~~has been filed under the provisions of this section prior to that date. This subdivision 7 shall not affect any action or proceeding which is now, or on or before June 1, 1960, shall be, pending in any court.~~

Sec. 37. **REPEALER.**

Minnesota Statutes 2000, sections 508.71, subdivision 7; 508A.22, subdivision 2; 508A.27; and 508A.351, subdivision 1, are repealed.

Sec. 38. **INSTRUCTION TO REVISOR.**

(a) The revisor of statutes shall change the headnote for Minnesota Statutes, section 508.51, to read "VOLUNTARY INSTRUMENT."

(b) The revisor of statutes shall change the headnote for Minnesota Statutes, section 508.421, to read "EXCHANGE CERTIFICATE."

(c) The revisor of statutes shall change the headnote for Minnesota Statutes, section 508A.22, to read "EXAMINER'S DIRECTIVE; FEES."

(d) The revisor of statutes shall change the headnote for Minnesota Statutes, section 508A.351, to read "CONDOMINIUM CERTIFICATE."

Sec. 39. **EFFECTIVE DATE.**

(a) Section 1 is effective the day following final enactment and applies to all easements, conditions, restrictions, and other servitudes created before, on, or after the effective date.

(b) Section 1 does not affect an action or proceeding involving the validity of an easement, condition, restriction, or other servitude if:

(1) the action or proceeding is pending as of the effective date of section 1, or is commenced before February 1, 2002; and

(2) a notice of the pendency of the action or proceeding is recorded or filed before February 1, 2002, in the office of the county recorder or registrar of titles of the county in which the property affected by the action or proceeding is located.

Presented to the governor April 23, 2001

Signed by the governor April 26, 2001, 10:25 a.m.

CHAPTER 51—H.F.No. 1260

An act relating to family law; neutralizing certain terminology; amending Minnesota Statutes 2000, sections 518.131, subdivision 2; 518.155; 518.171, subdivisions 1, 4, 5, 6, and 8; 518.175; 518.1751, subdivision 1b; 518.176, subdivision 1; 518.18; 518.55, subdivision 1; 518.551, subdivisions 5 and 5e; 518.612; and 518.64, subdivision 2.

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

New language is indicated by underline, deletions by ~~strikeout.~~

Section 1. Minnesota Statutes 2000, section 518.131, subdivision 2, is amended to read:

Subd. 2. **IMPERMISSIBLE ORDERS.** No temporary order shall:

(a) Deny parenting time to a ~~noncustodial~~ parent unless the court finds that the parenting time ~~by the noncustodial parent~~ is likely to cause physical or emotional harm to the child;

(b) Exclude a party from the family home of the parties unless the court finds that physical or emotional harm to one of the parties or to the children of the parties is likely to result, or that the exclusion is reasonable in the circumstances; or

(c) Vacate or modify an order granted under section 518B.01, subdivision 6, paragraph (a), clause (1), restraining an abusing party from committing acts of domestic abuse, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

Sec. 2. Minnesota Statutes 2000, section 518.155, is amended to read:

518.155 **CUSTODY DETERMINATIONS.**

Notwithstanding any law to the contrary, a court in which a proceeding for dissolution, legal separation, or child custody has been commenced shall not issue, revise, modify or amend any order, pursuant to sections 518.131, 518.165, 518.168, 518.17, 518.175 or 518.18, which affects the custody of a minor child or the parenting time of a ~~noncustodial~~ parent unless the court has jurisdiction over the matter pursuant to the provisions of chapter 518D.

Sec. 3. Minnesota Statutes 2000, section 518.171, subdivision 1, is amended to read:

Subdivision 1. **ORDER.** Compliance with this section constitutes compliance with a qualified medical child support order as described in the federal Employee Retirement Income Security Act of 1974 (ERISA) as amended by the federal Omnibus Budget Reconciliation Act of 1993 (OBRA).

(a) Every child support order must:

(1) expressly assign or reserve the responsibility for maintaining medical insurance for the minor children and the division of uninsured medical and dental costs; and

(2) contain the names, last known addresses, and social security ~~number~~ numbers of the ~~custodial parent and noncustodial parent,~~ parents of the dependents unless the court prohibits the inclusion of an address or social security number and orders the ~~custodial parent~~ parents to provide ~~the address~~ their addresses and social security ~~number~~ numbers to the administrator of the health plan. The court shall order the ~~party~~ parent with the better group dependent health and dental insurance coverage or health

insurance plan to name the minor child as beneficiary on any health and dental insurance plan that is available to the ~~party~~ parent on:

(i) a group basis;

(ii) through an employer or union; or

(iii) through a group health plan governed under the ERISA and included within the definitions relating to health plans found in section 62A.011, 62A.048, or 62E.06, subdivision 2.

