

SENATE BILL NO. 171

INTRODUCED BY B. GLASER

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF THE CHILD SUPPORT ENFORCEMENT PROGRAM; ~~CLARIFYING THAT PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEM BENEFITS ARE SUBJECT TO A SUPPORT LIEN;~~ ALLOWING GARNISHMENT OF SOCIAL SECURITY BENEFITS FOR SPOUSAL SUPPORT IN CONFORMITY WITH FEDERAL LAW; CORRECTING PROVISIONS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; ALLOWING WARRANTS FOR DISTRAINT TO BE SERVED BY ACKNOWLEDGMENT WHEN THE ENTITY SERVED ENTERS INTO AN AGREEMENT WITH THE DEPARTMENT; PROVIDING FOR EXPIRATION OF SUPPORT LIENS; ALLOWING AN EMPLOYER RECEIVING AN INCOME-WITHHOLDING ORDER FROM ANOTHER STATE TO REQUEST INFORMATION FROM AND FORWARD THE FUNDS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT SERVICE OF NOTICE OF REVIEW IS CONSIDERED EFFECTIVE IF A PERSON SUBJECT TO SERVICE REQUESTS A HEARING OR APPEARS AT THE REVIEW; DEFINING "PAYOR" TO INCLUDE AN EMPLOYER UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; ALLOWING SERVICE OF AN INCOME-WITHHOLDING ORDER BY ELECTRONIC SERVICE; PROVIDING THAT DISBURSEMENTS BY THE DEPARTMENT IN TITLE IV-D CASES MUST COMPLY WITH DEPARTMENT RULES FOR DISTRIBUTION NOTWITHSTANDING A RESTRICTIVE ENDORSEMENT; CLARIFYING A PARENT'S RESPONSIBILITY FOR NECESSITIES AND FINANCIAL ASSISTANCE TO A CHILD; AMENDING SECTIONS ~~19-2-909, 19-20-306,~~ 25-13-608, 40-5-103, 40-5-154, 40-5-157, 40-5-158, 40-5-161, 40-5-162, 40-5-164, 40-5-173, 40-5-247, 40-5-248, 40-5-273, 40-5-403, 40-5-415, 40-5-909, 40-5-910, AND 40-6-215, MCA; REPEALING SECTIONS 40-5-244 AND 40-6-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 1. Section 19-2-909, MCA, is amended to read:~~

~~"19-2-909. Execution or withholding for support obligation -- rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.~~

- ~~———— (2) For purposes of this section, the following definitions apply:~~
- ~~———— (a) "Execution" means a notice of a support lien or a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.~~
- ~~———— (b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.~~
- ~~———— (c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.~~
- ~~———— (d) "Support obligation" has the meaning provided in 40-5-403 for a support order.~~
- ~~———— (3) The execution or income-withholding order may not require:~~
- ~~———— (a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or~~
- ~~———— (b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.~~
- ~~———— (4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:~~
- ~~———— (a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.~~
- ~~———— (b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.~~
- ~~———— (c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.~~
- ~~———— (d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount each month if the number of payments is specified.~~
- ~~———— (5) The board shall adopt rules to provide for the application of an execution or income-withholding order within the defined contribution plan."~~

~~Section 2.~~ Section 19-20-306, MCA, is amended to read:

~~"19-20-306. Execution or withholding for support obligation.~~ (1) Benefits in the retirement system are subject to execution and income withholding for the payment of a participant's support obligation.

~~(2) For purposes of this section:~~

~~(a) "Execution" means a notice of a support lien or a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.~~

~~(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.~~

~~(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to this chapter.~~

~~(d) "Support obligation" has the meaning provided in 40-5-403 for support order.~~

~~(3) The execution or income-withholding order may not require:~~

~~(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or~~

~~(b) an amount or duration of payment greater than that available to a participant under the retirement system.~~

~~(4) The execution or income-withholding order may only provide for payment only as follows:~~

~~(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.~~

~~(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.~~

~~(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.~~

~~(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified."~~

Section 1. Section 25-13-608, MCA, is amended to read:

"25-13-608. Property exempt without limitation -- exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support; and

(h) a burial plot for the judgment debtor and the debtor's family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse ~~if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child.~~"

Section 2. Section 40-5-103, MCA, is amended to read:

"40-5-103. Definitions. (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

(8) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state pursuant to this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts or pursuant to a proceeding initiated by the department of public health and human services under 40-5-263.

