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Senate BILL NO. 288
V. Valkeburg

INTRODUCED BY _____
A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING SELF-SUFFICIENCY TRUSTS FROM LIENS IMPOSED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE EXTENT PERMITTED BY FEDERAL LAW; AMENDING SECTIONS 40-5-242, 40-5-248, 53-2-612, AND 53-6-143, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 40-5-242, MCA, is amended to read:

"40-5-242. Notice of support lien -- civil liability upon failure to honor support lien or to comply with warrant for distraint. (1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law. Except as provided in subsections (1)(a) and (1)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or the aid to families with dependent children program.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(2) Except as provided in subsection (3), a person or entity is liable to the department in an amount

1 equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property
2 subject to a support lien or distrained by a warrant for distraint, whichever is less, together with costs,
3 interest, and reasonable attorney fees, if the person or entity:

4 (a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support
5 lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the
6 support lien; or

7 (b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant
8 for distraint by a sheriff or levying officer under the provisions of 40-5-247.

9 (3) A person or entity is not liable to the department under this section when:

10 (a) a written release or waiver of the support lien or warrant for distraint issued by the department
11 has been delivered to the person or entity;

12 (b) a determination has been made in an adjudicative proceeding, either administrative or judicial,
13 that a support lien does not exist or that the lien has been satisfied; or

14 (c) the property subject to a support lien has been transferred to, paid over to, or repossessed by
15 a person or entity holding:

16 (i) a prior perfected lien;

17 (ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

18 (iii) a perfected purchase money security interest, as defined by 30-9-107."
19

20 **Section 2.** Section 40-5-248, MCA, is amended to read:

21 **"40-5-248. Lien against real and personal property -- effect of lien -- interest -- warrant for**
22 **distrain.** (1) There is a support lien on the real and personal property of an obligor:

23 (a) when the department has entered a final decision in a contested case under this chapter that
24 finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

25 (b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes
26 a sum certain amount of delinquent support.

27 (2) A support lien is for the amount required to satisfy:

28 (a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum
29 certain support debt included in any support order registered under 40-5-271;

30 (b) interest claimed under this section; and

1 (c) any fees that may be due under 40-5-210.

2 (3) A support lien has the priority of a secured creditor from the date the lien is perfected as
3 provided by this section; however, the lien is subordinate to:

4 (a) any prior perfected lien or security interest;

5 (b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

6 (c) any perfected purchase money security interest, as defined in 30-9-107.

7 (4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or
8 until 2 years after the child to whom the support lien is related attains the age of majority, whichever
9 occurs first.

10 (5) The lien applies to all real and personal property owned by the obligor, if it can be located in
11 the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except
12 as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon
13 a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a
14 self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

15 (a) The department may impose a lien under this section upon a self-sufficiency trust or upon the
16 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is
17 required by federal law to recover or collect from the trust or its assets as a condition of receiving federal
18 financial participation for the child support enforcement program or the aid to families with dependent
19 children program.

20 (b) To the extent otherwise permitted by this section, the department is not precluded from
21 asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the
22 trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any
23 transfer of the property to the trust is subject to the lien.

24 (6) The department shall keep a record of support liens asserted under this section in the registry
25 of support orders established by 40-5-271.

26 (7) A support lien is perfected:

27 (a) as to real property, upon filing a notice of support lien with the clerk of the district court in the
28 county or counties in which the real property is or may be located at the time of filing or at any time in the
29 future;

30 (b) as to motor vehicles or other items for which a certificate of ownership is issued by the

1 department of justice, upon filing a notice of support lien with the department of justice in accordance with
2 the provisions of Titles 23 and 61;

3 (c) as to all other personal property, upon filing a notice of support lien in the place required to
4 perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as
5 appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of
6 support lien were a financing statement within the meaning of the Uniform Commercial Code.

7 (8) A buyer for value of an obligor's personal property, other than motor vehicles and other items
8 for which a certificate of ownership is issued by the department of justice, who buys in good faith and
9 without knowledge of the support lien takes the property free of the support lien.

10 (9) (a) The department may charge interest on the support lien at the rate of 1% per month.

11 (b) Interest accrues at the close of the business day on the last day of each month and is
12 calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end
13 of the day, by the applicable rate of interest.

