

SENATE BILL NO. 28

INTRODUCED BY M. HALLIGAN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURE FOR MODIFICATION OF CHILD SUPPORT ORDERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-272, 40-5-273, AND 40-6-116, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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"40-4-204. Child support -- orders to address health insurance -- withholding of child support. (1)

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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.

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

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- (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

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support.

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(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.

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The guidelines must be used in all cases, including cases in which the order is entered upon the default

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

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

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

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

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

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

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

1 procedures.

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

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

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

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

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

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

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

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

30 (7) ~~Each district court judgment, decree, or order establishing a final child support obligation under~~

1 ~~this part and each modification of a final order for child support must contain a statement that the order~~
2 ~~is subject to review and modification by the department of public health and human services upon the~~
3 ~~request of the department or a party under 40-5-271 through 40-5-273 when the department is providing~~
4 ~~services under Title IV-D of the Social Security Act for the enforcement of the order. A judgment, decree,~~
5 ~~or order establishing a child support obligation under this part may be modified or adjusted as provided in~~
6 ~~40-4-208 or, if the department of public health and human services is providing services under Title IV-D~~
7 ~~of the Social Security Act, may be modified or adjusted by the department as provided for in 40-5-271~~
8 ~~through 40-5-273 and [sections 5 through 7].~~

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

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

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

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

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

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

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

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

1 terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

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3 **Section 2.** Section 40-5-226, MCA, is amended to read:

4 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
5 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

6 (2) If a hearing is requested, it must initially be conducted by teleconference methods and is
7 subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that
8 the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall
9 grant a de novo in-person hearing.

10 (3) The hearings officer shall determine the liability and responsibility, if any, of the parent or
11 parents under the notice and shall enter a final decision and order in accordance with the determination.
12 The order may award support from the date of:

13 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title
14 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

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

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

17 (4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing
18 or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter
19 a default decision and order declaring the amount stated in the notice to be final.

20 (b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing,
21 the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses
22 to appear for the hearing or participate in the proceedings, the hearings officer shall determine child
23 support and medical support orders based on the notice, information available to the department, and
24 evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry
25 of child and medical support orders consistent with the hearings officer's determination. However, the
26 default order may not be for more than the support requested in the notice unless the hearings officer finds
27 that the evidence requires a larger amount.

28 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any
29 proceeding to modify support under 40-5-272, 40-5-273, and [sections 5 through 7], the monthly support
30 responsibility must be determined in accordance with the evidence presented and with reference to the

1 uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not
2 limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in
3 which the order is entered upon the default of a party and those in which the order is entered upon the
4 parties' consent. A verified representation of a defaulting parent's income, based on the best information
5 available, may be used when a parent fails to provide financial information for use in applying the
6 guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable
7 support award, unless the hearings officer finds by clear and convincing evidence that the application of
8 the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the
9 hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings
10 officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a
11 party or is inappropriate in that particular case. Similar findings must also be made in a case in which the
12 parties have agreed to a support amount that varies from the guideline amount. The hearings officer may
13 vary the application of the guidelines to limit the obligor's liability for past support to the proportion of
14 expenses already incurred that the hearings officer considers just. Findings that rebut and vary the
15 guideline amount must include a statement of the amount of support that would have ordinarily been
16 ordered under the guidelines.

17 (6) In a hearing to enforce a support order or to establish paternity under this chapter, the
18 department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the
19 obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This
20 subsection does not limit participation of an obligee who is a party to the proceedings or who is called as
21 a witness to testify.

22 (7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received,
23 and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and
24 order. The determination of the hearings officer constitutes a final agency decision, subject to judicial
25 review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the
26 final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the
27 obligee is not a party.

28 (b) A child support obligation established under this section is subject to the registration and
29 processing provisions of part 9 of this chapter.

30 (8) A support order entered under this part must contain a statement that the order is subject to

1 review and modification by the department upon the request of the department or a party under ~~40-5-271~~
2 ~~through 40-5-272, 40-5-273, and [sections 5 through 7]~~ when the department is providing services under
3 IV-D for the enforcement of the order.

4 (9) A support debt determined pursuant to this section is subject to collection action without
5 further necessity of action by the hearings officer.

6 (10) A child support obligation determined under this part by reason of the obligor's failure to
7 request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the
8 motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the
9 grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the
10 department shall consider whether any of the exceptions to immediate income withholding found ~~at~~ in
11 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the
12 support order.