(9) "Initiating tribunal" means the authorized tribunal in an initiating state.

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(13) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or a support order have

been assigned or that has independent claims based on financial assistance provided to an individual obligee;
or

(c) an individual seeking a judgment determining parentage of that individual's child.

(14) "Obligor" means an individual or the estate of a decedent:

(a) who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order.

~~(15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.~~

~~(16)~~(15) "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

~~(17)~~(16) "Registering tribunal" means a tribunal in which a support order is registered.

~~(18)~~(17) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts or under a proceeding initiated by the department of public health and human services under 40-5-263.

~~(19)~~(18) "Responding tribunal" means the authorized tribunal in a responding state.

~~(20)~~(19) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

~~(21)~~(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe or a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

~~(22)~~(21) (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under Title IV-D of the Social Security Act, the department of public health and

human services; and

(ii) in all other cases, the ~~prosecuting attorney~~ prosecutor.

~~(23)~~(22) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that:

(a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

(b) provides for monetary support, health care, arrearages, or reimbursement; and

(c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

~~(24)~~(23) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."

Section 3. Section 40-5-154, MCA, is amended to read:

"40-5-154. Conditions of rendition. (1) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require any ~~prosecuting attorney~~ prosecutor of this state to demonstrate:

(a) that at least 60 days previously, the obligee had initiated proceedings for support pursuant to this part;

or

(b) that the proceeding would be of no avail.

(2) If, under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require a ~~prosecuting attorney~~ prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor of this state may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor of this state may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor of this state may decline to honor the demand if the individual is complying with the support order."

Section 4. Section 40-5-157, MCA, is amended to read:

"40-5-157. Income-withholding orders of another state -- employer compliance -- employer immunity -- penalties for noncompliance. (1) An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income-withholding laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

(2) (a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor ~~and, if the employer elects under subsection (3) to forward the funds to the department for distribution, to the department.~~

(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. ~~An employer may contact the department of public health and human services to determine whether the withholding order was issued by the appropriate authority.~~

(3) Except as provided by subsections (4) and (5), the employer shall withhold the funds and either distribute the funds as directed in the income-withholding order ~~or forward the funds to the department to be distributed by the department~~ by complying with the terms of the order that specify:

(a) the duration and the amount of periodic payments of current child support, stated as a sum certain;

(b) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or by ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) the amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) the employer's fee for processing an income-withholding order;

(b) the maximum amount permitted to be withheld from the obligor's income; and

(c) the times within which the employer must implement the income-withholding order and forward the child support payment.

(5) An obligor's employer who receives multiple income-withholding orders with respect to the earnings of the obligor satisfies the terms of the multiple orders if the employer complies with the law of the state of the

obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

(6) An employer who complies with an income-withholding order issued in another state in accordance with this section is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

(7) An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

(8) (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Choice of law under 40-5-187 applies to the contest.

(b) The obligor shall give notice of the contest to:

- (i) a support enforcement agency providing services to the obligee;
- (ii) each employer that has directly received an income-withholding order; and
- (iii) the person or agency designated to receive payments in the income-withholding order or, if a person or agency is not designated, to the obligee."

Section 5. Section 40-5-158, MCA, is amended to read:

"40-5-158. Proceedings under this part. (1) Except as otherwise provided in this part, 40-5-158 through 40-5-166, 40-5-170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under this part.