14 (c) A provision of this section may not be construed to require the department to maintain interest
15 balance due accounts. The department may waive interest if waiver would facilitate the collection of the
16 debt.

17 (d) Interest under this subsection (9) is in addition to and not in substitution for any other interest
18 accrued or accruing under any other provision of law.

19 (10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the
20 department shall take all necessary steps to release the support lien.

21 (b) Upon receiving partial payment of the support lien or if the department determines that a release
22 or partial release of the lien will facilitate the collection of support arrearages, the department may release
23 or partially release the support lien. The department may release the support lien if it determines that the
24 lien is unenforceable.

25 (11) A support lien under this section is in addition to any other lien created by law.

26 (12) A support lien under this section may not be discharged in bankruptcy.

27 (13) Support liens provided for by this section may be enforced or collected through the warrant
28 for distraint provided for by 40-5-247."

29

30 **Section 3.** Section 53-2-612, MCA, is amended to read:

1 **"53-2-612. Lien of department or county upon third-party recoveries.** (1) Upon notice by the
2 department, a county, or the recipient to a third party or ~~his~~ the third party's insurer as provided in
3 subsection (5)(b), the department or county has a lien upon all money paid by a third party or ~~his~~ the third
4 party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or
5 compensation for personal injury, disease, illness, or disability to the extent that the department or county
6 has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or
7 disability.

8 (2) The department or county may, in the name of the recipient on whose behalf medical assistance
9 has been paid by the department or county, commence and prosecute to final conclusion any action ~~which~~
10 that may be necessary to recover from a third party or ~~his~~ the third party's insurer compensation or
11 damages for medical assistance paid by the department or county on behalf of the recipient. This section
12 does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages
13 or compensation in ~~his~~ the recipient's own name in accordance with the provisions of this section.

14 (3) (a) The lien:

15 (i) applies to all money paid by a third party or ~~his~~ a third party's insurer regardless of whether the
16 recovery is allocated by the parties or a court to any particular type or element of damages; and

17 (ii) is subordinate to the lien of an attorney under 37-61-420.

18 (b) Unless specifically provided by law, the recipient's right to recover damages or compensation
19 from a third party or ~~his~~ a third party's insurer may not be reduced or denied on the ground that the
20 recipient's costs of medical treatment and medical-related services have been paid by the department or
21 county under any public assistance program.

22 (c) From the amount collected by the department, county, or recipient from legal proceedings or
23 as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the
24 department or county and the recipient agree to a different settlement, the amount previously paid as
25 medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be
26 deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

27 (d) In all cases of payment to the department or county out of an amount collected from a third
28 party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of
29 attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required
30 to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of

1 which the department or county receives full or partial payment of its lien.

2 (e) Except as provided in subsections (3)(e)(i) and (3)(e)(ii), the department may not impose a lien
3 under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon
4 the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

5 (i) The department may impose a lien under this section upon a self-sufficiency trust or upon the
6 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is
7 required by federal law to recover or collect from the trust or its assets as a condition of receiving federal
8 financial participation for the medicaid program.

9 (ii) To the extent otherwise permitted by this section, the department is not precluded from
10 asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the
11 trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any
12 transfer of the property to the trust is subject to the lien.

13 (4) (a) A recipient of medical assistance or ~~his~~ the recipient's legal representative shall notify the
14 department or county by certified letter within 30 days if the recipient or ~~his~~ the recipient's legal
15 representative asserts a claim against a third party or ~~his~~ a third party's insurer for damages or
16 compensation for a personal injury, disease, illness, or disability for which the department or county paid
17 medical assistance in whole or in part or for which the recipient has applied for medical assistance. The
18 notice must be mailed to the director of the department or the director of the county department that paid
19 medical assistance. At the same time, a copy must be sent by certified mail to the third party or ~~his~~ the
20 third party's insurer.

21 (b) The notice must contain the following information:

22 (i) the name and address of the recipient and ~~his~~ the recipient's legal representative, if any;

23 (ii) the name and address of the third party alleged to be liable to the recipient;

24 (iii) the name and address of any known insurer of the third party; and

25 (iv) the judicial district and docket number of any action filed.

