

HOUSE BILL NO. 80
INTRODUCED BY M. CAMPBELL
BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ENFORCEMENT OF CHILD SUPPORT TO ALLOW REFERRALS TO AND FROM OTHER IV-D PROGRAMS, INCLUDING TRIBAL PROGRAMS; AMENDING SECTIONS 40-5-201, 40-5-202, 40-5-203, 40-5-206, 40-5-226, 40-5-263, 40-5-271, 40-5-403, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-601, 40-5-701, 40-5-901, 40-5-906, 40-5-909, AND 40-5-923, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means:

(i) a person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age and still in high school;

(iii) a person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday; or

(iv) in a IV-D case, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for ~~interstate~~ IV-D services from an agency of another state or an Indian tribe under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearings examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state or an Indian tribe having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order;

(b) a support order for spousal maintenance of the custodial parent; or

(c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child;

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part; and

(c) when the context requires, includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the custodial parent of a child receiving services under this chapter; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

Section 2. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of public health and human services -- powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this chapter, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53;

(b) is providing services under 40-5-203; or

(c) receives ~~an interstate~~ a referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an ~~interstate~~ action by a Title IV-D agency of ~~another state~~.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. Upon filing, the department may, on behalf of itself or on behalf of the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created between department attorneys and any person or entity other than the department. The obligee, obligor, and child may obtain the services of a private attorney to represent their interests. The existence or appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the department's right to act or provide services under this chapter. This chapter does not require the department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or child.

(4) The department has the power of attorney to act in the name of any obligee to endorse and cash any drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(5) (a) If the department is providing IV-D services, the department must be afforded notice and an opportunity to participate as an independent party in any proceeding relating to paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child.

(b) The notice must reasonably inform the department of the issues to be determined in the proceeding, the names of the parties and the child, and the identity and location of the tribunal in which the issues will be determined. The notice is for informational purposes only and is not intended as a substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment, decree, or order is void as to any interest of the department that is or may be affected by the agreement, judgment, decree, or order if the department was not joined as a party in the manner provided in the Montana Rules of Civil Procedure.

(c) The notice must be personally served on the department. Within 20 days after service of the notice, the department may:

(i) decline to enter the proceeding as a party, in which case the proceeding may continue without the department's participation;

(ii) inform the tribunal that a substantial interest of the department could be adversely affected by the proceeding, in which case the proceeding may not continue without joining the department as a necessary party in the manner provided in the Montana Rules of Civil Procedure; or

(iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an administrative proceeding under this chapter in which the parties and some or all of the issues are the same as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the common issues until administrative remedies have been exhausted.

(6) (a) When the department is providing services, a recipient or former recipient of public assistance who assigned support rights under 42 U.S.C. 602(a)(26) or 42 U.S.C. 608(a)(3) or a collection agency acting on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that accrued after termination of public assistance. The recipient, former recipient, or collection agency may not commence or maintain an action against or make an agreement with the obligor to recover an assigned delinquent support amount unless the department, in writing:

(i) releases or relinquishes its assigned interest;

(ii) declares the support debt owed the department to be satisfied, in which case the balance of the delinquent amount is released; or

(iii) consents to the action or agreement.

(b) If a recipient, former recipient, or collection agency collects or receives value for any part of an assigned delinquent support amount and the department has not given its consent or released or relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt and full restitution to the department. If prompt and full restitution is not made, the department may send a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection agency is liable for damages equal to double the amount collected or value received. The amount of damages may be determined and assessed by the department under the contested case provisions of the Montana Administrative Procedure Act. The damages may be collected by the department by any method or remedy available for the enforcement of child support owed by an obligor parent.

(c) This subsection (6) does not limit the right of a person to recover money not assigned. If there are competing proceedings against an obligor for collection of delinquent support, the collection of support assigned

to the department takes priority over the obligor's income and assets.

(7) An applicant for or recipient of services may not act to the prejudice of the department's rights while the services are being provided.