(2) This part provides for the following proceedings:

- (a) establishment of an order for spousal support or child support pursuant to 40-5-179;
- (b) enforcement of a support order and income-withholding order of another state without registration;
- (c) registration of an order for spousal support or child support of another state for enforcement pursuant to 40-5-184 through 40-5-195;
- (d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to 40-5-147 through 40-5-150;
- (e) registration of an order for child support of another state for modification pursuant to 40-5-184 through 40-5-195;
- (f) determination of parentage pursuant to 40-5-196; and
- (g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.

~~(3) If the tribunal is the department of public health and human services, this part includes the administrative remedies under this chapter.~~

~~(4)~~(3) An individual or a support enforcement agency may commence a proceeding authorized under this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent."

Section 6. Section 40-5-161, MCA, is amended to read:

"40-5-161. Duties of initiating tribunal. (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

- (a) to the responding tribunal or appropriate support enforcement agency in the responding state; or
- (b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

~~(2) The department of public health and human services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 6. In all other cases, the district court is the initiating tribunal.~~

~~(3)~~(2) If a responding state has not enacted the Uniform Interstate Family Support Act or another law or procedure substantially similar to that act, a tribunal of this state may issue a certificate or other documents and make findings required by the law or procedure of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

Section 7. Section 40-5-162, MCA, is amended to read:

"40-5-162. Duties and powers of responding tribunal. (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158~~(4)~~(3), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

- (a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

- (c) order income withholding;
 - (d) determine the amount of any arrearages and specify a method of payment;
 - (e) enforce orders by use of civil or criminal contempt, or both;
 - (f) set aside property for satisfaction of the support order;
 - (g) place liens and order execution on the obligor's property;
 - (h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
 - (i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
 - (j) order the obligor to seek appropriate employment by specified methods;
 - (k) award reasonable attorney fees and other fees and costs; and
 - (l) grant any other available remedy.
- (3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.
- (4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.
- (5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.
- (6) The department of public health and human services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

Section 8. Section 40-5-164, MCA, is amended to read:

"40-5-164. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon ~~application~~ request, shall provide services to a petitioner in a proceeding under this part.

- (2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:
 - (a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
 - (b) request an appropriate tribunal to set a date, time, and place for a hearing;
 - (c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) ~~within 2 days, exclusive of Saturdays, Sundays, and legal holidays,~~ after receipt of a written notice from an initiating, responding, or registering tribunal, ~~promptly~~ send a copy of the notice to the petitioner;

(e) ~~within 2 days, exclusive of Saturdays, Sundays, and legal holidays,~~ after receipt of a written communication from the respondent or the respondent's attorney, ~~promptly~~ send a copy of the communication to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of public health and human services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 6. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

Section 9. Section 40-5-173, MCA, is amended to read:

"40-5-173. Costs and fees. (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under 40-5-184 through 40-5-195, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

~~(4) The standardized schedule of fees established by the department of public health and human services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."~~

SECTION 10. SECTION 40-5-247, MCA, IS AMENDED TO READ:

"40-5-247. Warrant for distraint -- effect -- satisfaction of support lien -- redemption. (1) (a) The department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and collect any money obligation authorized under this chapter.

(b) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based. The warrant must include notice of:

- (i) the existence of exemptions from execution;
- (ii) the procedure by which an exemption may be claimed; and
- (iii) the right to request a hearing to determine an exemption claim.

(c) A warrant must be signed by the director of the department or the director's designee.

(d) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A warrant for distraint may also be served by acknowledgment of service upon an entity that has entered into an agreement with the department to accept service of a warrant for distraint. Upon receipt of the warrant, the served entity shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment and shall return the warrant, along with any funds collected, within 90 days of receipt of the warrant.

~~(b)~~(c) A copy of the warrant must be mailed to the obligor at the obligor's last-known address at or promptly after the time of seizure.

~~(e)~~(d) Within 10 days after the date of the mailing of the warrant to the obligor, an obligor claiming an exemption may request a hearing to determine the existence of the exemption. The department shall convene a contested case hearing to determine the claimed exemption. An order entered under this section is a final agency order, subject to judicial review under Title 2, chapter 4, part 7.

