



AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS; PROVIDING FOR THE MODERNIZATION OF CHILD SUPPORT ENFORCEMENT LAWS; EXPANDING THE FORMS OF INCOME FROM WHICH CHILD SUPPORT MAY BE WITHHELD; PROVIDING PAYOR GUIDANCE ON THE ALLOCATION OF INCOME WITHHOLDING; REVISING THE DEFINITION OF A HEALTH BENEFIT PLAN FOR MEDICAL SUPPORT ENFORCEMENT; REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO PROVIDE CONFORMITY WITH UNIFORM LAWS; AND AMENDING SECTIONS 40-5-272, 40-5-403, 40-5-421, 40-5-423, 40-5-804, 40-5-909, 40-5-1002, 40-5-1005, 40-5-1008, 40-5-1017, 40-5-1027, 40-5-1043, 40-5-1051, 40-5-1059, 40-5-1063, 40-5-1064, 40-5-1067, 40-5-1068, 40-5-1069, AND 40-5-1074, MCA.

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

Section 1. Section 40-5-272, MCA, is amended to read:

"40-5-272. Application for review of child support orders. (1) Upon the application of the department, the obligor, or the obligee, a support order issued by a district court of this state or by a court or administrative agency of another state, tribe, or foreign country as defined in 40-5-1002 or a previously issued administrative support order of this state may be reviewed by the department to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273, 40-5-277, and 40-5-278 is authorized when:

- (a) this state has issued the order and the obligor and the obligee reside in this state; or
- (b) ~~jurisdiction can be obtained as provided under 40-5-231~~ this state has jurisdiction as provided under the Uniform Interstate Family Support Act.

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

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

- (a) a substantial change in circumstances as defined by administrative rules;

(b) the need to provide for the child's health care needs, regardless of the availability of health insurance coverage through employment or other group insurance;

(c) a lapse of 36 months from the date that:

(i) the order was entered;

(ii) an administrative hearing was granted under 40-5-277; or

(iii) an administrative order was issued denying a modification because of the applicant's failure to meet one of the criteria described in this subsection (4); or

(d) a change in custody of the child.

(5) A party may withdraw the party's request for modification prior to the issuance of the notice described in 40-5-273. After the issuance of the notice, if a party withdraws a request for modification, the nonrequesting party may continue the modification action by filing with the department a written request to continue.

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

~~(7) To the extent that they are consistent with this section, the provisions of 40-5-1008, 40-5-1012, and 40-5-1013 apply to this section."~~

Section 2. 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) "Financial institution" means:

(a) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(b) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(c) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of a credit union, as defined

in section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r); and

(d) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(5) (a) "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.

(b) Income does not include:

(i) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes, social security, mandatory retirement and disability contributions, and union dues; or

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

(6) "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.

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

(8) "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 4(b) of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 10 of this chapter.

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

(10) ~~"IV-D agency" or~~ "Title IV-D agency" or "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 3. Section 40-5-421, MCA, is amended to read:

"40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after service of the order. The payor shall, within 7 working days of the date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor's income.

(2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion of the withholding that is attributable to each obligor separately designated.

(3) (a) Whenever there is more than one order for withholding against a single obligor, the payor shall comply with the orders in the sequence in which they were served upon the payor and shall honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416. In no case may the allocation result in a withholding for one of the support obligations not being implemented.

(b) Withholding of current support that is less than the amount of current support due all obligees must be prorated among the obligees based on the amount of current support due each obligee.

(c) Withholding of support arrears must be distributed equally among the obligor's cases.

(4) The payor shall promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor."

Section 4. Section 40-5-423, MCA, is amended to read:

"40-5-423. Priority of income withholding. An order to withhold and deliver income ~~under this part by~~ any Title IV-D agency takes priority over any:

- (1) wage or income deduction order under any other state law and any income-withholding order issued in another state and sent to a payor in this state by a non IV-D agency;
- (2) voluntary or involuntary assignment of wages;
- (3) other voluntary deductions from the obligor's income;
- (4) levies, writs of execution, or garnishments of the obligor's income; and
- (5) any other claims by creditors."

Section 5. Section 40-5-804, MCA, is amended to read:

"40-5-804. Definitions. For purposes of this part, the following definitions apply:

- (1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for

enrollment under a health benefit plan or individual insurance policy.

(2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

(3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under which dependent children of employees may continue to receive, for a limited time under specific circumstances, health plan coverage after termination of employment.

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

(5) (a) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, ~~other than public assistance programs~~, that provides medical care or benefits for a child. The term includes but is not limited to a health maintenance organization, self-funded group, state or local government group health plan, church group plan, medical or health service corporation, or similar plan.

(b) The term does not include public health coverage if other medical insurance is available to one or both of the parents at a reasonable cost and is accessible for the child.

(6) "Individual insurance" means health or medical insurance coverage other than a group health benefit plan or public assistance that is or may be provided individually for a child.

(7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body.

(8) "Medical support order" means a judgment, decree, or order, including approval of a settlement agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that complies with the requirements of this part.

(9) "Obligated parent" means the parent who is required by a medical support order to provide for the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

(10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker having lawful charge of the child.

