

HOUSE BILL NO. 352

INTRODUCED BY T. CALLAHAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT INTEREST ON UNPAID AND OWING CHILD SUPPORT IS AT THE SAME RATE AS INTEREST ON OTHER JUDGMENTS; AND AMENDING SECTIONS 40-4-204 AND 40-6-116, MCA."

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

Section 1. Section 40-4-204, MCA, is amended to read:

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

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

- (a) the financial resources of the child;
- (b) the financial resources of the parents;
- (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child and the child's educational and medical needs;
- (e) the age of the child;
- (f) the cost of day care for the child;
- (g) any parenting plan that is ordered or decided upon; and
- (h) the needs of any person, other than the child, whom either parent is legally obligated to

support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may

1 be used when a parent fails to provide financial information for use in applying the guidelines. The amount
2 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
3 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
4 to the child or to any of the parties or that it is inappropriate in that particular case.

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

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

12 (d) Child support obligations established under this section are subject to the registration and
13 processing provisions of chapter 5, part 9.

14 (e) A child support obligation established under this section is subject to interest on any support
15 debt due and owing at the statutory interest rate payable on judgments recovered in the courts of this
16 state.

17 (4) Each temporary or final district court judgment, decree, or order establishing a child support
18 obligation under this title and each modification of a final order for child support must include a medical
19 support order as provided for in Title 40, chapter 5, part 8.

20 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
21 is included in the support order, a support obligation established by judgment, decree, or order under this
22 section, whether temporary or final, and each modification of an existing support obligation under
23 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40,
24 chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or
25 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject
26 to withholding for the payment of support without need for an amendment to the support order or for any
27 further action by the court.

28 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
29 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
30 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure

1 to include a warning statement in a judgment or order does not preclude the use of withholding
2 procedures.

3 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
4 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
5 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
6 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
7 monthly support obligation if the excess support is a result of annualized withholding.

8 (d) If an obligor is exempted from paying support through income withholding, the support order
9 must include a requirement that whenever the case is receiving services under Title IV-D of the Social
10 Security Act, support payments must be paid through the department of public health and human services
11 as provided in 40-5-909.

12 (6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or
13 modifies a child support obligation must include a provision requiring the parties to promptly file with the
14 court and to update, as necessary, information on:

15 (i) the party's identity, residential and mailing addresses, telephone number, [social security
16 number,] and driver's license number;

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

18 (iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
19 or health benefit plan, the policy identification number, the names of the persons covered, and any other
20 pertinent information regarding coverage or, if the child is not covered, information as to the availability
21 of coverage for the child through the party's employer.

22 (b) The court shall keep the information provided under subsection (6)(a) confidential except that
23 the information may be provided to the department of public health and human services for use in
24 administering Title IV-D of the Social Security Act.

25 (c) The order must also require that in any subsequent child support enforcement action, upon
26 sufficient showing that diligent effort has been made to ascertain the location of the party, the district
27 court or the department of public health and human services, if the department is providing services under
28 Title IV-D of the Social Security Act, may consider due process requirements for notice and service of
29 process met with respect to the party upon delivery of written notice by regular mail to the most recent
30 address of the party or the party's employer's address reported to the court.

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

6 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support
7 obligation must include a provision requiring the child support obligation to be paid, without need for
8 further court order:

9 (i) to the person with whom the child resides by legal order;

10 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical
11 care and control of the child to another person, organization, or agency, to the person, organization, or
12 agency to whom physical custody has been relinquished;

13 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason
14 to receive or collect the child support obligation, to the person, organization, or agency having the right
15 to receive or collect the payment; or

16 (iv) to the court for the benefit of the minor child.

17 (b) When the department of public health and human services is providing services under Title IV-D
18 of the Social Security Act, payment of support must be made through the department for distribution to
19 the person, organization, or agency entitled to the payment.

20 (c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
21 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
22 or for any further action by the court.

23 (9) A judgment, decree, or order that establishes or modifies a child support obligation must
24 include a provision that if a parent or guardian is the obligee under a child support order and is obligated
25 to pay a contribution for the same child under 41-3-406, 41-5-1304, or 41-5-1512, the parent or guardian
26 assigns and transfers to the department of public health and human services all rights that the parent or
27 guardian may have to child support that are not otherwise assigned under 53-2-613. (Bracketed language
28 terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

29

30 **Section 2.** Section 40-6-116, MCA, is amended to read:

1 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence
2 or nonexistence of the parent and child relationship is determinative for all purposes.

