

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 3142

(SENATE AUTHORS: GOODWIN, Hayden, Latz and Limmer)

| DATE | D-PG | OFFICIAL STATUS |
|------------|-------|---|
| 03/23/2016 | 5233 | Introduction and first reading Referred to Judiciary |
| 04/06/2016 | 5666a | Comm report: To pass as amended and re-refer to Finance |

A bill for an act

1.1 relating to family law; modifying the parenting expense adjustment for purposes
 1.2 of child support; modifying provisions for computing of child support; amending
 1.3 Minnesota Statutes 2014, sections 518.175, subdivision 5; 518A.34; 518A.35,
 1.4 subdivision 1; 518A.36; Minnesota Statutes 2015 Supplement, sections 518A.26,
 1.5 subdivision 14; 518A.39, subdivision 2.
 1.6

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2014, section 518.175, subdivision 5, is amended to read:

1.9 Subd. 5. **Modification of parenting plan or order for parenting time.** (a) If a
 1.10 parenting plan or an order granting parenting time cannot be used to determine the number
 1.11 of overnights or overnight equivalents the child has with each parent, the court shall modify
 1.12 the parenting plan or order granting parenting time so that the number of overnights or
 1.13 overnight equivalents the child has with each parent can be determined. For purposes of this
 1.14 section, "overnight equivalents" has the meaning given in section 518A.36, subdivision 1.

1.15 (b) If modification would serve the best interests of the child, the court shall modify
 1.16 the decision-making provisions of a parenting plan or an order granting or denying
 1.17 parenting time, if the modification would not change the child's primary residence.
 1.18 Consideration of a child's best interest includes a child's changing developmental needs.

1.19 ~~(b)~~ (c) Except as provided in section 631.52, the court may not restrict parenting
 1.20 time unless it finds that:

1.21 (1) parenting time is likely to endanger the child's physical or emotional health or
 1.22 impair the child's emotional development; or

1.23 (2) the parent has chronically and unreasonably failed to comply with court-ordered
 1.24 parenting time.

2.1 A modification of parenting time which increases a parent's percentage of parenting time
 2.2 to an amount that is between 45.1 to 54.9 percent parenting time is not a restriction of
 2.3 the other parent's parenting time.

2.4 ~~(e)~~ (d) If a parent makes specific allegations that parenting time by the other
 2.5 parent places the parent or child in danger of harm, the court shall hold a hearing at
 2.6 the earliest possible time to determine the need to modify the order granting parenting
 2.7 time. Consistent with subdivision 1a, the court may require a third party, including the
 2.8 local social services agency, to supervise the parenting time or may restrict a parent's
 2.9 parenting time if necessary to protect the other parent or child from harm. If there is an
 2.10 existing order for protection governing the parties, the court shall consider the use of an
 2.11 independent, neutral exchange location for parenting time.

2.12 Sec. 2. Minnesota Statutes 2015 Supplement, section 518A.26, subdivision 14, is
 2.13 amended to read:

2.14 Subd. 14. **Obligor.** "Obligor" means a person obligated to pay maintenance or
 2.15 support. For purposes of ordering medical support under section 518A.41, a parent who
 2.16 has primary physical custody of a child may be an obligor subject to a payment agreement
 2.17 under section 518A.69. If a parent has more than 55 percent court-ordered parenting
 2.18 time, there is a rebuttable presumption that the parent has a zero dollar basic support
 2.19 obligation. A party seeking to overcome this presumption must show, and the court must
 2.20 consider, the following:

2.21 (1) a significant income disparity, which may include potential income determined
 2.22 under section 518A.32;

2.23 (2) the benefit and detriment to the child and the ability of each parent to meet
 2.24 the needs of the child; and

2.25 (3) whether the application of the presumption would have an unjust or inappropriate
 2.26 result.

2.27 The presumption of a zero dollar basic support obligation does not eliminate a parent's
 2.28 obligation to pay child support arrears under section 518A.60. The presumption of a
 2.29 zero dollar basic support obligation does not apply to an action under section 256.87,
 2.30 subdivision 1 or 1a.

2.31 Sec. 3. Minnesota Statutes 2014, section 518A.34, is amended to read:

2.32 **518A.34 COMPUTATION OF CHILD SUPPORT OBLIGATIONS.**

2.33 (a) To determine the presumptive child support obligation of a parent, the court shall
 2.34 follow the procedure set forth in this section.