(11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer, trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the jurisdiction of this state under Rule 4(b) of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate

Family Support Act.

(12) "Plan administrator" means the person or entity, including but not limited to a state or local government or church, that assesses and collects premiums, accepts and processes claims, and pays benefits.

(13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan year.

(14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C. 1169.

(15) "Third-party custodian" means an agency or person other than a parent who:

(a) is authorized by legal process to have physical custody of a child;

(b) has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or

(c) has actual physical custody of a child because of the parents' neglect, failure, or inability to provide for the child's support, medical care, and other needs.

(16) "Tribunal" means a court of competent jurisdiction or the department."

Section 6. 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 40-5-1002, 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)(6)~~ 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)(7)~~ 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)~~(8) (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)~~ (8)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

~~(10)~~(9) (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)~~(10) 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)~~(11) 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 7. Section 40-5-1002, MCA, is amended to read:

"40-5-1002. Definitions. In this part:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) "Convention" means the convention on the international recovery of child support and other forms of family maintenance, concluded at The Hague on November 23, 2007.

(4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) "Foreign country" means a country, including a political subdivision of a country, other than the United States, that authorizes the issuance of support orders and:

(a) that has been declared under the law of the United States to be a foreign reciprocating country;

(b) that has established a reciprocal arrangement for child support with this state as provided in 40-5-1028;

(c) that has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under this part; or

(d) in which the convention is in force with respect to the United States.

(6) "Foreign support order" means a support order of a foreign tribunal.

(7) "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country that is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the convention.

(8) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month or other period.

(9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(10) "Income-withholding order" means an order or other legal process directed to an obligor's employer,

as provided in Title 40, chapter 5, parts 3 and 4, ~~or by a tribunal of another state~~ to withhold support from the income of the obligor.

(11) "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(12) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(13) "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

(14) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(16) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(b) a foreign country, state, or political subdivision of a state to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee in place of child support;

(c) an individual seeking a judgment determining parentage of that individual's child; or

(d) a person that is a creditor in a proceeding under 40-5-1073 through 40-5-1085.

(17) "Obligor" means an individual or the estate of a decedent that:

(a) owes or is alleged to owe a duty of support;

(b) is alleged but has not been adjudicated to be a parent of a child;

(c) is liable under a support order; or

(d) is a debtor in a proceeding under 40-5-1073 through 40-5-1085.

(18) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or

instrumentality, or any other legal or commercial entity.

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) "Register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or foreign country.

(22) "Registering tribunal" means a tribunal in which a support order or a judgment determining parentage of a child is registered.

(23) "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or foreign country.

(24) "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

(25) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(26) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) "Support enforcement agency" means a public official, governmental entity, or private agency authorized to:

- (a) seek enforcement of support orders or laws relating to the duty of support;
- (b) seek establishment or modification of child support;
- (c) request determination of parentage of a child;
- (d) attempt to locate obligors or their assets; or
- (e) request determination of the controlling child support order.

(28) (a) "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse that provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support.

(b) The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief.

(29) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish,

enforce, or modify support orders or to determine parentage of a child."

Section 8. Section 40-5-1005, MCA, is amended to read:

"40-5-1005. Application of part to resident of foreign country and foreign support proceeding. (1)

A tribunal of this state shall apply 40-5-1001 through ~~40-5-1004~~ 40-5-1005, 40-5-1008, ~~40-5-1010~~ through ~~40-5-1017~~ 40-5-1018, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ 40-5-1070 and, as applicable, 40-5-1073 through 40-5-1085 to a support proceeding involving:

- (a) a foreign support order;
- (b) a foreign tribunal; or
- (c) an obligee, obligor, or child residing in a foreign country.

(2) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of 40-5-1001 through ~~40-5-1004~~ 40-5-1005, 40-5-1008, ~~40-5-1010~~ through ~~40-5-1017~~ 40-5-1018, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ 40-5-1070.

(3) Sections 40-5-1073 through 40-5-1085 apply only to a support proceeding under the convention. In such a proceeding, if a provision of 40-5-1073 through 40-5-1085 is inconsistent with 40-5-1001 through ~~40-5-1004~~ 40-5-1005, 40-5-1008, ~~40-5-1010~~ through ~~40-5-1017~~ 40-5-1018, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ 40-5-1070, 40-5-1073 through 40-5-1085 control."

Section 9. Section 40-5-1008, MCA, is amended to read:

"40-5-1008. Bases for jurisdiction over nonresident. (1) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (a) the individual is personally served with notice within this state;
- (b) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (c) the individual resided with the child in this state;

- (d) the individual resided in this state and provided prenatal expenses or support for the child;
- (e) the child resides in this state as a result of the acts or directives of the individual;
- (f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (g) the individual asserted parentage of a child in the putative father registry maintained in this state by the department of public health and human services; or
- (h) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) The bases of personal jurisdiction set forth in subsection (1) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of 40-5-1065, ~~40-5-1067~~, and ~~40-5-1068~~ are met or, in the case of a foreign support order, unless the requirements of 40-5-1069 are met."