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

20 (b) If an obligor is excepted from paying support through income withholding, the support order
21 must include a requirement that whenever a party to the case is receiving IV-D services, support payments
22 must be paid through the department as provided in 40-5-909.

23 (12) (a) If the department establishes paternity or establishes or modifies a child support obligation,
24 the department's order must include a provision requiring each party other than the department to
25 promptly file with the department and to update, as necessary, information on:

26 (i) identity of the party;

27 [(ii) social security number;]

28 (iii) residential and mailing addresses;

29 (iv) telephone number;

30 (v) driver's license number;

1 (vi) name, address, and telephone number of employer; and
2 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
3 or health benefit plan, the policy identification number, the name of the persons covered, and any other
4 pertinent information regarding coverage or, if the child is not covered, information as to the availability
5 of coverage for the child through the obligor's and obligee's employer.

6 (b) The order must further direct that in a subsequent child support enforcement action, upon
7 sufficient showing that diligent effort has been made to ascertain the location of the party, the
8 department's due process requirements for notice and service of process are met with respect to the party
9 upon delivery of written notice by regular mail to the most recent address of the party or the party's
10 employer's address reported to the department.

11 (c) The department shall keep the information provided under subsection (12)(a) confidential
12 except as necessary for purposes of Title IV-D of the Social Security Act.

13 (13) The hearings officer may:

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

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

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

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

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

21 (f) compel the production of information requested by the department or a IV-D agency of another
22 state under 40-5-443.

23 (14) A contempt occurs whenever:

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

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

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

30 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply

1 with discovery requests;

2 (e) a person or entity compelled by administrative subpoena from the department or another IV-D
3 agency to produce financial information or other information needed to establish paternity or to establish,
4 modify, or enforce a support order fails to do so;

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

9 (g) a payor or labor union fails to provide information to the department or another IV-D agency
10 when requested under 40-5-443[; or]

11 [(h) a financial institution uses information provided by the department pursuant to 40-5-924 for
12 any other purpose without the authorization of the department].

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

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

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

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

4 (18) The penalties charged and collected under this section must be paid into the state treasury
 5 to the credit of the child support enforcement division special revenue fund and must be accompanied by
 6 a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of
 7 contingency--sec. 1, Ch. 27, L. 1999.)"

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9 **Section 3.** Section 40-5-272, MCA, is amended to read:

10 **"40-5-272. Application for review of child support orders.** (1) Upon the application of the
 11 department, the obligor, or the obligee, a ~~hearings officer appointed pursuant to 40-5-273 shall review~~
 12 support orders order filed with the support order registry or a previously issued administrative support
 13 order may be reviewed by the department. ~~The purpose of the review is to determine whether the support~~
 14 order should be modified in accordance with the guidelines.

15 (2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273 and
 16 [sections 5 through 7] is authorized when:

17 (a) the obligor and the obligee reside in this state; or

18 (b) jurisdiction can be obtained as provided under 40-5-231.

19 (3) Jurisdiction to review a child support order under this section does not confer jurisdiction for
 20 any other purpose, such as custody or visitation disputes.

21 (4) Criteria constituting sufficient grounds for review of a child support order include:

22 (a) ~~inconsistency with this state's guidelines, unless the inconsistency is considered negligible~~
 23 under department rules a substantial change in circumstances as defined by administrative rules; or

24 (b) availability of health insurance coverage to the obligor's child through the obligor's employment
 25 or other group insurance; or

26 (c) a lapse of 36 months from the date that the order was entered or last reviewed.

27 (5) The department shall make available procedures and forms that allow the obligor or the obligee
 28 to complete the review process without legal counsel.

29 (6) To the extent that they are consistent with this section, the provisions of 40-5-145, 40-5-149,
 30 and 40-5-150 apply to this section."