(8) Unless the department has consented to the agreement in writing, if public assistance is being or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or order adopting the agreement does not act to reduce or terminate any rights of the department to establish a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or order purports to:

- (a) relieve or terminate the obligor's support duty;
- (b) waive, modify, compromise, or discharge the support debt;
- (c) prepay future support obligations or settle past, present, or future support obligations; or
- (d) permit the obligor to pay past, present, or future support obligations:
 - (i) with noncash contributions;
 - (ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments; or
 - (iii) by making contributions to a trust or other account or payments toward an asset if the contributed amounts are unavailable to the department.

(9) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(10) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 42 U.S.C. 602(a)(26) and the support debt created by 40-5-221.

(11) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 42 U.S.C. 602(a)(26) and applies to the lesser of:

- (a) the amount of public assistance paid; or
- (b) the amount due under the support order.

(12) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(13) While providing services under this chapter and in order to carry out the purposes mentioned in this chapter, the department, through its director or the director's authorized representatives, may:

- (a) administer oaths;
- (b) certify official acts and records;

- (c) issue investigative and hearing subpoenas;
 - (d) order discovery before and after a hearing;
 - (e) hold prehearing and settlement conferences;
 - (f) compel the attendance of witnesses and the production of books, accounts, documents, and evidence;
 - (g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint, including a hearing on a claim that property is exempt from execution and the examination of an obligor or other person in the manner provided for the taking of a deposition in a civil action; and
 - (h) perfect service of investigative and hearing subpoenas by certified mail or in the manner prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.
- (14) In addition to any other requirement for service provided by the Montana Rules of Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the department under this chapter, the notice, service, or response must be made to the department's child support enforcement division.
- (15) The department may collect any funds received under this chapter, and wrongfully retained, by the obligor through any remedy available for collection of child support.
- (16) A hearing on a claim that property is exempt from execution must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that a party's case is substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing."

Section 3. Section 40-5-203, MCA, is amended to read:

"40-5-203. Child support enforcement services. (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department shall continue to provide services after public assistance is no longer being paid, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under this section, without requiring an application, application fee, or other request for services. Acceptance of continued services constitutes agreement to the terms and conditions set for

applicants by the department under this section.

(4) Services under this section, including information requests, are available to ~~obligors, obligees, and residents of other states~~ nonresidents on the same terms as residents of this state.

(5) The department may terminate services under this section if it:

(a) receives a written request for termination of services from the person to whom services are being provided;

(b) receives notice that the child is receiving public assistance; or

(c) determines that the person receiving services has violated any term or condition set by the department for an applicant under this section.

(6) For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations."

Section 4. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering ~~interstate~~ IV-D inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, the department or other IV-D agency may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee, including:

(a) name;

(b) residential and mailing addresses;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) state and local tax and revenue records;

- (i) penal corrections records;
- (j) address, location, and description of any real property or titled personal property; and
- (k) any other asset in which the obligor or obligee may have an interest, including its location and the extent, nature, and value of the interest.

(3) Upon service of an administrative subpoena from the department or another IV-D agency during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained in customer records.

(4) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. Absent a specific statutory prohibition to the contrary and subject to subsection (6), the department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

(5) Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use or disclosure of information obtained by the department from confidential sources or any information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

- (a) purposes directly related to the provision of services under this chapter;
- (b) ~~county government~~ attorneys and courts having jurisdiction in support and abandonment proceedings and IV-D agencies ~~in other states~~ engaged in the enforcement of support of minor children under the federal Social Security Act; and
- (c) any other use permitted or required by the federal Social Security Act.

(6) The department may not disclose information regarding the whereabouts of a party to another party if:

- (a) the department received notice that a protective order with respect to the party has been entered against the other party; or
- (b) the department has reason to believe that the release of information may result in physical or emotional harm to the party.

(7) A person or private entity that discloses information to the department in compliance with this section is not liable to the obligor or obligee for negligent disclosure.

(8) An entity failing to comply with this section is subject to the contempt authority of the department under 40-5-226."

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

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

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

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

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

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

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

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

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

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278, the monthly support responsibility

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

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

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

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

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further

necessity of action by the hearings officer.