3 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court
4 shall order that a substitute birth certificate be issued under 40-6-123.

5 (3) (a) The judgment or order may contain any other provision directed against the appropriate
6 party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the
7 child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the
8 best interest of the child.

9 (b) Except when the financial responsibility of a responsible parent is in the process of being
10 determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must
11 contain a provision concerning the duty of child support.

12 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's
13 pregnancy and confinement.

14 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in
15 amount.

16 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be
17 ordered in lieu of periodic payments of support.

18 (c) The court may limit the father's liability for past support of the child to the proportion of the
19 expenses already incurred that the court considers just.

20 (5) In determining the amount to be paid by a parent for support of the child and the period during
21 which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant
22 facts, including:

23 (a) the needs of the child, including medical needs;

24 (b) the standard of living and circumstances of the parents;

25 (c) the relative financial means of the parents;

26 (d) the earning ability of the parents;

27 (e) the need and capacity of the child for education, including higher education;

28 (f) the age of the child;

29 (g) the financial resources and the earning ability of the child;

30 (h) the responsibility of the parents for the support of others;

1 (i) the value of services contributed by the custodial parent;

2 (j) the cost of day care for the child; and

3 (k) any custody arrangement that is ordered or decided upon.

4 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall
5 determine the child support obligation by applying the standards in this section and the uniform child
6 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.
7 The guidelines must be used in all cases, including cases in which the order is entered upon the default
8 of a party and those in which the parties have entered into an agreement regarding the support amount.
9 A verified representation of a defaulting parent's income, based on the best information available, may be
10 used when a parent fails to provide financial information for use in applying the guidelines. The amount
11 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
12 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
13 to the child or to any of the parties or is inappropriate in that particular case.

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

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

22 (d) Child support obligations established under this section are subject to the registration and
23 processing provisions of chapter 5, part 9.

24 (e) A child support obligation established under this section is subject to interest on any support
25 debt due and owing at the statutory interest rate payable on judgments recovered in the courts of this
26 state.

27 (7) The judgment or order, whether temporary or final, concerning child support and each
28 modification of a judgment or order for child support must include a medical support order as defined in
29 40-5-804.

30 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included

1 in the support order, a support obligation established by judgment, decree, or order under this section,
2 whether temporary or final, and each modification of an existing support obligation made under 40-6-118
3 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
4 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent
5 with this section is nevertheless subject to withholding for the payment of support without need for an
6 amendment to the support order or for any further action by the court.

7 (b) If a support order subject to income withholding is expressed in terms of a monthly obligation,
8 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
9 regular pay period.

10 (c) If an obligor is excepted from paying support through income withholding, the support order
11 must include as part of the order a requirement that whenever the case is receiving services under Title
12 IV-D of the Social Security Act, support payments must be paid through the department of public health
13 and human services as provided in 40-5-909.

14 (9) (a) If the district court establishes paternity or establishes or modifies a child support
15 obligation, the judgment, decree, or order must include a provision requiring the parties to promptly file
16 with the court and to update, as necessary, information on:

17 (i) identity of the party;

18 [(ii) social security number;]

19 (iii) residential and mailing addresses;

20 (iv) telephone number;

21 (v) driver's license number;

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

23 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
24 or health benefit plan, the policy identification number, the name of the persons covered, and any other
25 pertinent information regarding coverage or, if the child is not covered, information as to the availability
26 of coverage for the child through the party's employer.

27 (b) The order must further direct that in any subsequent child support enforcement action, upon
28 sufficient showing that diligent effort has been made to ascertain the location of the party, the district
29 court or the department of public health and human services, if the department is providing services under
30 Title IV-D of the Social Security Act, may consider the due process requirements for notice and service

1 of process to be met with respect to the party upon delivery of written notice by regular mail to the most
2 recent address of the party or the party's employer's address reported to the court.

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

8 [(11) The social security number of a person subject to a paternity determination under this part
9 must be recorded in the records relating to the matter. The recordkeeper shall keep the social security
10 number from this source confidential, except that the number may be provided to the department of public
11 health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed
12 language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

13

- END -