26 (c) A recipient or ~~his~~ the recipient's legal representative who has received actual notice that the
27 department or county has paid medical assistance is liable to the department or county for the amount it
28 is entitled to receive under this section if:

29 (i) the recipient or ~~his~~ the recipient's legal representative fails to timely notify the department or
30 county or fails to mail a copy of the notice to the third party or ~~his~~ the third party's insurer; and

1 (ii) a third party or ~~his~~ the third party's insurer that did not receive notice from the department or
2 county as provided for in subsection (5)(b) pays the recipient or ~~his~~ the recipient's legal representative
3 without satisfying any lien of the department or county.

4 (5) (a) If a third party or ~~his~~ the third party's insurer that has received notice of the department's
5 or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's
6 claim without first satisfying the lien of the department or county, the third party or ~~his~~ the third party's
7 insurer is liable to the department or county for the amount the department or county is entitled to receive
8 under this section.

9 (b) For the purposes of subsection (5)(a), a third party or ~~his~~ the third party's insurer has been
10 given notice if:

11 (i) the department or county mails, by certified mail, to the third party or ~~his~~ the third party's
12 insurer:

13 (A) a statement of the medical assistance paid or ~~which that~~ which may be paid by the department or
14 county on behalf of the recipient; and

15 (B) a claim for reimbursement;

16 (ii) the recipient or ~~his~~ the recipient's legal representative mails, by certified mail, to the third party
17 or ~~his~~ the third party's insurer:

18 (A) a copy of the notice required by subsection (4)(a); or

19 (B) a statement stating that the recipient has applied for or has received medical assistance from
20 the department or county in connection with the same claim; or

21 (iii) the recipient or ~~his~~ the recipient's legal representative has commenced an action against the
22 third party or ~~his~~ the third party's insurer for damages or compensation for personal injury, disease, illness,
23 or disability for which the department or county has paid or may pay medical assistance, in whole or in
24 part, and the department or county files in the court in which the action is pending a notice of lien stating
25 that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or
26 settlement of the action and that:

27 (A) medical assistance in a stated amount has been paid by the department or county on behalf
28 of the recipient; or

29 (B) medical assistance may be paid on behalf of the recipient.

30 (6) As used in this section, the following definitions apply:

1 (a) "County" means a county department of welfare in a county that has not transferred its public
2 assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8.

3 (b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient
4 with respect to a claim or action to recover damages or compensation from a third party or ~~his~~ a third
5 party's insurer.

6 (c) "Recipient" means a person on whose behalf the department or a county has paid or may pay
7 medical assistance for the cost of medical treatment and medical-related services for personal injury,
8 disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

9 (d) "Third party" means an individual, institution, corporation, or public or private agency that is
10 or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal
11 injury, disease, illness, or disability of a recipient of medical assistance from the department or a county
12 and includes but is not limited to insurers, health service organizations, and parties liable or who may be
13 liable in tort."

14

15 **Section 4.** Section 53-6-143, MCA, is amended to read:

16 **"53-6-143. Medical assistance liens and recoveries.** (1) Except as provided in this section, the
17 department may not impose a lien upon the property of an applicant for or recipient of medical assistance.

18 (2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed
19 against the real or personal property of a medicaid applicant or recipient prior to the applicant's or
20 recipient's death only:

21 (a) pursuant to a judgment of a court for recovery of medical assistance paid on behalf of the
22 recipient;

23 (b) on a third-party recovery as provided in 53-2-612; or

24 (c) as provided in 53-6-171 through 53-6-188.

25 (3) The department may recover medical assistance correctly paid on behalf of a recipient only
26 as provided in 53-2-612, 53-6-167 through 53-6-169, or 53-6-171 through 53-6-188 or as provided in a
27 written agreement between the department and the recipient or the recipient's representative pursuant to
28 42 U.S.C. 1382b(b).

29 (4) Except as otherwise specifically provided by 53-6-144, 53-6-165 through 53-6-169, 53-6-171
30 through 53-6-189, and this section, the department may pursue recovery under any section or combination

1 of sections as may be applicable in a particular case. However, the department may not recover pursuant
2 to 53-6-167 through 53-6-169 or 53-6-171 through 53-6-188 more than the total amount of recoverable
3 medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges
4 specifically allowed by law. The fact that the department has or may have a lien on particular property does
5 not preclude the department from pursuing recovery under another section against other assets of the
6 recipient or assets of another person as provided in 53-6-144, 53-6-165 through 53-6-169, 53-6-171
7 through 53-6-189, and this section.