"Health insurance" or "health insurance coverage" as used in this section means coverage that is comparable to or better than a number two qualified plan as defined in section 62E.06, subdivision 2. "Health insurance" or "health insurance coverage" as used in this section does not include medical assistance provided under chapter 256, 256B, 256J, 256K, or 256D.

(b) If the court finds that dependent health or dental insurance is not available to the obligor or obligee on a group basis or through an employer or union, or that group insurance is not accessible to the obligee, the court may require the obligor (1) to obtain other dependent health or dental insurance, (2) to be liable for reasonable and necessary medical or dental expenses of the child, or (3) to pay no less than $50 per month to be applied to the medical and dental expenses of the children or to the cost of health insurance dependent coverage.

(c) If the court finds that the available dependent health or dental insurance does not pay all the reasonable and necessary medical or dental expenses of the child, including any existing or anticipated extraordinary medical expenses, and the court finds that the obligor has the financial ability to contribute to the payment of these medical or dental expenses, the court shall require the obligor to be liable for all or a portion of the medical or dental expenses of the child not covered by the required health or dental plan. Medical and dental expenses include, but are not limited to, necessary orthodontia and eye care, including prescription lenses.

(d) Unless otherwise agreed by the parties and approved by the court, if the court finds that the obligee is not receiving public assistance for the child and has the financial ability to contribute to the cost of medical and dental expenses for the child, including the cost of insurance, the court shall order the obligee and obligor to each assume a portion of these expenses based on their proportionate share of their total net income as defined in section 518.54, subdivision 6.

(e) Payments ordered under this section are subject to section 518.6111. An obligee who fails to apply payments received to the medical expenses of the dependents may be found in contempt of this order.

Sec. 4. Minnesota Statutes 2000, section 518.171, subdivision 4, is amended to read:

Subd. 4. **EFFECT OF ORDER.** (a) The order is binding on the employer or union and the health and dental insurance plan when service under subdivision 3 has been made. In the case of an obligor who changes employment and is required to

provide health coverage for the child, a new employer that provides health care coverage shall enroll the child in the obligor's health plan upon receipt of an order or notice for health insurance, unless the obligor contests the enrollment. The obligor may contest the enrollment on the limited grounds that the enrollment is improper due to mistake of fact or that the enrollment meets the requirements of section 518.64, subdivision 2. If the obligor chooses to contest the enrollment, the obligor must do so no later than 15 days after the employer notifies the obligor of the enrollment, by doing all of the following:

(1) filing a request for contested hearing according to section 484.702;

(2) serving a copy of the request for contested hearing upon the public authority and the obligee; and

(3) securing a date for the contested hearing no later than 45 days after the notice of enrollment.

(b) The enrollment must remain in place during the time period in which the obligor contests the withholding.

An employer or union that is included under ERISA may not deny enrollment based on exclusionary clauses described in section 62A.048. Upon application of the obligor according to the order or notice, the employer or union and its health and dental insurance plan shall enroll the minor child as a beneficiary in the group insurance plan and withhold any required premium from the obligor's income or wages. If more than one plan is offered by the employer or union, the child shall be enrolled in the least costly health insurance plan otherwise available to the obligor that is comparable to a number two qualified plan. If the obligor is not enrolled in a health insurance plan, the employer or union shall also enroll the obligor in the chosen plan if enrollment of the obligor is necessary in order to obtain dependent coverage under the plan. Enrollment of dependents and the obligor shall be immediate and not dependent upon open enrollment periods. Enrollment is not subject to the underwriting policies described in section 62A.048.

(c) An employer or union that willfully fails to comply with the order is liable for any health or dental expenses incurred by the dependents during the period of time the dependents were eligible to be enrolled in the insurance program, and for any other premium costs incurred because the employer or union willfully failed to comply with the order. An employer or union that fails to comply with the order is subject to contempt under section 518.615 and is also subject to a fine of $500 to be paid to the obligee or public authority. Fines paid to the public authority are designated for child support enforcement services.

