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HOUSE BILL NO. 122  
INTRODUCED BY M. LEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CHILD SUPPORT ASSURANCE PROGRAM;  
PROVIDING FOR STATE PAYMENT OF THE GREATER OF THE AMOUNT OF A CHILD SUPPORT ORDER  
OR A PER CHILD AMOUNT TO A CUSTODIAL PARENT WHO TRANSFERS THE RECEIPT OF CHILD  
SUPPORT TO THE STATE; AMENDING SECTION 40-4-204, MCA; AND PROVIDING AN EFFECTIVE  
DATE."

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

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 7] is to create a child support assurance program that secures financial stability to qualified children living in custodial families through a guaranteed minimum level of child support, while prompting custodial parents to be employed and noncustodial parents to financially support their children.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

- (1) "Child support enforcement division" means the division of the department administering Title 40, chapter 5, part 2, and Title IV-D of the Social Security Act.
- (2) "Custodial parent" means a person who has physical or legal custody of a child under a parenting plan. The term includes a parent in a joint parenting plan with whom the child primarily resides.
- (3) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.
- (4) "Noncustodial parent" means a person who has an obligation established by a judicial or administrative order to pay child support on behalf of a child and who is not the person with whom the child primarily resides.
- (5) "Qualified child" means a child for whom there is a child support order and who:
  - (a) resides in Montana;
  - (b) is under 18 years of age or is a student under 19 years of age;



- 1 (c) has a living noncustodial parent; and  
2 (d) has a custodial parent who is employed.

3

4 **NEW SECTION. Section 3. Program operation -- rulemaking.** (1) The department shall establish  
5 a child support assurance program. In implementing the program, the department shall:

6 (a) publicize the availability of the program through:

7 (i) public service announcements;

8 (ii) mailings to all families receiving services from the child support enforcement division;

9 (iii) presentations at public meetings;

10 (iv) collaboration with community-based organizations; and

11 (v) any means determined appropriate by the department.

12 (b) design a simple application that includes only the minimum information needed to determine  
13 eligibility and includes an assignment of child support rights to the state;

14 (c) make applications for participation in the program available through offices providing FAIM  
15 financial assistance, food stamp, or child support enforcement services; public libraries; online computer  
16 access; and the use of a toll-free telephone number;

17 (d) accept applications filed in person or by mail;

18 (e) certify eligibility for program payments, as provided in [sections 4 and 5], within 15 days of  
19 receipt of a completed application from an eligible custodial parent whose child meets program  
20 participation requirements;

21 (f) issue child support assurance payments, as provided in [sections 6 and 7], beginning the first  
22 day of the first month that commences after eligibility is determined;

23 (g) cooperate with the central payment and disbursement unit operated pursuant to 42 U.S.C.  
24 654b in maintaining records of payment and disbursement of child support and child support assurance  
25 payments;

26 (h) identify to the child support enforcement division cases in which payments under [sections 1  
27 through 7] are being made in order for the child support enforcement division to take appropriate action  
28 to enforce a child support order applicable to the child; and

29 (i) establish fair hearing procedures consistent with Title 2, chapter 4, for use by applicants for  
30 or recipients of child support assurance benefits.

1 (2) The child support enforcement division shall:

2 (a) accept applications for services from any custodial parent who wishes to apply for participation  
3 in the child support assurance program who is not already receiving services from the child support  
4 enforcement division on the date of application;

5 (b) while maintaining the timeliness required in all child support cases, give priority to establishing  
6 support orders for parents interested in participating in the child support assurance program and enforcing  
7 orders for those actually participating in the program; and

8 (c) cooperate with the department in sharing information and keeping records necessary for the  
9 operation of the child support assurance program.

10 (3) The department shall adopt rules to implement [sections 1 through 7]. The rules must be  
11 adopted by October 1, 2001.

12

13 **NEW SECTION. Section 4. Initial eligibility.** A custodial parent is eligible to receive child support  
14 assurance payments on behalf of a qualified child if the custodial parent:

15 (1) has applied to participate in the child support assurance program and has enrolled in the  
16 program operated by the child support enforcement division;

17 (2) has established paternity;

18 (3) has obtained a child support order;

19 (4) has obtained a medical support order;

20 (5) has assigned the child's right to collect child support to the state;

21 (6) is employed; and

22 (7) if eligible, has opted not to receive financial assistance under the FAIM program provided for  
23 in Title 53, chapter 2, part 9. However, the custodial parent remains eligible for medicaid and child care  
24 services.