8 (5) Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under
9 this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the
10 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

11 (a) The department may impose a lien under this section upon a self-sufficiency trust or upon the
12 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is
13 required by federal law to recover or collect from the trust or its assets as a condition of receiving federal
14 financial participation for the medicaid program.

15 (b) To the extent otherwise permitted by this section, the department is not precluded from
16 asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the
17 trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any
18 transfer of the property to the trust is subject to the lien."

19

20 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 1997.

21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0288, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting self-sufficiency trusts from liens imposed by the Department of Public Health and Human Services.

Assumptions:

1. There is no fiscal impact to the Department of Public Health and Human Services (DPHHS) as a result of this bill.

FISCAL IMPACT:

None.

Dave Lewis 2-12-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Van Valkenburg 2-12-97
FRED VAN VALKENBURG, PRIMARY SPONSOR DATE

Fiscal Note for SB0288, as introduced
SB 288

1
2 INTRODUCED BY Van Valkenburg ^{Senate} BILL NO. 288
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING SELF-SUFFICIENCY TRUSTS FROM LIENS IMPOSED
5 BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE EXTENT PERMITTED BY
6 FEDERAL LAW; AMENDING SECTIONS 40-5-242, 40-5-248, 53-2-612, AND 53-6-143, MCA; AND
7 PROVIDING AN EFFECTIVE DATE."

8
9 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 INTRODUCED COPY
(WHITE) FOR COMPLETE TEXT.**

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INTRODUCED BY *V. Velker* ^{*Senate*} BILL NO. *288*

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING SELF-SUFFICIENCY TRUSTS FROM LIENS IMPOSED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE EXTENT PERMITTED BY FEDERAL LAW; AMENDING SECTIONS 40-5-242, 40-5-248, 53-2-612, AND 53-6-143, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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INTRODUCED BY Van Valkenburg ^{Senate} BILL NO. 288

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING SELF-SUFFICIENCY TRUSTS FROM LIENS IMPOSED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE EXTENT PERMITTED BY FEDERAL LAW; AMENDING SECTIONS 40-5-242, 40-5-248, 53-2-612, AND 53-6-143, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

1 SENATE BILL NO. 288

2 INTRODUCED BY VAN VALKENBURG

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING SELF-SUFFICIENCY TRUSTS FROM LIENS IMPOSED
5 BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE EXTENT PERMITTED BY
6 FEDERAL LAW; AMENDING SECTIONS 40-5-242, 40-5-248, 53-2-612, AND 53-6-143, MCA; AND
7 PROVIDING AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 40-5-242, MCA, is amended to read:

12 **"40-5-242. Notice of support lien -- civil liability upon failure to honor support lien or to comply**
13 **with warrant for distraint.** (1) The department may, at any time after asserting a support lien, serve a notice
14 of the lien on any person, firm, corporation, association, or political subdivision or department of the state
15 in possession of any real or personal property that is due, owing, or belonging to an obligor. For this
16 purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation
17 benefits, and any proceeds or potential proceeds from suits at law. Except as provided in subsections (1)(a)
18 and (1)(b), the department may not impose a lien under this section upon a self-sufficiency trust established
19 pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant
20 to Title 53, chapter 18, part 1.

21 (a) The department may impose a lien under this section upon a self-sufficiency trust or upon the
22 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is
23 required by federal law to recover or collect from the trust or its assets as a condition of receiving federal
24 financial participation for the child support enforcement program or the aid to families with dependent
25 children program.

26 (b) To the extent otherwise permitted by this section, the department is not precluded from
27 asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the
28 trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any
29 transfer of the property to the trust is subject to the lien.

30 (2) Except as provided in subsection (3), a person or entity is liable to the department in an amount

1 equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property
2 subject to a support lien or distrained by a warrant for distraint, whichever is less, together with costs,
3 interest, and reasonable attorney fees, if the person or entity:

4 (a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support
5 lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the
6 support lien; or

7 (b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant
8 for distraint by a sheriff or levying officer under the provisions of 40-5-247.