~~(d)~~(e) A sheriff or levying officer shall return a warrant, along with any funds collected, within 90 days

of the receipt of the warrant.

~~(e)~~(f) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

~~(f)~~(g) If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and accumulated interest, the department shall release the warrant.

(b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the warrant for distraint. The department may release the warrant if it determines that the warrant is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts."

Section 11. Section 40-5-248, MCA, is amended to read:

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

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

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

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

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

(b) interest claimed under this section; and

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

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

(a) any prior perfected lien or security interest;

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

(c) any perfected purchase money security interest, as [defined in 30-9-107] described in 30-9-321.

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

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(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 FAIM financial assistance 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.

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

(7) A support lien is perfected:

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

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under [30-9-401] 30-9-321. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

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

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

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

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

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

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

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

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

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247. (Bracketed references deleted July 1, 2001.)"

Section 12. Section 40-5-273, MCA, is amended to read:

"40-5-273. Administrative review of child support orders -- modifying orders. (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative review. Unless the department determines under rules of the department that an in-person review is necessary, the review must be conducted by teleconferencing methods. A notice that an administrative review will be conducted must be served either personally or by certified mail on the obligor and the obligee. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed requests a hearing or appears at the administrative review. The notice must include the following information as an exception to 2-4-601:

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

(b) a statement of the right of the obligor and the obligee to request the department to issue subpoenas compelling the appearance of witnesses and the production of documents for a hearing; and

(c) a requirement that the obligor and the obligee provide the department with telephone numbers at which they and their witnesses may be contacted for the review.

(2) The department may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be served either personally or by certified mail with the notice that a review will be conducted. If service is by certified mail, the department must receive a return receipt signed by the person to whom the order was mailed for the service to be effective. The department may also issue subpoenas ordering the parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the department must be provided to the parties before a hearing.

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

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

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

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

(4) (a) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 30 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available when telephoned.

(b) A proposed modification consent order or notice of proposed modification becomes final 30 days after issuance unless during that period a party files with the department a written request for further administrative proceedings.

(c) The department shall grant a modification hearing if it receives a timely written request by a party aggrieved by the department's determination. The hearing is subject to the provisions of this section relating to a review. The department may adopt rules regulating the fair and efficient conduct of the hearing. Unless the department determines under department rules that an in-person hearing is necessary, the hearing must be conducted by teleconferencing methods.

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

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

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

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

(7) The department shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section may not be contested before entry of the final department order. If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department,

the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the department determines, after the review, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order may modify the underlying support order from the date of service of a notice that an administrative review will be conducted under this section and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.

(8) The department shall consider whether or not health insurance for the child is available and shall include an appropriate requirement for the provision of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.

(9) In addition to complying with other requirements of law, the modifying order must include provisions:

(a) that each party, other than the department, is required to promptly file with the department and update, as necessary, information on:

(i) the identity of the party;

(ii) the party's social security number;

(iii) the party's residential and mailing addresses;

(iv) the party's telephone number;

(v) the party's driver's license number;

(vi) the name, address, and telephone number of the party's employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or medical insurance plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to availability of coverage for the child through the obligor's and obligee's employers;

(b) that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent

known address of the party or the party's employer's address reported to the department; and

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

(10) The department shall keep information provided under subsection (9)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

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

(12) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(5)(d)."

Section 13. Section 40-5-403, MCA, is amended to read:

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

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

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

(3) "Employer" includes a payor.

(4) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages. However, income does not include:

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

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

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

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

(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject

to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter.

(8) "Support order" has the meaning provided in 40-5-201."

Section 14. Section 40-5-415, MCA, is amended to read:

"40-5-415. Order to withhold income -- rules. (1) When the requirements of this part have been met, the department shall serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department;

(d) state the rights and duties of the payor under this part; and

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or, by certified mail, or by electronic service upon an entity that has entered into an agreement with the department to accept electronic service of an order entered under this part.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors. Whenever an obligor's income is subject to withholding for more than one obligee, the department may consolidate the payments received each month and distribute the income among the obligees according to department rules."

