

CHAPTER 118--H.F.No. 3389

An act relating to children; modifying presumptions in child support modifications; codifying case law; amending Minnesota Statutes 2016, section 518A.39, subdivision 2.

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

Section 1. Minnesota Statutes 2016, section 518A.39, 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, any of which makes the terms unreasonable and unfair: (1) substantially increased or decreased gross income of an obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee 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 Labor Statistics; (5) extraordinary medical expenses of the child not provided for under section 518A.41; (6) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs; (7) 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; or (8) upon the emancipation of the child, as provided in subdivision 5.

(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 518A.35, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$75 per month higher or lower than the current support order or, if the current support order is less than \$75, it results in a calculated court order that is at least 20 percent per month higher or lower;

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

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

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

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

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518A.43, subdivision 1, clause (4), and the child no longer resides in a foreign country or the factor is otherwise no longer applicable.

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

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

(1) if a 12 percent parenting expense adjustment was applied, multiply the obligor's share of the combined basic support obligation calculated under section 518A.34, paragraph (b), clause (5), by 0.88; or

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

(i) multiply the combined basic support obligation under section 518A.34, paragraph (b), clause (5), by 0.075;

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

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

(e) 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 518A.35, 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.

(f) 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, unless the court adopts an alternative effective date under paragraph (l). The court's adoption of an alternative effective date under paragraph (l) shall not be considered a retroactive modification of maintenance or support.

(g) 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 518A.71.

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

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

(j) ~~Except as expressly provided,~~ An enactment, amendment, or repeal of law ~~does not constitute~~ constitutes a substantial change in the circumstances for purposes of modifying a child support order when it meets the standards for modification in this section.

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

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

Presented to the governor May 4, 2018

Signed by the governor May 8, 2018, 12:30 p.m.