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

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

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

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

(i) identity of the party;

[(ii) social security number;]

(iii) residential and mailing addresses;

(iv) telephone number;

(v) driver's license number;

(vi) name, address, and telephone number of employer; and

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

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient

showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

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

(13) The hearings officer may:

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

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

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

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

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

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

(14) A contempt occurs whenever:

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

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

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

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

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

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

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

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

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

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

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid 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. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 6. Section 40-5-263, MCA, is amended to read:

"40-5-263. Central clearinghouse -- interstate enforcement services -- powers and duties of the

department. (1) The department shall establish a clearinghouse for the registration of all ~~interstate~~ IV-D cases referred to the department ~~by other states~~. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding ~~interstate~~ IV-D enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act, Uniform Reciprocal Enforcement of Support Act, ~~or the Uniform Interstate Family Support Act~~, or Title IV-D of the Social Security Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any ~~interstate~~ IV-D referral made by ~~interstate~~ application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act, ~~or the Uniform Interstate Family Support Act~~, or Title IV-D of the Social Security Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating ~~state~~ agency in another state, an Indian tribe, or a country that a case filed in the registry of foreign support orders, including a petition under the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may:

(a) proceed under Title 40, chapter 5, part 1; or

(b) pursue any other remedy available to it to establish or enforce a support order.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any ~~interstate~~ IV-D referral;

(b) request missing information from the initiating ~~state~~ agency in another state, an Indian tribe, or a country;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating ~~state~~ agency in another state, an Indian tribe, or a country, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department ~~to a resident of this state~~ and the

obligor ~~resides~~ or the obligor's income or assets reside outside the state.

(6) If the department is providing support enforcement services ~~to a resident of this state~~, the director or the director's designee may certify any ~~interstate~~ petition, application, and referral, including a petition under part 1 of this chapter.

(7) A lien created by operation of law or issued by order of a court or another IV-D ~~agency in another state~~ entity to enforce a support order may, at the request of the other IV-D agency, be registered with the department. Upon registration, the lien applies to any of the obligor's real and personal property located in this state with the same force and effect as a lien established under 40-5-248. At the request of the other IV-D agency, a registered lien may be enforced by the department using any remedy available to enforce a support lien under 40-5-248."

Section 7. Section 40-5-271, MCA, is amended to read:

"40-5-271. Registration of support orders. (1) The department may, for the purpose of review and modification proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this state or by a court or administrative agency of another state, an Indian tribe, or a country. Registration of the order under this section does not confer jurisdiction for any purpose other than for the review and modification process.

(2) When the department conducts review and modification proceedings, the department shall give the parties notice by personal service or certified mail and opportunity to contest registration of the order. A party seeking to vacate the registered order has the burden of proving that the court or agency issuing the order:

- (a) did not have jurisdiction to enter the order;
- (b) did not have personal jurisdiction over the party; or
- (c) did not give the party reasonable notice and opportunity to be heard before the order was entered.

(3) (a) As an alternative to any other registration process or remedy available for the enforcement of a support order issued by a court or agency in another state, an Indian tribe, or a country, the department may register the support order under this subsection (3).

(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer jurisdiction for any other purpose such as visitation, custody, or paternity disputes.

(c) If an order is registered for enforcement under this subsection (3), the department shall notify the parties to the order of the registration. A copy of the registered order must be included with the notice. The notice must inform the parties:

- (i) of the amount of any alleged arrearage as of the date of the notice;

(ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage for any reason set out in subsection (3)(e);

(iii) that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and

(iv) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

(d) A party seeking to contest the validity or enforcement of a registered order shall request a hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a party timely requests a hearing to contest the validity or enforcement of the order, the department shall schedule the matter for hearing.

(e) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;

(ii) the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;

(iii) the order was obtained by fraud;

(iv) the issuing court or agency has stayed enforcement of the order pending appeal;

(v) the order has been vacated, suspended, or modified by a later order;

(vi) there is a defense under the law of this state to the remedy sought; or

(vii) the statute of limitations precludes enforcement of some or all of the arrearages.

(f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or enforcement of the order, the department shall issue an order confirming the order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of the registration. A confirmed order is enforceable as of the date of confirmation in the same manner as an order issued by the department or a district court of this state.

(g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing ~~state~~ jurisdiction, whichever is longer, applies.