Section 10. Section 40-5-1017, MCA, is amended to read:

"40-5-1017. Application of part to nonresident subject to personal jurisdiction. A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this part, under the law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to 40-5-1036, communicate with a tribunal outside this state pursuant to 40-5-1037, and obtain discovery through a tribunal outside this state pursuant to 40-5-1038. In all other respects, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through 40-5-1070 do not apply and the tribunal shall apply the procedural and substantive law of this state."

Section 11. Section 40-5-1027, MCA, is amended to read:

"40-5-1027. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency of this state that is providing services to the petitioner shall:

- (a) take all steps necessary to enable an appropriate tribunal of this state, another state, or a foreign country to obtain jurisdiction over the respondent;
- (b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) within 2 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(e) within 2 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(a) to ensure that the order to be registered is the controlling order; or

(b) if two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(4) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(5) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to 40-5-1039.

(6) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency."

Section 12. Section 40-5-1043, MCA, is amended to read:

"40-5-1043. Proceeding to determine parentage. A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding brought under this part to determine parentage of a child."

Section 13. Section 40-5-1051, MCA, is amended to read:

"40-5-1051. Contest by obligor. (1) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in 40-5-1055 through ~~40-5-1065~~ and ~~40-5-1067~~ through 40-5-1070, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(2) The obligor shall give notice of the contest to:

- (a) a support enforcement agency providing services to the obligee;
- (b) each employer that has directly received an income-withholding order relating to the obligor; and
- (c) the person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee."

Section 14. Section 40-5-1059, MCA, is amended to read:

"40-5-1059. Notice of registration of order. (1) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered support order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice unless the registered order is under 40-5-1079;

(c) 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 arrearages; and

(d) of the amount of any alleged arrearages.

(3) If the registering party asserts that two or more orders are in effect, a notice must also:

(a) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(b) notify the nonregistering party of the right to a determination of which is the controlling order;

(c) state that the procedures provided in subsection (2) apply to the determination of which is the

controlling order; and

(d) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(4) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding laws of this state."

Section 15. Section 40-5-1063, MCA, is amended to read:

"40-5-1063. Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in 40-5-1055 through 40-5-1062 ~~and 40-5-274~~ if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or later. The pleading must specify the grounds for modification."

Section 16. Section 40-5-1064, MCA, is amended to read:

"40-5-1064. Effect of registration for modification. A tribunal of this state may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of 40-5-1065; or 40-5-1067, ~~and 40-5-1068~~ have been met."

Section 17. Section 40-5-1067, MCA, is amended to read:

"40-5-1067. Jurisdiction to modify child support order of another state when individual parties reside in this state. (1) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.

(2) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of 40-5-1001 through 40-5-1005, 40-5-1008 through 40-5-1018, 40-5-1055 through 40-5-1070, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, 40-5-1073 through ~~40-5-1080~~ 40-5-1085, 40-5-1088, and 40-5-1089 do not apply."

Section 18. Section 40-5-1068, MCA, is amended to read:

"40-5-1068. Notice to issuing tribunal of modification. (1) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows that the earlier order has been registered.

(2) A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal of having continuing, exclusive jurisdiction."

Section 19. Section 40-5-1069, MCA, is amended to read:

"40-5-1069. Jurisdiction to modify child support order of foreign country. (1) Except as otherwise provided in 40-5-1083, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to 40-5-1065, ~~40-5-1067~~, and ~~40-5-1068~~ has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(2) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order."

Section 20. Section 40-5-1074, MCA, is amended to read:

"40-5-1074. Applicability. Sections 40-5-1073 through 40-5-1085 apply only to a support proceeding under the convention. In such a proceeding, if a provision of 40-5-1073 through 40-5-1085 is inconsistent with 40-5-1001 through ~~40-5-1004~~ 40-5-1005, 40-5-1008, ~~40-5-1010~~ through ~~40-5-1017~~ 40-5-1018, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ 40-5-1070, 40-5-1073 through 40-5-1085 control."

- END -

I hereby certify that the within bill,
SB 0064, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 64

INTRODUCED BY D. SANDS

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS; PROVIDING FOR THE MODERNIZATION OF CHILD SUPPORT ENFORCEMENT LAWS; EXPANDING THE FORMS OF INCOME FROM WHICH CHILD SUPPORT MAY BE WITHHELD; PROVIDING PAYOR GUIDANCE ON THE ALLOCATION OF INCOME WITHHOLDING; REVISING THE DEFINITION OF A HEALTH BENEFIT PLAN FOR MEDICAL SUPPORT ENFORCEMENT; REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO PROVIDE CONFORMITY WITH UNIFORM LAWS; AND AMENDING SECTIONS 40-5-272, 40-5-403, 40-5-421, 40-5-423, 40-5-804, 40-5-909, 40-5-1002, 40-5-1005, 40-5-1008, 40-5-1017, 40-5-1027, 40-5-1043, 40-5-1051, 40-5-1059, 40-5-1063, 40-5-1064, 40-5-1067, 40-5-1068, 40-5-1069, AND 40-5-1074, MCA.