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2 **Section 4.** Section 40-5-273, MCA, is amended to read:

3 **"40-5-273. Administrative review of child support orders~~---modifying orders~~.** (1) ~~A~~ Upon receipt
4 of a review application setting forth facts meeting any of the criteria for review of a child support order
5 established in 40-5-272, ~~must be scheduled for an administrative review. Unless the department~~
6 ~~determines under rules of the department that an in-person review is necessary, the review must be~~
7 ~~conducted by teleconferencing methods.~~ A notice that an administrative review will be conducted and
8 an order for the production of financial information must be served either personally or by certified mail
9 on the obligor, ~~and~~ the obligee, and any other party entitled to notice. If service is by certified mail, the
10 department must receive a return receipt signed by the person to whom the notice was mailed for the
11 service to be effective. Service of the notice is effective if, in the absence of a return receipt, the person
12 to whom the notice was mailed requests a hearing or appears at the administrative review. The notice
13 must include the following information as an exception to 2-4-601:

14 (a) a statement of the purpose, objectives, and possible consequences of the review, including
15 that a modified support order may require the obligee to pay a monthly transfer payment to another party;

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

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

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

28 (a) the financial information must be returned no later than the 20th day after the date the order
29 is served;

30 (b) if the requested information is not returned as required, the department may:

- 1 (i) proceed with the review using the information available to the department;
 2 (ii) cease all proceedings for the review; or
 3 (iii) initiate contempt proceedings in accordance with 40-5-226; and
 4 (c) any information required by the order must be provided to the department and other parties
 5 prior to the review session.

6 (3) IF, IN THE ABSENCE OF A CERTIFIED MAIL RETURN RECEIPT SHOWING THE DATE OF SERVICE, A PERSON
 7 REQUESTS A HEARING OR APPEARS AT AN ADMINISTRATIVE REVIEW, ANY FINANCIAL INFORMATION ORDERED PRODUCED
 8 PURSUANT TO SUBSECTION (2) MUST BE PROVIDED TO THE DEPARTMENT NO LATER THAN THE 20TH DAY AFTER THE
 9 PERSON REQUESTS THE HEARING OR APPEARS AT THE ADMINISTRATIVE REVIEW, UNLESS THE PERSON REQUESTING THE
 10 HEARING OR ATTENDING THE ADMINISTRATIVE REVIEW WAIVES THAT DATE IN WRITING. A PERSON WHO WAIVES THAT
 11 DATE IN WRITING SHALL PROVIDE THE FINANCIAL INFORMATION BY THE DATE PROVIDED IN SUBSECTION (2) OR BY ANOTHER
 12 DATE ESTABLISHED BY ORDER OF THE DEPARTMENT.

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

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

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

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

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

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

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

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

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

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

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

16 ~~———(7) The department shall determine a support obligation in accordance with the guidelines and shall~~
17 ~~issue a modifying order. A stipulation by the parties in a proceeding under this section may not be~~
18 ~~contested before entry of the final department order. If the department determines that the difference~~
19 ~~between the existing support order and the amount determined under the guidelines is negligible under~~
20 ~~rules issued by the department, the modifying order may not change the amount of the support obligation.~~
21 ~~Even though the review may indicate that a modification of the support obligation is appropriate, the~~
22 ~~department may not modify the support order if the department determines, after the review, that to do~~
23 ~~so would not be in the best interests of the child under the rules issued by the department. An increase~~
24 ~~in child support is presumed to be in the best interests of the child unless, after a review, either the obligor~~
25 ~~or the obligee demonstrates it would not be in the best interests of the child. The modifying order may~~
26 ~~modify the underlying support order from the date of service of a notice that an administrative review will~~
27 ~~be conducted under this section and may modify the underlying order from the date found to be the date~~
28 ~~that the amount required for support decreased. The obligee may be ordered to repay the obligor for any~~
29 ~~support amount overpayment found to have been paid since the date that the amount required for support~~
30 ~~decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's~~

1 repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement,
2 and collection of child support or a delinquency.
3 ~~———(8) The department shall consider whether or not health insurance for the child is available and
4 shall include an appropriate requirement for the provision of the child's health insurance needs in a
5 modifying order in accordance with part 8 of this chapter.~~
6 ~~———(9) In addition to complying with other requirements of law, the modifying order must include
7 provisions:~~
8 ~~———(a) that each party, other than the department, is required to promptly file with the department
9 and update, as necessary, information on:~~
10 ~~———(i) the identity of the party;~~
11 ~~———(ii) the party's social security number;~~
12 ~~———(iii) the party's residential and mailing addresses;~~
13 ~~———(iv) the party's telephone number;~~
14 ~~———(v) the party's driver's license number;~~
15 ~~———(vi) the name, address, and telephone number of the party's employer; and~~
16 ~~———(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
17 or medical insurance plan, the policy identification number, the names of the persons covered, and any
18 other pertinent information regarding coverage or, if the child is not covered, information as to availability
19 of coverage for the child through the obligor's and obligee's employers;~~
20 ~~———(b) that in a subsequent child support enforcement action, upon sufficient showing that diligent
21 effort has been made to ascertain the location of a party, the department's due process requirements for
22 notice and service of process are met with respect to the party upon delivery of written notice by regular
23 mail to the most recent known address of the party or the party's employer's address reported to the
24 department; and~~
25 ~~———(c) that the modifying order is subject to future administrative review and modification by the
26 department upon the request of the department or a party under 40-5-271 through 40-5-273 when the
27 department is providing services under IV-D.~~
28 ~~———(10) The department shall keep information provided under subsection (9)(a) confidential except
29 as necessary for purposes of Title IV-D of the Social Security Act.~~
30 ~~———(11) An order entered under this section by the department is a final agency decision, subject to~~