(d) Failure of the obligor to execute any documents necessary to enroll the dependent in the group health and dental insurance plan will not affect the obligation of the employer or union and group health and dental insurance plan to enroll the dependent in a plan. Information and authorization provided by the public authority responsible for child support enforcement, or by the ~~custodial parent~~ obligee or guardian, is valid for the purposes of meeting enrollment requirements of the health

plan. The insurance coverage for a child eligible under subdivision 5 shall not be terminated except as authorized in subdivision 5.

Sec. 5. Minnesota Statutes 2000, section 518.171, subdivision 5, is amended to read:

Subd. 5. **ELIGIBLE CHILD.** A minor child that an obligor is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the obligor until the child is emancipated or until further order of the court. The health or dental insurance carrier or employer may not disenroll or eliminate coverage of the child unless the health or dental insurance carrier or employer is provided satisfactory written evidence that the court order is no longer in effect, or the child is or will be enrolled in comparable health coverage through another health or dental insurance plan that will take effect no later than the effective date of the disenrollment, or the employer has eliminated family health and dental coverage for all of its employees, or that the required premium has not been paid by or on behalf of the child. If disenrollment or elimination of coverage of a child under this subdivision is based upon nonpayment of premium, the health or dental insurance plan must provide 30 days' written notice to the ~~child's nonobligor parent~~ obligee prior to the disenrollment or elimination of coverage.

Sec. 6. Minnesota Statutes 2000, section 518.171, subdivision 6, is amended to read:

Subd. 6. **PLAN REIMBURSEMENT; CORRESPONDENCE AND NOTICE.** (a) The signature of ~~the custodial~~ either parent of the insured dependent is a valid authorization to a health or dental insurance plan for purposes of processing an insurance reimbursement payment to the provider of the medical services or to the ~~custodial~~ parent ~~if~~ who has prepaid for the medical services ~~have been prepaid by the custodial parent~~.

(b) The health or dental insurance plan shall send copies of all correspondence regarding the insurance coverage to both parents. When an order for dependent insurance coverage is in effect and the obligor's employment is terminated, or the insurance coverage is terminated, the health or dental insurance plan shall notify the obligee within ten days of the termination date with notice of conversion privileges.

Sec. 7. Minnesota Statutes 2000, section 518.171, subdivision 8, is amended to read:

Subd. 8. **OBLIGOR LIABILITY.** (a) An obligor who fails to maintain medical or dental insurance for the benefit of the children as ordered or fails to provide other medical support as ordered is liable to the obligee for any medical or dental expenses incurred from the effective date of the court order, including health and dental insurance premiums paid by the obligee because of the obligor's failure to obtain coverage as ordered. Proof of failure to maintain insurance or noncompliance with an order to provide other medical support constitutes a showing of increased need by the obligee pursuant to section 518.64 and provides a basis for a modification of the obligor's child support order.

(b) Payments for services rendered to the dependents that are directed to the obligor, in the form of reimbursement by the health or dental insurance carrier or employer, must be endorsed over to and forwarded to the vendor or ~~custodial parent~~ obligee or public authority when the reimbursement is not owed to the obligor. An obligor retaining insurance reimbursement not owed to the obligor may be found in contempt of this order and held liable for the amount of the reimbursement. Upon written verification by the health or dental insurance carrier or employer of the amounts paid to the obligor, the reimbursement amount is subject to all enforcement remedies available under subdivision 10, including income withholding pursuant to section 518.6111. The monthly amount to be withheld until the obligation is satisfied is 20 percent of the original debt or $50, whichever is greater.

Sec. 8. Minnesota Statutes 2000, section 518.175, is amended to read:

518.175 ~~VISITATION OF CHILDREN AND NONCUSTODIAL PARENT~~ PARENTING TIME.

Subdivision 1. **GENERAL.** (a) In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such parenting time on behalf of the child and ~~noncustodial~~ a parent as will enable the child and the ~~noncustodial~~ parent to maintain a child to parent relationship that will be in the best interests of the child.

If the court finds, after a hearing, that parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with ~~the noncustodial~~ that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the ~~noncustodial~~ parent prior to the commencement of the proceeding.

A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of parenting time.

(b) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with parenting time.

(c) Upon request of either party, to the extent practicable an order for parenting time must include a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, unless parenting time is restricted, denied, or reserved.