3.1 (b) To determine the obligor's basic support obligation, the court shall:

3.2 (1) determine the gross income of each parent under section 518A.29;

3.3 (2) calculate the parental income for determining child support (PICS) of each
3.4 parent, by subtracting from the gross income the credit, if any, for each parent's nonjoint
3.5 children under section 518A.33;

3.6 (3) determine the percentage contribution of each parent to the combined PICS by
3.7 dividing the combined PICS into each parent's PICS;

3.8 (4) determine the combined basic support obligation by application of the guidelines
3.9 in section 518A.35;

3.10 (5) determine ~~the obligor's~~ each parent's share of the combined basic support
3.11 obligation by multiplying the percentage figure from clause (3) by the combined basic
3.12 support obligation in clause (4); and

3.13 (6) ~~determine the parenting expense adjustment, if any, as apply the parenting~~
3.14 expense adjustment formula provided in section 518A.36, and adjust the obligor's basic
3.15 support obligation accordingly to determine the obligor's basic support obligation. If the
3.16 parenting time of the parties is presumed equal, section 518A.36, subdivision 3, applies
3.17 to the calculation of the basic support obligation and a determination of which parent
3.18 is the obligor.

3.19 (c) If the parents have split custody of joint children, child support must be
3.20 calculated for each joint child as follows:

3.21 (1) the court shall determine each parent's basic support obligation under paragraph
3.22 (b) and include the amount of each parent's obligation in the court order. If the basic
3.23 support calculation results in each parent owing support to the other, the court shall offset
3.24 the higher basic support obligation with the lower basic support obligation to determine
3.25 the amount to be paid by the parent with the higher obligation to the parent with the
3.26 lower obligation. For the purpose of the cost-of-living adjustment required under section
3.27 518A.75, the adjustment must be based on each parent's basic support obligation prior to
3.28 offset. For the purposes of this paragraph, "split custody" means that there are two or more
3.29 joint children and each parent has at least one joint child more than 50 percent of the time;

3.30 (2) if each parent pays all child care expenses for at least one joint child, the court
3.31 shall calculate child care support for each joint child as provided in section 518A.40. The
3.32 court shall determine each parent's child care support obligation and include the amount of
3.33 each parent's obligation in the court order. If the child care support calculation results in
3.34 each parent owing support to the other, the court shall offset the higher child care support
3.35 obligation with the lower child care support obligation to determine the amount to be paid
3.36 by the parent with the higher obligation to the parent with the lower obligation; and

4.1 (3) if each parent pays all medical or dental insurance expenses for at least one
4.2 joint child, medical support shall be calculated for each joint child as provided in section
4.3 518A.41. The court shall determine each parent's medical support obligation and include
4.4 the amount of each parent's obligation in the court order. If the medical support calculation
4.5 results in each parent owing support to the other, the court shall offset the higher medical
4.6 support obligation with the lower medical support obligation to determine the amount to
4.7 be paid by the parent with the higher obligation to the parent with the lower obligation.
4.8 Unreimbursed and uninsured medical expenses are not included in the presumptive amount
4.9 of support owed by a parent and are calculated and collected as provided in section 518A.41.

4.10 (d) The court shall determine the child care support obligation for the obligor
4.11 as provided in section 518A.40.

4.12 ~~(d)~~ (e) The court shall determine the medical support obligation for each parent as
4.13 provided in section 518A.41. Unreimbursed and uninsured medical expenses are not
4.14 included in the presumptive amount of support owed by a parent and are calculated and
4.15 collected as described in section 518A.41.

4.16 ~~(e)~~ (f) The court shall determine each parent's total child support obligation by
4.17 adding together each parent's basic support, child care support, and health care coverage
4.18 obligations as provided in this section.

4.19 ~~(f)~~ (g) If Social Security benefits or veterans' benefits are received by one parent as a
4.20 representative payee for a joint child based on the other parent's eligibility, the court shall
4.21 subtract the amount of benefits from the other parent's net child support obligation, if any.

4.22 ~~(g)~~ (h) The final child support order shall separately designate the amount owed for
4.23 basic support, child care support, and medical support. If applicable, the court shall use
4.24 the self-support adjustment and minimum support adjustment under section 518A.42 to
4.25 determine the obligor's child support obligation.

4.26 Sec. 4. Minnesota Statutes 2014, section 518A.35, subdivision 1, is amended to read:

4.27 Subdivision 1. **Determination of support obligation.** (a) The guideline in this
4.28 section is a rebuttable presumption and shall be used in any judicial or administrative
4.29 proceeding to establish or modify a support obligation under this chapter.

4.30 (b) The basic child support obligation shall be determined by referencing the
4.31 guideline for the appropriate number of joint children and the combined parental income
4.32 for determining child support of the parents.