9 (3) A person or entity is not liable to the department under this section when:

10 (a) a written release or waiver of the support lien or warrant for distraint issued by the department
11 has been delivered to the person or entity;

12 (b) a determination has been made in an adjudicative proceeding, either administrative or judicial,
13 that a support lien does not exist or that the lien has been satisfied; or

14 (c) the property subject to a support lien has been transferred to, paid over to, or repossessed by
15 a person or entity holding:

16 (i) a prior perfected lien;

17 (ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

18 (iii) a perfected purchase money security interest, as defined by 30-9-107."
19

20 **Section 2.** Section 40-5-248, MCA, is amended to read:

21 **"40-5-248. Lien against real and personal property -- effect of lien -- interest -- warrant for**
22 **d distraint.** (1) There is a support lien on the real and personal property of an obligor:

23 (a) when the department has entered a final decision in a contested case under this chapter that
24 finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

25 (b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes
26 a sum certain amount of delinquent support.

27 (2) A support lien is for the amount required to satisfy:

28 (a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum
29 certain support debt included in any support order registered under 40-5-271;

30 (b) interest claimed under this section; and

1 (c) any fees that may be due under 40-5-210.

2 (3) A support lien has the priority of a secured creditor from the date the lien is perfected as
3 provided by this section; however, the lien is subordinate to:

4 (a) any prior perfected lien or security interest;

5 (b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

6 (c) any perfected purchase money security interest, as defined in 30-9-107.

7 (4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or
8 until 2 years after the child to whom the support lien is related attains the age of majority, whichever
9 occurs first.

10 (5) The lien applies to all real and personal property owned by the obligor, if it can be located in
11 the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except
12 as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon
13 a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a
14 self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

15 (a) The department may impose a lien under this section upon a self-sufficiency trust or upon the
16 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is
17 required by federal law to recover or collect from the trust or its assets as a condition of receiving federal
18 financial participation for the child support enforcement program or the aid to families with dependent
19 children program.

20 (b) To the extent otherwise permitted by this section, the department is not precluded from
21 asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the
22 trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any
23 transfer of the property to the trust is subject to the lien.

24 (6) The department shall keep a record of support liens asserted under this section in the registry
25 of support orders established by 40-5-271.

26 (7) A support lien is perfected:

27 (a) as to real property, upon filing a notice of support lien with the clerk of the district court in the
28 county or counties in which the real property is or may be located at the time of filing or at any time in the
29 future;

30 (b) as to motor vehicles or other items for which a certificate of ownership is issued by the

1 department of justice, upon filing a notice of support lien with the department of justice in accordance with
2 the provisions of Titles 23 and 61;

3 (c) as to all other personal property, upon filing a notice of support lien in the place required to
4 perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as
5 appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of
6 support lien were a financing statement within the meaning of the Uniform Commercial Code.

7 (8) A buyer for value of an obligor's personal property, other than motor vehicles and other items
8 for which a certificate of ownership is issued by the department of justice, who buys in good faith and
9 without knowledge of the support lien takes the property free of the support lien.

10 (9) (a) The department may charge interest on the support lien at the rate of 1% per month.

11 (b) Interest accrues at the close of the business day on the last day of each month and is
12 calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end
13 of the day, by the applicable rate of interest.

14 (c) A provision of this section may not be construed to require the department to maintain interest
15 balance due accounts. The department may waive interest if waiver would facilitate the collection of the
16 debt.

17 (d) Interest under this subsection (9) is in addition to and not in substitution for any other interest
18 accrued or accruing under any other provision of law.

19 (10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the
20 department shall take all necessary steps to release the support lien.

21 (b) Upon receiving partial payment of the support lien or if the department determines that a release
22 or partial release of the lien will facilitate the collection of support arrearages, the department may release
23 or partially release the support lien. The department may release the support lien if it determines that the
24 lien is unenforceable.

25 (11) A support lien under this section is in addition to any other lien created by law.

26 (12) A support lien under this section may not be discharged in bankruptcy.

27 (13) Support liens provided for by this section may be enforced or collected through the warrant
28 for distraint provided for by 40-5-247."