(h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative

Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."

Section 8. Section 40-5-403, MCA, is amended to read:

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

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

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

(3) "Employer" includes a payor.

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

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

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

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

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

(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter.

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

(9) "IV-D agency" or "Title IV-D agency" means the agency responsible for the provision of services under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq."

Section 9. Section 40-5-431, MCA, is amended to read:

"40-5-431. Registration of interstate income withholding orders. (1) Whenever an obligor, whether or not the obligor resides in this state, derives income within this state and an order for income withholding of the

obligor's income has been issued by ~~a public~~ another IV-D agency of another state as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the ~~foreign~~ withholding order issued by an entity other than the department, it must be treated in the same manner and have the same effect as an income withholding order issued by the department. The provisions of 40-5-188 through 40-5-191 apply to this section to the extent that they are consistent with this section.

(2) The application for registration of ~~a foreign~~ an order issued by an entity other than the department for income withholding must include:

- (a) a certified copy of the support order, with all modifications of the order;
- (b) a certified copy of the income withholding order;
- (c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the ~~foreign other~~ jurisdiction for issuance of the income withholding order have been carried out in full;
- (d) the name, address, and social security number of the obligor;
- (e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the ~~foreign other~~ jurisdiction extends to other income; and
- (f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the ~~foreign~~ income withholding order issued by an entity other than the department is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department. Registration of ~~a foreign~~ an income-withholding order issued by an entity other than the department under this section does not confer jurisdiction for any other purpose, such as modification of the support order, custody, or visitation."

Section 10. Section 40-5-432, MCA, is amended to read:

"40-5-432. Application for interstate withholding. (1) Whenever an obligor resides in this state and derives income within this state and a support order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for ~~interstate~~ income withholding must include:

- (a) a certified copy of the support order, with all ~~modification thereof~~ modifications of the support order;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if ~~such~~ the records are maintained by the agency or any other agency within that jurisdiction;

(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall ~~commence~~ begin procedures to establish orders for income withholding, including notice and opportunity for hearing under this part. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with 40-5-414, a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the ~~interstate~~ interjurisdictional aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within ~~such~~ the time limit and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit."

Section 11. Section 40-5-433, MCA, is amended to read:

"40-5-433. Additional duties of department in ~~interstate~~ income withholding. (1) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency ~~which~~ that requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(2) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the ~~interstate~~ application."

Section 12. Section 40-5-434, MCA, is amended to read:

"40-5-434. Initiation of income withholding in other jurisdictions. Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income ~~in another~~ outside of the state, the department shall request the Title IV-D agency responsible for income withholding in that ~~state~~ jurisdiction to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other ~~state~~ jurisdiction all documentation required by the law of that ~~state~~ jurisdiction necessary for the purpose of obtaining an income withholding order in that ~~state~~ jurisdiction. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order."

Section 13. Section 40-5-601, MCA, is amended to read:

"40-5-601. Failure to pay support -- civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

- (a) that issued the support order;
- (b) of the judicial district in which the obligated person resides; or
- (c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

- (a) there is a support order issued by a court or administrative agency of this or another state, an Indian tribe, or a country with jurisdiction to enter the order;
- (b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

- (a) has insufficient income to pay the arrearages;
- (b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;
- (c) has unsuccessfully attempted to borrow the sum from a financial institution;
- (d) has no other source, including relatives, from which the sum can be borrowed or secured;
- (e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or
- (f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

- (a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;
- (b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;
- (c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;
- (d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or
- (e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

- (a) not more than 5 days incarceration in the county jail;

- (b) not more than 120 hours of community service work;
- (c) not more than a \$500 fine; or
- (d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

- (a) seek employment and periodically report to the district court all efforts to find employment;
- (b) meet a repayment schedule;
- (c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;
- (d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;
- (e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;
- (f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or
- (g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order."