4.33 (c) If a child is not in the custody of either parent and a support order is sought against
4.34 one or both parents, the basic child support obligation shall be determined by referencing
4.35 the guideline for the appropriate number of joint children, and the parent's individual

5.1 parental income for determining child support, not the combined parental incomes for
 5.2 determining child support of the parents. Unless a parent has court-ordered parenting time,
 5.3 the parenting expense adjustment formula under section 518A.34 must not be applied.

5.4 (d) If a child is in custody of either parent and a support order is sought by the public
 5.5 authority under section 256.87, unless the parent against whom the support order is sought
 5.6 has court-ordered parenting time, the support obligation must be determined by referencing
 5.7 the guideline for the appropriate number of joint children and the parent's individual income
 5.8 without application of the parenting expense adjustment formula under section 518A.34.

5.9 (e) For combined parental incomes for determining child support exceeding \$15,000
 5.10 per month, the presumed basic child support obligations shall be as for parents with
 5.11 combined parental income for determining child support of \$15,000 per month. A basic
 5.12 child support obligation in excess of this level may be demonstrated for those reasons set
 5.13 forth in section 518A.43.

5.14 Sec. 5. Minnesota Statutes 2014, section 518A.36, is amended to read:

5.15 **518A.36 PARENTING EXPENSE ADJUSTMENT.**

5.16 Subdivision 1. **General.** (a) The parenting expense adjustment under this section
 5.17 reflects the presumption that while exercising parenting time, a parent is responsible
 5.18 for and incurs costs of caring for the child, including, but not limited to, food, clothing,
 5.19 transportation, recreation, and household expenses. Every child support order shall specify
 5.20 the percentage of parenting time granted to or presumed for each parent. For purposes
 5.21 of this section, the percentage of parenting time means the percentage of time a child is
 5.22 scheduled to spend with the parent during a calendar year according to a court order
 5.23 averaged over a two-year period. Parenting time includes time with the child whether it is
 5.24 designated as visitation, physical custody, or parenting time. The percentage of parenting
 5.25 time may be determined by calculating the number of overnights or overnight equivalents
 5.26 that a child parent spends with a parent, or child pursuant to a court order. For purposes of
 5.27 this section, overnight equivalents are calculated by using a method other than overnights
 5.28 if the parent has significant time periods on separate days where the child is in the parent's
 5.29 physical custody and under the direct care of the parent but does not stay overnight. The
 5.30 court may consider the age of the child in determining whether a child is with a parent
 5.31 for a significant period of time.

5.32 (b) If there is not a court order awarding parenting time, the court shall determine
 5.33 the child support award without consideration of the parenting expense adjustment. If a
 5.34 parenting time order is subsequently issued or is issued in the same proceeding, then the
 5.35 child support order shall include application of the parenting expense adjustment.

6.1 Subd. 2. **Calculation of parenting expense adjustment.** (a) For the purposes of
 6.2 this section, the following terms have the meanings given:

6.3 (1) "parent A" means the parent with whom the child or children will spend the least
 6.4 number of overnights under the court order; and

6.5 (2) "parent B" means the parent with whom the child or children will spend the
 6.6 greatest number of overnights under the court order.

6.7 ~~The obligor is entitled to a parenting expense adjustment calculated as provided in~~
 6.8 ~~this subdivision.~~ (b) The court shall apply the following formula to determine which
 6.9 parent is the obligor and calculate the basic support obligation:

6.10 ~~(1) find the adjustment percentage corresponding to the percentage of parenting~~
 6.11 ~~time allowed to the obligor below:~~

| | Percentage Range of Parenting Time | Adjustment Percentage |
|------|---|--|
| 6.12 | less than 10 percent | no adjustment |
| 6.13 | 10 percent to 45 percent | 12 percent |
| 6.14 | 45.1 percent to 50 percent | presume parenting time is equal |
| 6.15 | (i) | |
| 6.16 | (ii) | |
| 6.17 | (iii) | |

6.17 ~~(2) multiply the adjustment percentage by the obligor's basic child support obligation~~
 6.18 ~~to arrive at the parenting expense adjustment; and~~

6.19 ~~(3) subtract the parenting expense adjustment from the obligor's basic child support~~
 6.20 ~~obligation. The result is the obligor's basic support obligation after parenting expense~~
 6.21 ~~adjustment.~~

6.22 (1) raise to the power of three the approximate number of annual overnights the child
 6.23 or children will likely spend with parent A;

6.24 (2) raise to the power of three the approximate number of annual overnights the child
 6.25 or children will likely spend with parent B;

6.26 (3) multiply the result of clause (1) times parent B's share of the combined basic
 6.27 support obligation as determined in section 518A.34, paragraph (b), clause (5);

6.28 (4) multiply the result of clause (2) times parent A's share of the combined basic
 6.29 support obligation as determined in section 518A.34, paragraph (b), clause (5);

6.30 (5) subtract the result of clause (4) from the result of clause (3); and

6.31 (6) divide the result of clause (5) by the sum of clauses (1) and (2).