29
30 **Section 3.** Section 53-2-612, MCA, is amended to read:

1 **"53-2-612. Lien of department or county upon third-party recoveries.** (1) Upon notice by the
2 department, a county, or the recipient to a third party or ~~his~~ the third party's insurer as provided in
3 subsection (5)(b), the department or county has a lien upon all money paid by a third party or ~~his~~ the third
4 party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or
5 compensation for personal injury, disease, illness, or disability to the extent that the department or county
6 has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or
7 disability.

8 (2) The department or county may, in the name of the recipient on whose behalf medical assistance
9 has been paid by the department or county, commence and prosecute to final conclusion any action ~~which~~
10 that may be necessary to recover from a third party or ~~his~~ the third party's insurer compensation or
11 damages for medical assistance paid by the department or county on behalf of the recipient. This section
12 does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages
13 or compensation in ~~his~~ the recipient's own name in accordance with the provisions of this section.

14 (3) (a) The lien:

15 (i) applies to all money paid by a third party or ~~his~~ a third party's insurer regardless of whether the
16 recovery is allocated by the parties or a court to any particular type or element of damages; and

17 (ii) is subordinate to the lien of an attorney under 37-61-420.

18 (b) Unless specifically provided by law, the recipient's right to recover damages or compensation
19 from a third party or ~~his~~ a third party's insurer may not be reduced or denied on the ground that the
20 recipient's costs of medical treatment and medical-related services have been paid by the department or
21 county under any public assistance program.

22 (c) From the amount collected by the department, county, or recipient from legal proceedings or
23 as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the
24 department or county and the recipient agree to a different settlement, the amount previously paid as
25 medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be
26 deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

27 (d) In all cases of payment to the department or county out of an amount collected from a third
28 party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of
29 attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required
30 to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of

1 which the department or county receives full or partial payment of its lien.

2 (e) Except as provided in subsections (3)(e)(i) and (3)(e)(ii), the department may not impose a lien
3 under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon
4 the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

5 (i) The department may impose a lien under this section upon a self-sufficiency trust or upon the
6 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is
7 required by federal law to recover or collect from the trust or its assets as a condition of receiving federal
8 financial participation for the medicaid program.

9 (ii) To the extent otherwise permitted by this section, the department is not precluded from
10 asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the
11 trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any
12 transfer of the property to the trust is subject to the lien.

13 (4) (a) A recipient of medical assistance or ~~his~~ the recipient's legal representative shall notify the
14 department or county by certified letter within 30 days if the recipient or ~~his~~ the recipient's legal
15 representative asserts a claim against a third party or ~~his~~ a third party's insurer for damages or
16 compensation for a personal injury, disease, illness, or disability for which the department or county paid
17 medical assistance in whole or in part or for which the recipient has applied for medical assistance. The
18 notice must be mailed to the director of the department or the director of the county department that paid
19 medical assistance. At the same time, a copy must be sent by certified mail to the third party or ~~his~~ the
20 third party's insurer.

21 (b) The notice must contain the following information:

22 (i) the name and address of the recipient and ~~his~~ the recipient's legal representative, if any;

23 (ii) the name and address of the third party alleged to be liable to the recipient;

24 (iii) the name and address of any known insurer of the third party; and

25 (iv) the judicial district and docket number of any action filed.

26 (c) A recipient or ~~his~~ the recipient's legal representative who has received actual notice that the
27 department or county has paid medical assistance is liable to the department or county for the amount it
28 is entitled to receive under this section if:

29 (i) the recipient or ~~his~~ the recipient's legal representative fails to timely notify the department or
30 county or fails to mail a copy of the notice to the third party or ~~his~~ the third party's insurer; and

1 (ii) a third party or ~~his~~ the third party's insurer that did not receive notice from the department or
2 county as provided for in subsection (5)(b) pays the recipient or ~~his~~ the recipient's legal representative
3 without satisfying any lien of the department or county.

4 (5) (a) If a third party or ~~his~~ the third party's insurer that has received notice of the department's
5 or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's
6 claim without first satisfying the lien of the department or county, the third party or ~~his~~ the third party's
7 insurer is liable to the department or county for the amount the department or county is entitled to receive
8 under this section.