1 ~~judicial review pursuant to the Montana Administrative Procedure Act, except as provided in 40-5-253.~~
 2 ~~An order entered under this section must notify the parties that the order is subject to judicial review under~~
 3 ~~Title 2, chapter 4, part 7. A final order entered under a stipulation of parties waives the stipulating parties'~~
 4 ~~right to judicial review.~~
 5 ~~————(12) The parties to the support order and the department when it is providing services under IV-D~~
 6 ~~may enforce the support order or modify that order independently, as provided in 40-4-208 and~~
 7 ~~53-2-613(5)(d)."~~

8

9 NEW SECTION. Section 5. Review session -- consent orders -- request for hearing. (1) The review
 10 session provided for in 40-5-273 must be conducted by telephone and proceed regardless of the failure
 11 of a party to provide the department with a telephone number or be present. A PARTY MAY APPEAR IN PERSON
 12 AT THE ADMINISTRATIVE REVIEW SESSION AT THE PARTY'S OWN EXPENSE. THE PERSONAL APPEARANCE OF A PARTY AT
 13 AN ADMINISTRATIVE REVIEW SESSION DOES NOT REQUIRE THE PERSONAL APPEARANCE OF ANY OTHER PARTY OR WITNESS
 14 AT THE REVIEW SESSION.

15 (2) The department shall identify facts that are at issue and facts that are agreed, calculate a
 16 support obligation in accordance with the guidelines, and issue a recommendation regarding the proper
 17 child support amount and the effective date of the proposed modification. The department shall consider
 18 whether or not health insurance for the child is available and make an appropriate recommendation in
 19 accordance with part 8 of this chapter for the provision of the child's health insurance. A support order
 20 may not be modified prior to the date of service of the notice of review.

21 (3) If the department determines that the difference between the existing support order and the
 22 amount determined under the guidelines is negligible under rules issued by the department, an
 23 administrative modified support order may not change the amount of the support obligation.

24 (4) The administrative modified support order must include the following notices and warnings:

25 (a) that the parents must keep the department informed of the name and address of the obligor's
 26 current employer and information on health insurance available to the parents through employment or other
 27 group insurance; and

28 (b) that the modified support order is subject to future administrative review and modification by
 29 the department upon the request of the department or a party under 40-5-271 through 40-5-273 and
 30 [sections 5 through 7] when the department is providing services under Title IV-D of the Social Security

1 Act.

2 (5) The review session is not a contested case as defined in 2-4-102. If the parties agree with
3 the proposed administrative modified support order, a consent order will be entered modifying the support
4 obligation. A party disagreeing with the proposed order may request an administrative hearing within 10
5 days after the date that the proposed order is ~~mailed to~~ SERVED ON the party: PERSONALLY OR BY CERTIFIED
6 MAIL. IF SERVICE ON THE PARTY IS BY CERTIFIED MAIL, THE 10-DAY PERIOD FOR A REQUEST OF AN ADMINISTRATIVE
7 HEARING BEGINS TO RUN THE DAY AFTER THE CERTIFIED MAIL RETURN RECEIPT IS SIGNED. A party's failure to request
8 an administrative hearing when presented with a proposed order in the form of a consent order constitutes
9 a consent to entry of an administrative modified support order in accordance with the recommendation.

10

11 NEW SECTION. **Section 6. Administrative hearing after review -- final order -- court approval of**
12 **order.** (1) Upon receipt of a timely request for hearing from a party to a review session, the department
13 shall schedule an administrative hearing. The hearing is a contested case as defined in 2-4-102 and must
14 initially be conducted by teleconferencing methods. At the request of a party or upon a showing that the
15 party's case was substantially prejudiced by the lack of an in-person hearing, the department shall grant
16 a de novo in-person hearing. The hearing is subject to Title 2, chapter 4, and 40-5-253, except as
17 otherwise provided in 40-5-272, 40-5-273, and [sections 5 through 7].