6.32 (c) If the result is a negative number, parent A is the obligor, the negative number
 6.33 becomes its positive equivalent, and the result is the basic support obligation. If the result
 6.34 is a positive number, parent B is the obligor and the result is the basic support obligation.

6.35 Subd. 3. **Calculation of basic support when parenting time presumed is equal.**

6.36 (a) If the parenting time is equal and the parental incomes for determining child support of

7.1 the parents also are equal, no basic support shall be paid unless the court determines that
7.2 the expenses for the child are not equally shared.

7.3 ~~(b) If the parenting time is equal but the parents' parental incomes for determining~~
7.4 ~~child support are not equal, the parent having the greater parental income for determining~~
7.5 ~~child support shall be obligated for basic child support, calculated as follows:~~

7.6 ~~(1) multiply the combined basic support calculated under section 518A.34 by 0.75;~~

7.7 ~~(2) prorate the amount under clause (1) between the parents based on each parent's~~
7.8 ~~proportionate share of the combined PICS; and~~

7.9 ~~(3) subtract the lower amount from the higher amount.~~

7.10 ~~The resulting figure is the obligation after parenting expense adjustment for the~~
7.11 ~~parent with the greater parental income for determining child support.~~

7.12 Sec. 6. Minnesota Statutes 2015 Supplement, section 518A.39, subdivision 2, is
7.13 amended to read:

7.14 Subd. 2. **Modification.** (a) The terms of an order respecting maintenance or support
7.15 may be modified upon a showing of one or more of the following, any of which makes
7.16 the terms unreasonable and unfair: (1) substantially increased or decreased gross income
7.17 of an obligor or obligee; (2) substantially increased or decreased need of an obligor or
7.18 obligee or the child or children that are the subject of these proceedings; (3) receipt of
7.19 assistance under the AFDC program formerly codified under sections 256.72 to 256.87
7.20 or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for
7.21 either party as measured by the Federal Bureau of Labor Statistics; (5) extraordinary
7.22 medical expenses of the child not provided for under section 518A.41; (6) a change in
7.23 the availability of appropriate health care coverage or a substantial increase or decrease
7.24 in health care coverage costs; (7) the addition of work-related or education-related child
7.25 care expenses of the obligee or a substantial increase or decrease in existing work-related
7.26 or education-related child care expenses; or (8) upon the emancipation of the child, as
7.27 provided in subdivision 5.

7.28 (b) It is presumed that there has been a substantial change in circumstances under
7.29 paragraph (a) and the terms of a current support order shall be rebuttably presumed to be
7.30 unreasonable and unfair if:

7.31 (1) the application of the child support guidelines in section 518A.35, to the current
7.32 circumstances of the parties results in a calculated court order that is at least 20 percent
7.33 and at least \$75 per month higher or lower than the current support order or, if the current
7.34 support order is less than \$75, it results in a calculated court order that is at least 20
7.35 percent per month higher or lower;

8.1 (2) the medical support provisions of the order established under section 518A.41
8.2 are not enforceable by the public authority or the obligee;

8.3 (3) health coverage ordered under section 518A.41 is not available to the child for
8.4 whom the order is established by the parent ordered to provide;

8.5 (4) the existing support obligation is in the form of a statement of percentage and not
8.6 a specific dollar amount;

8.7 (5) the gross income of an obligor or obligee has decreased by at least 20 percent
8.8 through no fault or choice of the party; or

8.9 (6) a deviation was granted based on the factor in section 518A.43, subdivision 1,
8.10 clause (4), and the child no longer resides in a foreign country or the factor is otherwise no
8.11 longer applicable.

8.12 (c) A child support order is not presumptively modifiable solely because an obligor
8.13 or obligee becomes responsible for the support of an additional nonjoint child, which is
8.14 born after an existing order. Section 518A.33 shall be considered if other grounds are
8.15 alleged which allow a modification of support.

