

SENATE BILL NO. 72

INTRODUCED BY J. COBB

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CHARGE A HANDLING FEE AND WITHHOLD IT FROM CHILD SUPPORT PAYMENTS COLLECTED AND DISTRIBUTED TO AN OBLIGEE WHO IS NOT ON PUBLIC ASSISTANCE; AMENDING SECTION 40-5-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature recognizes that parties who are not required to participate in Montana's child support program are choosing to use program services; and

WHEREAS, the Legislature intends that these parties help defray the costs associated with the provision of services;

THEREFORE, if the Child Support Enforcement Division projects that revenue in the Division's special revenue fund may be insufficient to fund appropriations, the Child Support Enforcement Division shall implement a plan to charge a handling fee to obligees who are not receiving public assistance.

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

Section 1. Section 40-5-210, MCA, is amended to read:

"40-5-210. Standardized fee schedule -- rules. (1) The department may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

- (a) a flat dollar amount; or
- (b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity blood testing may be recovered from the parent, whether the alleged father or the mother, who is denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed the actual costs of the paternity blood tests. A bill for a paternity blood test is admissible in evidence without third-party foundation testimony.

- (3) The department may ~~not~~ charge a handling fee for payment of support collected and distributed to

an obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the obligee.

(4) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(5) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

(b) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order whenever the department:

(i) is a prevailing party in the action; or

(ii) is not a party but incurs expenses and costs related to the action.

(6) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or, if the fee has been assessed and deducted from the collection by an entity other than the department, the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(7) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(8) The department may adopt rules necessary to implement fee schedules under this section.

(9) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected.

(10) A district court may not order the department to charge or collect fees, except as authorized under this section and rules implementing this section."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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