18 (2) The administrative hearing following a review session is limited to resolution of contested facts
19 identified by the PARTIES OR THE department during the review session.

20 (3) If additional discovery is requested by a party, the hearings officer may issue subpoenas
21 ordering the department to produce nonprotected information and ordering other parties to produce
22 information in their possession about the obligor and the obligee that may be reasonably necessary for
23 application of the guidelines.

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

26 (a) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts in
27 dispute;

28 (b) hear evidence submitted by the parties and rule on its admissibility; and

29 (c) apply the guidelines to the facts agreed upon and to those determined at the hearing on
30 disputed matters.

1 (5) On the basis of evidence presented on the contested facts at the administrative hearing and
2 the agreed facts determined in the review session, the department may:

3 (a) adopt its own recommendation;

4 (b) determine a support obligation in accordance with the guidelines and issue a modifying order;

5 or

6 (c) terminate the review.

7 (6) If the department determines that the difference between the existing support order and the
8 amount determined under the guidelines is negligible under rules issued by the department, the modified
9 support order may not change the amount of the support obligation. Regardless of the amount of the
10 support order, the department may determine that an order for the provision of health insurance is
11 appropriate.

12 (7) The department shall consider whether or not health insurance for the child is available and
13 make an appropriate order in accordance with part 8 of this chapter for the provision of the child's health
14 insurance.

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

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

20 (b) that the modified order is subject to future administrative review and modification by the
21 department upon the request of the department or a party under 40-5-271 through 40-5-273 and [sections
22 5 through 7] when the department is providing services under Title IV-D of the Social Security Act.

23 (9) Except as provided in subsection (10), an order entered under this section:

24 (a) is a final agency decision and is subject to judicial review pursuant to the Montana
25 Administrative Procedure Act; and

26 (b) must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part
27 7, and 40-5-253.

28 (10) An administrative modified support order issued under [section 5] or this section that modifies
29 a support order entered by a Montana court ~~OR A COURT OR ADMINISTRATIVE AGENCY OF ANOTHER JURISDICTION~~
30 is not effective as a final order until the modified order is filed with and approved by the court that entered

1 the order- IF THAT ORDER WAS ENTERED BY A MONTANA DISTRICT COURT. IF THE ORDER WAS ENTERED BY A COURT
 2 OR ADMINISTRATIVE AGENCY OF ANOTHER JURISDICTION, THE ORDER MUST BE FILED WITH AND APPROVED BY A MONTANA
 3 DISTRICT COURT THAT IS AN APPROPRIATE COURT UNDER THE MONTANA LAWS OR RULES OF COURT GOVERNING
 4 JURISDICTION AND VENUE IN CIVIL PROCEEDINGS. The department shall file the PROPOSED modified order with the
 5 Montana APPROPRIATE court that issued the support order UNDER THE MONTANA LAWS OR RULES OF COURT
 6 GOVERNING JURISDICTION AND VENUE IN CIVIL PROCEEDINGS and shall serve the order ~~by mailing copies to~~ ON the
 7 parties- AND THEIR COUNSEL OF RECORD IN THE ADMINISTRATIVE AND COURT PROCEEDINGS PERSONALLY OR BY CERTIFIED
 8 MAIL, RETURN RECEIPT REQUESTED. SERVICE IS COMPLETE UPON SIGNING OF THE RETURN RECEIPT. A party may file
 9 a written objection to an administrative modified support order proposed by the department under this
 10 section with the court within 20 days after service of a copy of the order on the party. The court shall
 11 set a date for a hearing on the objection to the proposed order. If an objection is not filed, the court may
 12 without further notice enter its order. The court may adopt an administrative modified support order
 13 proposed under [section 5] or this section, modify it, reject it, or remand it to the department with
 14 instructions for further hearing. Service of the court order must be in accordance with Rule 5 of the
 15 Montana Rules of Civil Procedure. If the court modifies a proposed administrative modified support order
 16 proposed under [section 5] or this section without a hearing, a party may file an objection to the court's
 17 modification within 10 days of service of the court's order on the party. If an objection is filed, the court
 18 shall set a date for hearing the objection and shall enter its final order after the hearing.