(d) The court administrator shall provide a form for a pro se motion regarding parenting time disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the parenting time expeditor process under section 518.1751. The form may not include a request for a change of custody. The court shall provide instructions on serving and filing the motion.

Subd. 1a. **DOMESTIC ABUSE; SUPERVISED PARENTING TIME.** (a) If a ~~custodial~~ parent requests supervised parenting time under subdivision 1 or 5 and an order for protection under chapter 518B or a similar law of another state is in effect against the ~~noncustodial~~ other parent to protect the ~~custodial~~ parent with whom the child resides or the child, the judge or judicial officer must consider the order for protection in making a decision regarding parenting time.

(b) The state court administrator, in consultation with representatives of ~~custodial and noncustodial~~ parents and other interested persons, shall develop standards to be met by persons who are responsible for supervising parenting time. Either parent may challenge the appropriateness of an individual chosen by the court to supervise parenting time.

Subd. 2. **RIGHTS OF CHILDREN AND ~~NONCUSTODIAL PARENT~~ PARENTS.** Upon the request of either parent, the court may inform any child of the parties, if eight years of age or older, or otherwise of an age of suitable comprehension, of the rights of the child and ~~the noncustodial~~ each parent under the order or decree or any substantial amendment thereof. The ~~custodial~~ parent with whom the child resides shall present the child for parenting time with the ~~noncustodial~~ other parent, at such times as the court directs.

Subd. 3. **MOVE TO ANOTHER STATE.** The ~~custodial~~ parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the ~~noncustodial~~ other parent, ~~when~~ if the ~~noncustodial~~ other parent has been given parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the ~~noncustodial~~ other parent by the decree, the court shall not permit the child's residence to be moved to another state.

Subd. 5. **MODIFICATION OF PARENTING PLAN OR ORDER FOR PARENTING TIME.** If modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child's primary residence. Except as provided in section 631.52, the court may not restrict parenting time unless it finds that:

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

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

If ~~the custodial~~ a parent makes specific allegations that parenting time by the other parent places the ~~custodial~~ parent or child in danger of harm, the court shall hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time. Consistent with subdivision 1a, the court may require a third party, including the local social services agency, to supervise the parenting time or may restrict a parent's parenting time if necessary to protect the ~~custodial~~ other parent or child from harm. ~~In addition,~~ If there is an existing order for protection governing the

parties, the court shall consider the use of an independent, neutral exchange location for parenting time.

Subd. 6. **REMEDIES.** (a) The court may provide for one or more of the following remedies for denial of or interference with court-ordered parenting time as provided under this subdivision. All parenting time orders must include notice of the provisions of this subdivision.

(b) If the court finds that a person has been deprived of court-ordered parenting time, the court shall order the ~~custodial~~ parent who has interfered to ~~permit additional~~ allow compensatory parenting time to ~~compensate for the parenting time of which the person was deprived~~ the other parent or the court shall make specific findings as to why a request for compensatory parenting time is denied. If compensatory parenting time is awarded, additional parenting time must be:

(1) at least of the same type and duration as the deprived parenting time and, at the discretion of the court, may be in excess of or of a different type than the deprived parenting time;

(2) taken within one year after the deprived parenting time; and

(3) at a time acceptable to the ~~person~~ parent deprived of parenting time.

(c) If the court finds that a party has wrongfully failed to comply with a parenting time order or a binding agreement or decision under section 518.1751, the court may:

(1) impose a civil penalty of up to $500 on the party;

(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance;

(3) award reasonable attorney's fees and costs;

(4) require the party who violated the parenting time order or binding agreement or decision of the parenting time expeditor to reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or

(5) award any other remedy that the court finds to be in the best interests of the children involved.

A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a parenting time expeditor program in a county with this program. In other counties, the civil penalty must be deposited in the state general fund.

(d) If the court finds that a party has been denied parenting time and has incurred expenses in connection with the denied parenting time, the court may require the party who denied parenting time to post a bond in favor of the other party in the amount of prepaid expenses associated with upcoming planned parenting time.

(e) Proof of an unwarranted denial of or interference with duly established parenting time may constitute contempt of court and may be sufficient cause for reversal of custody.

Subd. 7. **GRANDPARENT VISITATION.** In all proceedings for dissolution or legal separation, after the commencement of the proceeding or at any time after completion of the proceedings, and continuing during the minority of the child, the court may make an order granting visitation rights to grandparents under section 257.022, subdivision 2.