8.16 (d) If child support was established by applying a parenting expense adjustment
8.17 or presumed equal parenting time calculation under previously existing child support
8.18 guidelines and there is no parenting plan or order from which overnights or overnight
8.19 equivalents can be determined, there is a rebuttable presumption that the established
8.20 adjustment or calculation will continue after modification so long as the modification is
8.21 not based on a change in parenting time. In determining an obligation under previously
8.22 existing child support guidelines, it is presumed that the court shall:

8.23 (1) if a 12 percent parenting expense adjustment was applied, multiply the obligor's
8.24 share of the combined basic support obligation calculated under section 518A.34,
8.25 paragraph (b), clause (5), by .88; or

8.26 (2) if the parenting time was presumed equal but the parents' parental incomes for
8.27 determining child support were not equal:

8.28 (i) multiply the combined basic support obligation under section 518A.34, paragraph
8.29 (b), clause (5), by .075;

8.30 (ii) prorate the amount under item (i) between the parents based on each parent's
8.31 proportionate share of the combined PICS; and

8.32 (iii) subtract the lower amount from the higher amount.

8.33 (e) On a motion for modification of maintenance, including a motion for the
8.34 extension of the duration of a maintenance award, the court shall apply, in addition to all
8.35 other relevant factors, the factors for an award of maintenance under section 518.552 that
8.36 exist at the time of the motion. On a motion for modification of support, the court:

9.1 (1) shall apply section 518A.35, and shall not consider the financial circumstances of
9.2 each party's spouse, if any; and

9.3 (2) shall not consider compensation received by a party for employment in excess of
9.4 a 40-hour work week, provided that the party demonstrates, and the court finds, that:

9.5 (i) the excess employment began after entry of the existing support order;

9.6 (ii) the excess employment is voluntary and not a condition of employment;

9.7 (iii) the excess employment is in the nature of additional, part-time employment, or
9.8 overtime employment compensable by the hour or fractions of an hour;

9.9 (iv) the party's compensation structure has not been changed for the purpose of
9.10 affecting a support or maintenance obligation;

9.11 (v) in the case of an obligor, current child support payments are at least equal to the
9.12 guidelines amount based on income not excluded under this clause; and

9.13 (vi) in the case of an obligor who is in arrears in child support payments to the
9.14 obligee, any net income from excess employment must be used to pay the arrearages
9.15 until the arrearages are paid in full.

9.16 ~~(e)~~ (f) A modification of support or maintenance, including interest that accrued
9.17 pursuant to section 548.091, may be made retroactive only with respect to any period
9.18 during which the petitioning party has pending a motion for modification but only from
9.19 the date of service of notice of the motion on the responding party and on the public
9.20 authority if public assistance is being furnished or the county attorney is the attorney of
9.21 record, unless the court adopts an alternative effective date under paragraph (l). The
9.22 court's adoption of an alternative effective date under paragraph (l) shall not be considered
9.23 a retroactive modification of maintenance or support.

9.24 ~~(f)~~ (g) Except for an award of the right of occupancy of the homestead, provided
9.25 in section 518.63, all divisions of real and personal property provided by section 518.58
9.26 shall be final, and may be revoked or modified only where the court finds the existence
9.27 of conditions that justify reopening a judgment under the laws of this state, including
9.28 motions under section 518.145, subdivision 2. The court may impose a lien or charge on
9.29 the divided property at any time while the property, or subsequently acquired property, is
9.30 owned by the parties or either of them, for the payment of maintenance or support money,
9.31 or may sequester the property as is provided by section 518A.71.

9.32 ~~(g)~~ (h) The court need not hold an evidentiary hearing on a motion for modification
9.33 of maintenance or support.

9.34 ~~(h)~~ (i) Sections 518.14 and 518A.735 shall govern the award of attorney fees for
9.35 motions brought under this subdivision.

10.1 (†) (j) Except as expressly provided, an enactment, amendment, or repeal of law does
10.2 not constitute a substantial change in the circumstances for purposes of modifying a
10.3 child support order.

10.4 (†) MS 2006 [Expired]

10.5 (k) On the first modification ~~under the income shares method of calculation~~
10.6 following implementation of amended child support guidelines, the modification of
10.7 basic support may be limited if the amount of the full variance would create hardship
10.8 for either the obligor or the obligee. Hardship includes, but is not limited to, eligibility
10.9 for assistance under chapter 256J.

10.10 (l) The court may select an alternative effective date for a maintenance or support
10.11 order if the parties enter into a binding agreement for an alternative effective date.

10.12 Sec. 7. **EFFECTIVE DATE.**

10.13 Sections 1 to 6 are effective August 1, 2017.