25

26 **NEW SECTION. Section 5. Continuing eligibility.** (1) In addition to the requirements in [section  
27 4] and as a condition of continued receipt of child support assurance payments for a qualified child, a  
28 custodial parent shall cooperate with the state in pursuing child support by:

29 (a) providing all relevant information that the custodial parent has that is requested by the child  
30 support enforcement division;

1 (b) appearing at required interviews, hearings, or legal proceedings for which notice is given,  
2 unless prevented from attending by illness or an emergency; and

3 (c) assigning to the state any child support paid by the noncustodial parent directly to the custodial  
4 parent.

5 (2) A custodial parent may not be required to comply with subsections (1)(a) and (1)(b) when the  
6 custodial parent has been granted an exception to the cooperation requirement because of domestic  
7 violence. Exceptions must be based on a showing of good cause.

8

9 NEW SECTION. **Section 6. Child support assurance payments.** (1) On the last day of each month,  
10 a participating custodial parent must receive a child support assurance payment for a qualified child that  
11 is the greater of the monthly child support payment of the noncustodial parent or the amount calculated  
12 as provided in subsection (2).

13 (2) Subject to subsections (3) and (4), the child support assurance payment is the sum of:

14 (a) \$250 for the first qualified child;

15 (b) \$125 for the second qualified child; and

16 (c) \$65 for each additional qualified child.

17 (3) The department shall adjust the amounts in subsection (2) each year to reflect changes in the  
18 consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other  
19 index that the bureau of business and economic research of the university of Montana-Missoula may in  
20 the future recognize as the successor to that index.

21 (4) A custodial parent is not eligible for a child support assurance payment if the household income  
22 of the custodial parent is more than 185% of the federal poverty level. The child support assurance  
23 payment, calculated pursuant to subsection (2) and adjusted as provided in subsection (3), must be  
24 decreased based upon an income disregard calculated by the department. For family income below the  
25 federal poverty level, the earned income disregard must be 90%. For household income between the  
26 federal poverty level and 185% of the federal poverty level, the income disregard must be decreased  
27 incrementally until the child support assurance payment reaches zero for income equal to 185% of the  
28 federal poverty level.

29

30 NEW SECTION. **Section 7. Funding.** (1) The primary funding for child support assurance payments

1 provided for in [section 6] is the child support paid by the noncustodial parent as provided in subsection  
2 (2). The legislature shall provide other funding necessary for the child support assurance program.

3 (2) Each month that the noncustodial parent of a qualified child pays the amount specified in the  
4 child support order, the state shall retain the payment as full or partial reimbursement for the assured  
5 payment. If the child support payment is less than the amount specified in the child support order, the  
6 noncustodial parent owes the amount of the deficiency to the state. Any deficient amount that is  
7 subsequently collected must be retained by the state. If no support is paid, the entire amount of the  
8 court-ordered support payment is owed to the state by the noncustodial parent.

9 (3) General fund appropriations for the program may be counted toward the state's maintenance  
10 of effort for the federal temporary assistance for needy families block grant in accordance with provisions  
11 for separate state programs under the Personal Responsibility and Work Opportunity Reconciliation Act  
12 of 1996.

13

14 **Section 8.** Section 40-4-204, MCA, is amended to read:

15 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)

16 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall  
17 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary  
18 for the child's support, without regard to marital misconduct.

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

20 (a) the financial resources of the child;

21 (b) the financial resources of the parents;

22 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

23 (d) the physical and emotional condition of the child and the child's educational and medical needs;

24 (e) the age of the child;

25 (f) the cost of day care for the child;

26 (g) any parenting plan that is ordered or decided upon; ~~and~~

27 (h) the needs of any person, other than the child, whom either parent is legally obligated to  
28 support; and

29 (i) the provisions of [section 6].

30 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall

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

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

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

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

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

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

30 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order

1 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's  
2 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure  
3 to include a warning statement in a judgment or order does not preclude the use of withholding  
4 procedures.

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

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

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

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

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

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

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

27 (c) The order must also require 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 due process requirements for notice and service of

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

3 (7) 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 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support  
9 obligation must include a provision requiring the child support obligation to be paid, without need for  
10 further court order:

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

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

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

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

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

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

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



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2           NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 7] are intended to be  
3 codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to  
4 [sections 1 through 7].

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

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