Subd. 8. **ADDITIONAL PARENTING TIME FOR CHILD CARE ~~OF CHILD BY NONCUSTODIAL~~ PARENT.** The court may allow additional parenting time to ~~the noncustodial~~ a parent to provide child care while the ~~custodial~~ other parent is working if this arrangement is reasonable and in the best interests of the child, as defined in section 518.17, subdivision 1. In addition, the court shall consider:

(1) the ability of the parents to cooperate;

(2) methods for resolving disputes regarding the care of the child, and the parents' willingness to use those methods; and

(3) whether domestic abuse, as defined in section 518B.01, has occurred between the parties.

Sec. 9. Minnesota Statutes 2000, section 518.1751, subdivision 1b, is amended to read:

Subd. 1b. **PURPOSE; DEFINITIONS.** (a) The purpose of a parenting time expeditor is to resolve parenting time disputes by enforcing, interpreting, clarifying, and addressing circumstances not specifically addressed by an existing parenting time order and, if appropriate, to make a determination as to whether the existing parenting time order has been violated. A parenting time expeditor may be appointed to resolve a one-time parenting time dispute or to provide ongoing parenting time dispute resolution services.

(b) For purposes of this section, "parenting time dispute" means a disagreement among parties about parenting time with a child, including a dispute about an anticipated denial of future scheduled parenting time. "Parenting time dispute" includes a claim by a ~~custodial~~ parent that ~~a noncustodial~~ the other parent is not spending time with a child as well as a claim by a ~~noncustodial~~ parent that ~~a custodial~~ the other parent is denying or interfering with parenting time.

(c) A "parenting time expeditor" is a neutral person authorized to use a mediation-arbitration process to resolve parenting time disputes. A parenting time expeditor shall attempt to resolve a parenting time dispute by facilitating negotiations between the parties to promote settlement and, if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, the parenting time expeditor shall make a decision resolving the dispute.

Sec. 10. Minnesota Statutes 2000, section 518.176, subdivision 1, is amended to read:

Subdivision 1. **LIMITS ON ~~CUSTODIAN'S~~ PARENT'S AUTHORITY; HEARING.** Except as otherwise agreed by the parties in writing at the time of the custody order, the ~~custodian~~ parent with whom the child resides may determine the

child's upbringing, including education, health care, and religious training, unless the court after hearing, finds, upon motion by the ~~noncustodial~~ other parent, that in the absence of a specific limitation of the ~~custodian's~~ authority of the parent with whom the child resides, the child's physical or emotional health is likely to be endangered or the child's emotional development impaired.

Sec. 11. Minnesota Statutes 2000, section 518.18, is amended to read:

518.18 **MODIFICATION OF ORDER.**

(a) Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan may be made earlier than one year after the date of the entry of a decree of dissolution or legal separation containing a provision dealing with custody, except in accordance with paragraph (c).

(b) If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within two years after disposition of the prior motion on its merits, except in accordance with paragraph (c).

(c) The time limitations prescribed in paragraphs (a) and (b) shall not prohibit a motion to modify a custody order or parenting plan if the court finds that there is persistent and willful denial or interference with parenting time, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order or a parenting plan provision which specifies the child's primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custody arrangement or the parenting plan provision specifying the child's primary residence that was established by the prior order unless:

(i) the court finds that a change in the custody arrangement or primary residence is in the best interests of the child and the parties previously agreed, in a writing approved by a court, to apply the best interests standard in section 518.17 or 257.025, as applicable; and, with respect to agreements approved by a court on or after April 28, 2000, both parties were represented by counsel when the agreement was approved or the court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications;

(ii) both parties agree to the modification;

(iii) the child has been integrated into the family of the petitioner with the consent of the other party; or

(iv) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

In addition, a court may modify a custody order or parenting plan under section 631.52.

(e) In deciding whether to modify a prior joint custody order, the court shall apply the standards set forth in paragraph (d) unless: (1) the parties agree in writing to the application of a different standard, or (2) the party seeking the modification is asking the court for permission to move the residence of the child to another state.

(f) If a ~~custodial~~ parent has been granted sole physical custody of a minor and the child subsequently lives with the ~~noncustodial~~ other parent, and temporary sole physical custody has been approved by the court or by a court-appointed referee, the court may suspend the ~~noncustodial parent's~~ obligor's child support obligation pending the final custody determination. The court's order denying the suspension of child support must include a written explanation of the reasons why continuation of the child support obligation would be in the best interests of the child.