Section 15. Section 40-5-909, MCA, is amended to read:

"40-5-909. Centralized payment center -- mandatory payments to center. (1) Payments due under a support order must be paid through the department for processing and distribution to the person or agency entitled to receive the payment whenever:

(a) the case is receiving IV-D services; or

(b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) (a) An employer who receives an income-withholding order issued in another state, as defined in 40-5-103, may contact the department to determine whether the withholding order was issued by the appropriate authority.

(b) The employer may elect to forward the funds to the department for distribution.

(c) If the employer elects under this section to forward the funds to the department for distribution, the employer shall immediately provide a copy of the income-withholding order to the department.

(7) INCOME-WITHHOLDING ORDERS MAY BE ISSUED IN THIS STATE PURSUANT ONLY TO 40-5-308 THROUGH 40-5-315 AND 40-5-401 THROUGH 40-5-432.

~~(6)(7)(8)~~ Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case management and payment processing unit.

~~(7)(8)(9)~~ (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case management and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection ~~(7)(a)~~ ~~(8)(a)~~ ~~(9)(A)~~, the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

~~(8)(9)(10)~~ (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

~~(9)(10)(11)~~ An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law."

Section 16. Section 40-5-910, MCA, is amended to read:

"40-5-910. Distribution of payments. (1) Support payments processed through the case processing unit must be promptly disbursed unless one of the following circumstances or a similar circumstance prevents prompt distribution:

- (a) the location of the obligee is unknown;
- (b) the support debt is in litigation or, in an income-withholding case, the income-withholding action is contested; or
- (c) the department receives a payment that does not include sufficient information to identify the case or the obligee.

(2) A disbursement must comply with department rules for distribution in IV-D cases, notwithstanding an endorsement or other writing accompanying the payment that restricts disbursement or purports to direct disbursement in a manner contrary to the department's rules.

(3) If the department is unable to make a distribution because the obligee's location is unknown, the department shall return the payment to the obligor.

(4) If a payment properly distributed under this section is later determined by a court or by department decision to be refundable to the obligor for any reason, except for when the department is the obligee, the department need not pay the refund or recover the refunded amount from the obligee or from any person or agency to whom the amount was distributed.

(5) If the department distributes a support payment in error or if a distribution is made to a person, obligee, or agency not entitled to retain the distributed amount, the department may obtain restitution by means of a setoff against future payments, including arrears payments, received on behalf of the person, obligee, or agency. A setoff against future payments of current support is limited to 10% of the payment."

Section 17. Section 40-6-215, MCA, is amended to read:

"40-6-215. When parent ~~liable~~ responsible for necessities ~~necessities~~ and financial assistance supplied to child. (1) If a parent with a duty to support a child fails to, neglects to, refuses to, or otherwise does not provide necessary articles necessary or financial assistance for his child under his charge the child's support, according to his the parent's circumstances, a relative or third person may in good faith supply ~~such necessities~~ the necessary articles or financial assistance and recover the reasonable value ~~thereof~~ from the parent.

(2) (a) If by court order or express or implied consent of either parent, a child resides with and is supported in the home of a relative or third person, the child's parent or parents shall provide support for the child

to the relative or third person.

(b) A relative or third person may receive support under the substitute payee provisions of 40-4-204(8) or a similar law, or if the substitute payee laws are not applicable, the relative or third person may apply for establishment of a support order to any court or administrative agency with authority to enter child support orders.

(3) A parent's duty to support and maintain a child is not abrogated by the child's abandoning the parent's home or by any other voluntary act unless a court has determined the child to be an emancipated minor not in need of parental support."

NEW SECTION. **Section 18. Repealer.** Sections 40-5-244 and 40-6-216, MCA, are repealed.

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

- END -

