~~or the department expressly requests an in-person hearing before the hearings examiner and is subject to~~  
15 the Montana Administrative Procedure Act. At the request of a party and OR upon a showing that the  
16 party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer may  
17 SHALL, following a teleconferencing hearing, grant a de novo in-person hearing.

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

19 (a) the initiation of delinquency income withholding by the department and the modification of an  
20 existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the  
21 obligor fails to appear at the scheduled hearing. However, in a proceeding to initiate income withholding,  
22 if the obligor is only contesting an arrearage amount and is not contesting withholding for current support,  
23 income withholding for current support is not stayed. In a proceeding to modify an existing order, income  
24 withholding under the existing order to withhold is not stayed.

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

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

29 (a) the obligor fails to file a written request for hearing with the department within the specified  
30 10-day period;

- 1 (b) the obligor fails to appear at a scheduled hearing;
- 2 (c) the hearings examiner determines from the evidence that the obligor owes unpaid support equal  
3 to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and  
4 adjudged to be a fixed and certain sum;
- 5 (d) there is an existing order to withhold and if the hearings examiner determines from the evidence  
6 that the obligor owes new or additional amounts in arrears; or
- 7 (e) in cases in which income withholding is being initiated at the request of an obligee without  
8 regard to whether there is an arrearage, the hearings examiner determines from the evidence that the  
9 obligor did not meet the terms of the alternative arrangement.
- 10 (6) For purposes of the hearing process, arrearages of support must be computed on the basis of  
11 the amount owed and unpaid on the date on which the obligor was served with the notice of intent to  
12 withhold income. When the department is enforcing a current support obligation, payment of the arrearage  
13 after service of the notice is not a basis for not initiating income withholding.
- 14 (7) In a case initiated because an arrearage has accrued or because additional income is being  
15 withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to  
16 withhold income, must be informed of the hearing decision on whether income withholding will take place.
- 17 (8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing  
18 or if the hearings examiner determines that the obligor owes a combination of unpaid support equal to or  
19 in excess of 1 month's support obligation or determines that a modification of an existing order is proper,  
20 the department shall proceed with the intended action in accordance with 40-5-415."

21

22 **Section 14.** Section 40-5-703, MCA, is amended to read:

23 **"40-5-703. Hearing -- order suspending license.** (1) To show cause why suspension of a license  
24 would not be appropriate, the obligor shall request a hearing from the support enforcement entity that  
25 issued the notice of intent to suspend the license. The request must be made within 60 days of the date  
26 of service of the notice.

27 (2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall  
28 schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. A  
29 court hearing may be conducted by teleconferencing methods. A department hearing must initially be  
30 conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At

1 the request of a party and OR upon a showing that the party's case was substantially prejudiced by the  
 2 lack of an in-person hearing, the department may SHALL, following a teleconferencing hearing, grant a de  
 3 novo in-person hearing. The support enforcement entity shall stay suspension of the license pending the  
 4 outcome of the hearing.

5 (3) The only issues that may be determined in a hearing under this section are the amount of the  
 6 support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the  
 7 obligor has entered into a payment plan.

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

12 (5) If the support enforcement entity determines that the obligor owes a delinquency and that the  
 13 obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending  
 14 the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support  
 15 enforcement entity shall send a copy of the order suspending a license to the licensing authority and the  
 16 obligor.

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

19 (7) A determination made by the support enforcement entity under this part is independent of any  
 20 proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."  
 21

22 **Section 15.** Section 40-5-809, MCA, is amended to read:

23 **"40-5-809. Effect of order on health benefit plans.** (1) The duties and responsibilities under a plan  
 24 pursuant to this part apply equally to a union or employer that serves as the administrator of a plan for a  
 25 parent who is a member or employee.

26 (2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may  
 27 be submitted to the plan administrator by either parent, by the department, ~~or~~ by a third-party custodian,  
 28 or by an employer-payor of either parent. The party submitting the order shall submit the child's name and  
 29 birth date and the names and mailing addresses of the parents. If the child is a recipient of public  
 30 assistance, the party submitting the order shall also submit the address of the department. If there is a

1 third-party custodian of the child, the address of the third-party custodian must also be submitted. A copy  
2 of a medical support order may be served on the plan administrator by certified mail.

3 (3) Presentation of the medical support order to the plan administrator authorizes each parent, the  
4 department, if the department has interest, or the third-party custodian to receive pertinent notices from  
5 the plan administrator and to freely communicate and generally interact with the plan administrator in all  
6 respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so  
7 personally.

8 (4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation  
9 of the order to the plan administrator binds the plan to enroll the child in the plan as provided by this part.

10 (5) If a health benefit plan is available through the obligated parent's employer or other payor of  
11 income, presentation of the medical support order to the payor binds the payor to enrollment of the child  
12 in the plan and to automatically deduct premium payments required by the plan from the obligated parent's  
13 income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

14 (6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily  
15 delay health benefit plan coverage for a child.