Sec. 12. Minnesota Statutes 2000, section 518.55, subdivision 1, is amended to read:

Subdivision 1. **CONTENTS OF ORDER.** Every award of maintenance or support money in a judgment of dissolution or legal separation shall clearly designate whether the same is maintenance or support money, or what part of the award is maintenance and what part is support money. An award of payments from future income or earnings of the ~~custodial~~ parent with whom the child resides is presumed to be maintenance and an award of payments from the future income or earnings of the ~~noncustodial~~ parent with whom the child does not reside is presumed to be support money, unless otherwise designated by the court. In a judgment of dissolution or legal separation the court may determine, as one of the issues of the case, whether or not either spouse is entitled to an award of maintenance notwithstanding that no award is then made, or it may reserve jurisdiction of the issue of maintenance for determination at a later date.

Sec. 13. Minnesota Statutes 2000, section 518.551, subdivision 5, is amended to read:

Subd. 5. **NOTICE TO PUBLIC AUTHORITY; GUIDELINES.** (a) The petitioner shall notify the public authority of all proceedings for dissolution, legal separation, determination of parentage or for the custody of a child, if either party is receiving public assistance or applies for it subsequent to the commencement of the proceeding. The notice must contain the full names of the parties to the proceeding, their social security account numbers, and their birth dates. After receipt of the notice, the court shall set child support as provided in this subdivision. The court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct. The court shall approve a child support stipulation of the parties if each

party is represented by independent counsel, unless the stipulation does not meet the conditions of paragraph (i). In other cases the court shall determine and order child support in a specific dollar amount in accordance with the guidelines and the other factors set forth in paragraph (c) and any departure therefrom. The court may also order the obligor to pay child support in the form of a percentage share of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount.

(b) The court shall derive a specific dollar amount for child support by multiplying the obligor's net income by the percentage indicated by the following guidelines:

Net Income Per Month of Obligor	Number of Children						
	1	2	3	4	5	6	7 or more
$550 and Below	Order based on the ability of the obligor to provide support at these income levels, or at higher levels, if the obligor has the earning ability.						
$551 - 600	16%	19%	22%	25%	28%	30%	32%
$601 - 650	17%	21%	24%	27%	29%	32%	34%
$651 - 700	18%	22%	25%	28%	31%	34%	36%
$701 - 750	19%	23%	27%	30%	33%	36%	38%
$751 - 800	20%	24%	28%	31%	35%	38%	40%
$801 - 850	21%	25%	29%	33%	36%	40%	42%
$851 - 900	22%	27%	31%	34%	38%	41%	44%
$901 - 950	23%	28%	32%	36%	40%	43%	46%
$951 - 1000	24%	29%	34%	38%	41%	45%	48%
$1001 - 5000 or the amount in effect under paragraph (k)	25%	30%	35%	39%	43%	47%	50%

Guidelines for support for an obligor with a monthly income in excess of the income limit currently in effect under paragraph (k) shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income equal to the limit in effect.

Net Income defined as:

Total monthly income less

*(i) Federal Income Tax
*(ii) State Income Tax
(iii) Social Security Deductions
(iv) Reasonable Pension Deductions

New language is indicated by underline, **deletions by** ~~strikeout.~~

*Standard Deductions apply-use of tax tables recommended

(v) Union Dues
(vi) Cost of Dependent Health Insurance Coverage
(vii) Cost of Individual or Group Health/Hospitalization Coverage or an Amount for Actual Medical Expenses
(viii) A Child Support or Maintenance Order that is Currently Being Paid.

"Net income" does not include:

(1) the income of the obligor's spouse, but does include in-kind payments received by the obligor in the course of employment, self-employment, or operation of a business if the payments reduce the obligor's living expenses; or

(2) compensation received by a party for employment in excess of a 40-hour work week, provided that:

(i) support is nonetheless ordered in an amount at least equal to the guidelines amount based on income not excluded under this clause; and

(ii) the party demonstrates, and the court finds, that:

(A) the excess employment began after the filing of the petition for dissolution;

(B) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;