Section 14. Section 40-5-701, MCA, is amended to read:

"40-5-701. Definitions. As used in this part, the following definitions apply:

- (1) (a) "Child" means:
 - (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;
 - (ii) a person under 19 years of age who is still in high school;
 - (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and
 - (iv) in IV-D cases, a person for whom:
 - (A) support rights are assigned under 53-2-613;
 - (B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate IV-D services ~~from an agency of another state~~ under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

~~(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:~~

~~—— (a) an assignment of support rights under 53-2-613;~~

~~—— (b) a payment of public assistance;~~

~~—— (c) an application for support enforcement services under 40-5-203; or~~

~~—— (d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act.~~

~~(5)~~(4) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

~~(6)~~(5) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

~~(7)~~(6) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state or an Indian tribe that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

~~(8)~~(7) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

~~(9)~~(8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

~~(10)~~(9) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

~~(11)~~(10) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

~~(12)~~(11) "Subpoena" means a writ or order issued by a ~~district~~ court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

~~(13)~~(12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

- (a) support to a child under the laws of this or any other state or under a support order;
 - (b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent;
- or

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

~~(14)~~(13) "Support enforcement entity" means:

- (a) in IV-D cases, the department; or
- (b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

~~(15)~~(14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

- (i) a district court of this state;
- (ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;
- (iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or
- (iv) an administrative agency of another state or an Indian tribe with a hearing function and process

similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

~~(16)~~(15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

~~(17)~~(16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by the district a court relating to the appearance of a party in a paternity or child support proceeding.

(17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for services from an agency of another state or an Indian tribe under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

Section 15. Section 40-5-901, MCA, is amended to read:

"40-5-901. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]

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

[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or

counterintelligence functions if the head of the agency has determined that reporting pursuant to 40-5-922 with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]

(4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization that engages an employee for compensation and withholds federal or state tax liabilities from the employee's compensation.

(5) "Foreign support order" means a support order entered or last modified by a court or administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

(6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obligor" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

- (a) is for the benefit of a child or a state agency;
- (b) provides for monetary support, health care, arrearages, or reimbursement;
- (c) may include related costs and fees, interest, and similar other relief; and
- (d) may include an order for maintenance or other support to be paid to a child's custodial parent.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case also includes a case in which the department is collecting a support debt assigned to this or another state or an Indian tribe under Title IV-D. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 16. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with ~~child support enforcement agencies of this and other states~~ other IV-D agencies for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice must, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and payment processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and payment processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and

(c) the costs charged to the department under the contract or cooperative agreement may not exceed

the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. Rules must be drafted, adopted, and applied in a manner that:

- (a) minimizes the personal intrusiveness on the employer or employee of any requested information;
- (b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and
- (c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 17. Section 40-5-909, MCA, is amended to read:

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

- (a) the case is receiving IV-D services; or
- (b) the support obligation is payable through non IV-D income withholding.

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

- (a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and
- (b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

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

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

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

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

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

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

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

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

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

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

(7) Income-withholding orders may be issued in this state pursuant only to 40-5-308 through 40-5-315 and 40-5-401 through 40-5-432.

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

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

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

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

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

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

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

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

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

(12) If the department is providing IV-D services for the enforcement of a tribal court order that expressly permits satisfaction of a child support obligation with noncash resources, this section applies to the portion of the support obligation paid or payable with cash resources."

Section 18. Section 40-5-923, MCA, is amended to read:

"40-5-923. Information and records -- disclosure. Information in the case registry and payment processing unit that contains the social security number, residential address, income sources, and employers of an obligee or obligor [and the employee W-4 forms or similar forms transmitted to the department] is private and confidential and may be disclosed only to:

(1) courts, tribunals, and administrative agencies in this and any agency of another state or an Indian tribe having jurisdiction over child support, custody, visitation, and welfare pursuant to 42 U.S.C. 651, et seq.;

(2) public assistance and medicaid agencies and the revenue, workers' compensation, and employment security programs of this or any other state for the purpose of determining eligibility, continued eligibility, or fraud by programs operated by those agencies and programs;

(3) the obligor or obligee who is the subject of the information;

(4) the state vital statistics agency for the purposes of 50-15-302; and

(5) the department of revenue. (Bracketed language terminates on occurrence of contingency--sec. 1,

Ch. 27, L. 1999.)"

NEW SECTION. **Section 19. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 20. Effective date.** [This act] is effective on passage and approval.

- END -