16 (b) If more than one plan is available to an obligated parent and the medical support order fails to  
17 specify a plan or combination of benefits to be provided for a child or if there has been a change in plans  
18 due to a change in employment of the obligated parent or for some other reason, the parties and the  
19 department shall apply the medical support order so as to provide the child with coverage under a plan that  
20 has a reasonable cost and that provides the child with benefits closest to those described in the order."  
21

22 **Section 16.** Section 40-5-824, MCA, is amended to read:

23 **"40-5-824. Expedited enforcement procedures.** (1) A parent, the department, or the third-party  
24 custodian may apply to the court for expedited enforcement procedures under this part. If the child receives  
25 medicaid, a parent or third-party custodian may apply to the department for and the department may on  
26 its own motion use expedited enforcement procedures under this part.

27 (2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent  
28 to appear and show cause why an order, penalty, fine, or any combination should not be determined,  
29 assessed, and entered under one or more provisions of this part. The obligated parent may appear at the  
30 hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order

1 must be issued if the tribunal finds that:

2 (a) a medical support obligation has been established by order of a tribunal or by a court or  
3 administrative agency of another state, territory, or Indian reservation;

4 (b) the obligated parent is liable for medical costs and expenses or premium payments under this  
5 part;

6 (c) a parent receives a reimbursement payment from individual insurance or a health benefit plan  
7 and fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the  
8 health service provider;

9 (d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian  
10 the parent's share of:

11 (i) copayments and deductibles required under the individual insurance or plan; or

12 (ii) costs and expenses not covered by individual insurance or a health benefit plan; or

13 (e) there are fines, penalties, or other financial sanctions that may be imposed under this part.

14 (3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice  
15 of the claim under this part. The obligated parent may pay the claim within 30 days after receiving the  
16 notice. A copy of the notice must be given to the other parent, to the department, if the department is not  
17 the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the  
18 third-party custodian. The other parent, the department, or the third-party custodian may participate in the  
19 proceedings as a party.

20 (4) An application for expedited enforcement may be based on any credible statements or evidence  
21 presented to the tribunal, including the sworn affidavit of:

22 (a) a health care provider who has provided care or benefits for the child;

23 (b) an authorized representative of the department, the health benefit plan, or the individual insurer;

24 (c) either parent of the child; or

25 (d) the third-party custodian of the child.

26 (5) The order to show cause must inform the obligated parent and any other party of the party's  
27 right to respond by affidavit. An affidavit may include written proof of payment. A hearing must be  
28 scheduled ~~within 15 days after the date of~~ service of the order on the obligated parent. A court hearing  
29 may be conducted by teleconferencing methods. A department hearing must initially be conducted by  
30 teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of



1 a party and OR upon a showing that the party's case was substantially prejudiced by the lack of an  
 2 in-person hearing, the department may SHALL, following a teleconferencing hearing, grant a de novo  
 3 in-person hearing. If an affidavit with written proof of payment is not received by the tribunal within 15  
 4 days and the obligated parent does not appear at the hearing, judgment may be entered for the relief  
 5 requested. If an affidavit with written proof of payment is received but the obligated parent does not appear  
 6 at the hearing, the tribunal may resolve the issues on the basis of credible documents and affidavits  
 7 submitted.

8 (6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly  
 9 rule upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of  
 10 the liability and the amount of the liability is not contested by a party to the proceedings.

11 (7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability  
 12 as an award against the liable parent. If requested to do so, the tribunal may make an award specifically  
 13 in favor of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied  
 14 bill of the health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical  
 15 support liability involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous  
 16 or in bad faith, the tribunal may impose sanctions against the party including an award of costs and  
 17 attorney fees.

18 (8) Awards under this section may be collected by any remedy available for the collection of  
 19 delinquent child support, but claims for current or past-due child support have priority.

20 (9) An award under this section is a final order and may be appealed if the tribunal is a court or  
 21 may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department."

22

23 **Section 17.** Section 71-3-302, MCA, is amended to read:

24 "**71-3-302. Priority in case of death of employer.** In case of the death of any employer, the wages  
 25 of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months  
 26 next preceding the death of the employer, in the amount actually owed, are preferred debts under  
 27 72-3-807~~(4)~~~~(4)~~(1)(e) and must be paid before other claims against the estate of the deceased person."

28

29 **Section 18.** Section 72-3-807, MCA, is amended to read:

30 "**72-3-807. Classification of claims as to priority of payment.** (1) If the applicable assets of the

1 estate are insufficient to pay all claims in full, the personal representative shall make payment in the  
2 following order:

3 (a) costs and expenses of administration;

4 (b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of  
5 the last illness of the decedent, including compensation of persons attending ~~him~~ the decedent;

6 (c) federal estate and Montana state estate and inheritance taxes;

7 (d) debt for a current support obligation and past-due support for decedent's children pursuant to  
8 a support order as defined in 40-5-201;

9 ~~(d)~~(e) debts with preference under federal and Montana law;

10 ~~(e)~~(f) other federal and Montana state taxes;

11 ~~(f)~~(g) all other claims.

12 (2) ~~No A preference shall~~ may not be given in the payment of any claim over any other claim of  
13 the same class, and a claim due and payable ~~shall~~ may not be entitled to a preference over claims not due."

14

15 NEW SECTION. Section 19. Effective date. [This act] is effective on passage and approval.

16

-END-