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

(D) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and

(E) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

The court shall review the work-related and education-related child care costs paid and shall allocate the costs to each parent in proportion to each parent's net income, as determined under this subdivision, after the transfer of child support and spousal maintenance, unless the allocation would be substantially unfair to either parent. There is a presumption of substantial unfairness if after the sum total of child support, spousal maintenance, and child care costs is subtracted from the ~~noncustodial parent's~~ obligor's income, the income is at or below 100 percent of the federal poverty guidelines. The cost of child care for purposes of this paragraph is 75 percent of the actual cost paid for child care, to reflect the approximate value of state and federal tax credits available to the ~~custodial parent~~ obligee. The actual cost paid for child care is the total amount received by the child care provider for the child or children of the

obligor from the obligee or any public agency. The court shall require verification of employment or school attendance and documentation of child care expenses from the obligee and the public agency, if applicable. If child care expenses fluctuate during the year because of seasonal employment or school attendance of the obligee or extended periods of parenting time with the obligor, the court shall determine child care expenses based on an average monthly cost. The amount allocated for child care expenses is considered child support but is not subject to a cost-of-living adjustment under section 518.641. The amount allocated for child care expenses terminates when either party notifies the public authority that the child care costs have ended and without any legal action on the part of either party. The public authority shall verify the information received under this provision before authorizing termination. The termination is effective as of the date of the notification. In other cases where there is a substantial increase or decrease in child care expenses, the parties may modify the order under section 518.64.

The court may allow the ~~noncustodial~~ obligor parent to care for the child while the ~~custodial~~ obligee parent is working, as provided in section 518.175, subdivision 8. ~~Allowing the noncustodial parent to care for the child under section 518.175, subdivision 8,~~ but this is not a reason to deviate from the guidelines.

(c) In addition to the child support guidelines, the court shall take into consideration the following factors in setting or modifying child support or in determining whether to deviate from the guidelines:

(1) all earnings, income, and resources of the parents, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of paragraph (b), clause (2)(ii);

(2) the financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;

(4) which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it;

(5) the parents' debts as provided in paragraph (d); and

(6) the obligor's receipt of public assistance under the AFDC program formerly codified under sections 256.72 to 256.82 or 256B.01 to 256B.40 and chapter 256J or 256K.

(d) In establishing or modifying a support obligation, the court may consider debts owed to private creditors, but only if:

(1) the right to support has not been assigned under section 256.741;

(2) the court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income. If the debt was incurred for the necessary generation of income, the court shall consider only the

amount of debt that is essential to the continuing generation of income; and

(3) the party requesting a departure produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the amount of the original debt, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.

(e) Any schedule prepared under paragraph (d), clause (3), shall contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the party's control.

(f) Any further departure below the guidelines that is based on a consideration of debts owed to private creditors shall not exceed 18 months in duration, after which the support shall increase automatically to the level ordered by the court. Nothing in this section shall be construed to prohibit one or more step increases in support to reflect debt retirement during the 18-month period.

(g) If payment of debt is ordered pursuant to this section, the payment shall be ordered to be in the nature of child support.

(h) Nothing shall preclude the court from receiving evidence on the above factors to determine if the guidelines should be exceeded or modified in a particular case.

(i) The guidelines in this subdivision are a rebuttable presumption and shall be used in all cases when establishing or modifying child support. If the court does not deviate from the guidelines, the court shall make written findings concerning the amount of the obligor's income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the determination of child support. If the court deviates from the guidelines, the court shall make written findings giving the amount of support calculated under the guidelines, the reasons for the deviation, and shall specifically address the criteria in paragraph (c) and how the deviation serves the best interest of the child. The court may deviate from the guidelines if both parties agree and the court makes written findings that it is in the best interests of the child, except that in cases where child support payments are assigned to the public agency under section 256.741, the court may deviate downward only as provided in paragraph (j). Nothing in this paragraph prohibits the court from deviating in other cases. The provisions of this paragraph apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The court shall review stipulations presented to it for conformity to the guidelines and the court is not required to conduct a hearing, but the parties shall provide the documentation of earnings required under subdivision 5b.

(j) If the child support payments are assigned to the public agency under section 256.741, the court may not deviate downward from the child support guidelines unless the court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.

(k) The dollar amount of the income limit for application of the guidelines must be adjusted on July 1 of every even-numbered year to reflect cost-of-living changes. The supreme court shall select the index for the adjustment from the indices listed in

section 518.641. The state court administrator shall make the changes in the dollar amount required by this paragraph available to courts and the public on or before April 30 of the year in which the amount is to change.