19

20 NEW SECTION. Section 7. Limited review of support order. A party may apply for a limited
 21 review to address a specific change that occurred after a support order was entered, that is not caused
 22 by an increase or decrease in a party's annual net income, and that may have other effects on the existing
 23 support order. It is presumed that all other facts relative to the existing support order, including income
 24 and deductions from income, remain unchanged. Information gathered is limited to that which is necessary
 25 to verify the change, the value of the change, and the expected duration of the change. The department's
 26 recommendation must be limited to whether the value of the change should be added to or subtracted
 27 from the amount of the existing support order. If a more detailed modification is required in a case
 28 presented for limited review, the case becomes subject to the requirements of [section 6]. The
 29 circumstances in which a limited review process is available are confined to cases in which:

30 (1) there is a change in parenting time or residence of a child and a modified support order has

1 not been entered as a result of the change;

2 (2) a child's need for daycare services has increased or decreased and the increase or decrease
3 is expected to continue for at least 18 months;

4 (3) a child has developed special needs that did not exist when the existing support order was
5 issued and the needs are expected to continue for at least 18 months or a special need considered in the
6 support order no longer exists;

7 (4) the cost of health insurance coverage for a child provided by a parent has increased or
8 decreased by 25% of the support order and the increase or decrease is expected to continue for at least
9 18 months;

10 (5) there has been the birth of another child to the parties and the child's needs are to be added
11 to the existing support order; or

12 (6) a child has reached the age of majority, become emancipated, married, entered military service,
13 or died.

14

15 **Section 8.** Section 40-6-116, MCA, is amended to read:

16 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence
17 or nonexistence of the parent and child relationship is determinative for all purposes.

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

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

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

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

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

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

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

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

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

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

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

11 (d) the earning ability of the parents;

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

13 (f) the age of the child;

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

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

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

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

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

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

29 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
30 state its reasons for finding that the application of the standards and guidelines is unjust to the child or

1 a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which
2 the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and
3 vary the guideline amount must include a statement of the amount of support that would have ordinarily
4 been ordered under the guidelines.

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

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

9 (7) The judgment or order, whether temporary or final, concerning child support and each
10 modification of a judgment or order for child support must include a medical support order as defined in
11 40-5-804.

12 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included
13 in the support order, a support obligation established by judgment, decree, or order under this section,
14 whether temporary or final, and each modification of an existing support obligation made under 40-6-118
15 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
16 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent
17 with this section is nevertheless subject to withholding for the payment of support without need for an
18 amendment to the support order or for any further action by the court.

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

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

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

29 (i) identity of the party;

30 [(ii) social security number;]

1 (iii) residential and mailing addresses;
 2 (iv) telephone number;
 3 (v) driver's license number;
 4 (vi) name, address, and telephone number of the party's employer; and
 5 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
 6 or health benefit plan, the policy identification number, the name of the persons covered, and any other
 7 pertinent information regarding coverage or, if the child is not covered, information as to the availability
 8 of coverage for the child through the party's employer.

9 (b) The order must further direct that in any subsequent child support enforcement action, upon
 10 sufficient showing that diligent effort has been made to ascertain the location of the party, the district
 11 court or the department of public health and human services, if the department is providing services under
 12 Title IV-D of the Social Security Act, may consider the due process requirements for notice and service
 13 of process to be met with respect to the party upon delivery of written notice by regular mail to the most
 14 recent address of the party or the party's employer's address reported to the court.

15 ~~(10) Each district court judgment, decree, or order establishing a final child support obligation under~~
 16 ~~this part and each modification of a final order for child support must contain a statement that the order~~
 17 ~~is subject to review and modification by the department of public health and human services upon the~~
 18 ~~request of the department or a party under 40-5-271 through 40-5-273 when the department is providing~~
 19 ~~services under Title IV-D of the Social Security Act for the enforcement of the order. A judgment, decree,~~
 20 ~~or order establishing a child support obligation under this part may be modified or adjusted as provided by~~
 21 ~~40-4-208 or, if the department of public health and human services is providing services under Title IV-D~~
 22 ~~of the Social Security Act, may be modified or adjusted, by the department as provided for in 40-5-271~~
 23 ~~through 40-5-273 and [sections 5 through 7].~~

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

29

30 NEW SECTION. **Section 9. Codification instruction.** [Sections 5 through 7] are intended to be

1 codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part
2 2, apply to [sections 5 through 7].

3

4 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2001.

5

- END -