9 (b) For the purposes of subsection (5)(a), a third party or ~~his~~ the third party's insurer has been
10 given notice if:

11 (i) the department or county mails, by certified mail, to the third party or ~~his~~ the third party's
12 insurer:

13 (A) a statement of the medical assistance paid or ~~which that~~ may be paid by the department or
14 county on behalf of the recipient; and

15 (B) a claim for reimbursement;

16 (ii) the recipient or ~~his~~ the recipient's legal representative mails, by certified mail, to the third party
17 or ~~his~~ the third party's insurer:

18 (A) a copy of the notice required by subsection (4)(a); or

19 (B) a statement stating that the recipient has applied for or has received medical assistance from
20 the department or county in connection with the same claim; or

21 (iii) the recipient or ~~his~~ the recipient's legal representative has commenced an action against the
22 third party or ~~his~~ the third party's insurer for damages or compensation for personal injury, disease, illness,
23 or disability for which the department or county has paid or may pay medical assistance, in whole or in
24 part, and the department or county files in the court in which the action is pending a notice of lien stating
25 that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or
26 settlement of the action and that:

27 (A) medical assistance in a stated amount has been paid by the department or county on behalf
28 of the recipient; or

29 (B) medical assistance may be paid on behalf of the recipient.

30 (6) As used in this section, the following definitions apply:

1 (a) "County" means a county department of welfare in a county that has not transferred its public
2 assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8.

3 (b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient
4 with respect to a claim or action to recover damages or compensation from a third party or ~~his~~ a third
5 party's insurer.

6 (c) "Recipient" means a person on whose behalf the department or a county has paid or may pay
7 medical assistance for the cost of medical treatment and medical-related services for personal injury,
8 disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

9 (d) "Third party" means an individual, institution, corporation, or public or private agency that is
10 or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal
11 injury, disease, illness, or disability of a recipient of medical assistance from the department or a county
12 and includes but is not limited to insurers, health service organizations, and parties liable or who may be
13 liable in tort."
14

15 **Section 4.** Section 53-6-143, MCA, is amended to read:

16 **"53-6-143. Medical assistance liens and recoveries.** (1) Except as provided in this section, the
17 department may not impose a lien upon the property of an applicant for or recipient of medical assistance.

18 (2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed
19 against the real or personal property of a medicaid applicant or recipient prior to the applicant's or
20 recipient's death only:

21 (a) pursuant to a judgment of a court for recovery of medical assistance paid on behalf of the
22 recipient;

23 (b) on a third-party recovery as provided in 53-2-612; or

24 (c) as provided in 53-6-171 through 53-6-188.

25 (3) The department may recover medical assistance correctly paid on behalf of a recipient only
26 as provided in 53-2-612, 53-6-167 through 53-6-169, or 53-6-171 through 53-6-188 or as provided in a
27 written agreement between the department and the recipient or the recipient's representative pursuant to
28 42 U.S.C. 1382b(b).

29 (4) Except as otherwise specifically provided by 53-6-144, 53-6-165 through 53-6-169, 53-6-171
30 through 53-6-189, and this section, the department may pursue recovery under any section or combination

1 of sections as may be applicable in a particular case. However, the department may not recover pursuant
2 to 53-6-167 through 53-6-169 or 53-6-171 through 53-6-188 more than the total amount of recoverable
3 medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges
4 specifically allowed by law. The fact that the department has or may have a lien on particular property does
5 not preclude the department from pursuing recovery under another section against other assets of the
6 recipient or assets of another person as provided in 53-6-144, 53-6-165 through 53-6-169, 53-6-171
7 through 53-6-189, and this section.

8 (5) Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under
9 this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the
10 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

11 (a) The department may impose a lien under this section upon a self-sufficiency trust or upon the
12 assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is
13 required by federal law to recover or collect from the trust or its assets as a condition of receiving federal
14 financial participation for the medicaid program.

15 (b) To the extent otherwise permitted by this section, the department is not precluded from
16 asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the
17 trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any
18 transfer of the property to the trust is subject to the lien."

19

20 **NEW SECTION. Section 5. Effective date.** [This act] is effective July 1, 1997.

21

-END-