(l) In establishing or modifying child support, if a child receives a child's insurance benefit under United States Code, title 42, section 402, because the obligor is entitled to old age or disability insurance benefits, the amount of support ordered shall be offset by the amount of the child's benefit. The court shall make findings regarding the obligor's income from all sources, the child support amount calculated under this section, the amount of the child's benefit, and the obligor's child support obligation. Any benefit received by the child in a given month in excess of the child support obligation shall not be treated as an arrearage payment or a future payment.

Sec. 14. Minnesota Statutes 2000, section 518.551, subdivision 5e, is amended to read:

Subd. 5e. **ADJUSTMENT TO SUPPORT ORDER.** A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the ~~noncustodial parent~~ obligor, the amount of support otherwise due under the order may be reduced.

Sec. 15. Minnesota Statutes 2000, section 518.612, is amended to read:

518.612 **INDEPENDENCE OF PROVISIONS OF DECREE OR TEMPORARY ORDER.**

Failure by a party to make support payments is not a defense to:

(1) interference with parenting time; or

(2) without the permission of the court or the ~~noncustodial~~ other parent, removing a child from this state.

~~Nor is~~ Interference with parenting time or taking a child from this state without permission of the court or the ~~noncustodial~~ other parent is not a defense to nonpayment of support. If a party fails to make support payments, ~~or~~ interferes with parenting time, or removes a child from the state without permission of the court or the ~~noncustodial~~ other parent ~~removes a child from this state~~, the other party may petition the court for an appropriate order.

Sec. 16. Minnesota Statutes 2000, section 518.64, subdivision 2, is amended to read:

Subd. 2. **MODIFICATION.** (a) The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following: (1) substantially increased or decreased earnings of a party; (2) substantially increased or decreased need of a party or the child or children that are the subject of these proceedings; (3) receipt of assistance under the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for either party as measured by the federal bureau of statistics, any of which makes the terms unreasonable and unfair; (5) extraordinary

medical expenses of the child not provided for under section 518.171; or (6) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses.

On a motion to modify support, the needs of any child the obligor has after the entry of the support order that is the subject of a modification motion shall be considered as provided by section 518.551, subdivision 5f.

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

(1) the application of the child support guidelines in section 518.551, subdivision 5, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least $50 per month higher or lower than the current support order;

(2) the medical support provisions of the order established under section 518.171 are not enforceable by the public authority or the ~~custodial parent~~ obligee;

(3) health coverage ordered under section 518.171 is not available to the child for whom the order is established by the parent ordered to provide; or

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

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

(1) shall apply section 518.551, subdivision 5, and shall not consider the financial circumstances of each party's spouse, if any; and

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

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

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

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

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

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

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

(d) A modification of support or maintenance, including interest that accrued pursuant to section 548.091, may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the public authority if public assistance is being furnished or the county attorney is the attorney of record. However, modification may be applied to an earlier period if the court makes express findings that:

(1) the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability, a material misrepresentation of another party, or fraud upon the court and that the party seeking modification, when no longer precluded, promptly served a motion;

(2) the party seeking modification was a recipient of federal Supplemental Security Income (SSI), Title II Older Americans, Survivor's Disability Insurance (OASDI), other disability benefits, or public assistance based upon need during the period for which retroactive modification is sought; or

(3) the order for which the party seeks amendment was entered by default, the party shows good cause for not appearing, and the record contains no factual evidence, or clearly erroneous evidence regarding the individual obligor's ability to pay.

The court may provide that a reduction in the amount allocated for child care expenses based on a substantial decrease in the expenses is effective as of the date the expenses decreased.

(e) Except for an award of the right of occupancy of the homestead, provided in section 518.63, all divisions of real and personal property provided by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state, including motions under section 518.145, subdivision 2. The court may impose a lien or charge on the divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property as is provided by section 518.24.

(f) The court need not hold an evidentiary hearing on a motion for modification of maintenance or support.

(g) Section 518.14 shall govern the award of attorney fees for motions brought under this subdivision.

Sec. 17. **REVISOR INSTRUCTION.**

The revisor of statutes must renumber Minnesota Statutes, section 518.175, subdivision 7, as section 518.1752.

Presented to the governor April 23, 2001

Signed by the governor April 26, 2001, 10:25 a.m.

New language is indicated by underline, deletions by ~~strikeout.~~