
CHAPTER 259—H.F.No.643

An act relating to marriage; providing for procedures and remedies in actions for dissolution and legal separation; defining terms; requiring personal service in a dissolution; providing for the court's findings in an uncontested dissolution; providing mutual restraining orders pending a dissolution; providing additional relevant factors for making custody determinations and for awarding maintenance; permitting retroactive modification of support and maintenance orders for inability to pay; providing penalties; amending Minnesota Statutes 1978, Sections 517.03; 518.005, Subdivision 3; 518.06, Subdivisions 1 and 3; 518.07; 518.09; 518.10; 518.12; 518.13; 518.145; 518.155; 518.156; 518.165; 518.166; 518.17, Subdivision 1; 518.175, Subdivisions 1 and 3; 518.176; 518.18; 518.27; 518.54, Subdivision 5; 518.55; 518.551; 518.552; 518.58; 518.611; 518.612; 518.62; 518.64, Subdivision 2; 518.66; 518A.09, Subdivision 1; and Chapter 518, by adding sections; repealing Minnesota Statutes 1978, Sections 518.135 and 518.16.

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

Section 1. Minnesota Statutes 1978, Section 517.03, is amended to read:

517.03 PROHIBITED MARRIAGES. The following marriages are prohibited:

(a) A marriage entered into prior to before the dissolution of an earlier marriage of one of the parties becomes final, as provided in section 518.145 or by the law of the jurisdiction where the dissolution was granted;

(b) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption;

(c) A marriage between an uncle and a niece, between an aunt and a nephew, or between first cousins, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures;

provided, however, that mentally deficient persons committed to the guardianship of the commissioner of public welfare and mentally deficient persons committed to the conservatorship of the commissioner of public welfare in which the terms of the conservatorship limit the right to marry, may marry on receipt of written consent of the commissioner. The commissioner shall grant consent unless it appears from his investigation that the marriage is not in the best interest of the ward or conservatee and the public. The clerk of the district court in the county where the application for a license is made by the ward or conservatee shall not issue the license unless he has received a signed copy of the consent of the commissioner of public welfare.

Sec. 2. Minnesota Statutes 1978, Chapter 518, is amended by adding a section to read:

[518.003] DEFINITIONS. Subdivision 1. For the purposes of chapter 518, the

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following terms have the meanings provided in this section unless the context clearly requires otherwise.

Subd. 2. "Residence" means the place where a party has established a permanent home from which the party has no present intention of moving.

Sec. 3. Minnesota Statutes 1978, Section 518.005, Subdivision 3, is amended to read:

Subd. 3. The initial pleading in all proceedings under sections 518.001 to 518.66 shall be denominated a petition. A responsive pleading shall be denominated a response an answer. Other pleadings shall be denominated as provided in the rules of civil procedure.

Sec. 4. Minnesota Statutes 1978, Section 518.06, Subdivision 1, is amended to read:

518.06 DISSOLUTION OF MARRIAGE; LEGAL SEPARATION; GROUNDS; UNCONTESTED LEGAL SEPARATION. Subdivision 1. A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation does not terminate the marital status of the parties. A dissolution of a marriage may shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.

A decree of legal separation shall be granted when the court finds that one or both parties need a legal separation.

Defenses to divorce, dissolution and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

Sec. 5. Minnesota Statutes 1978, Section 518.06, Subdivision 3, is amended to read:

Subd. 3. If a party requests one or both parties petition for a decree of legal separation rather than and neither party contests the granting of the decree nor petitions for a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects a decree of legal separation.

Sec. 6. Minnesota Statutes 1978, Section 518.07, is amended to read:

518.07 RESIDENCE OF PARTIES. No dissolution ~~or legal separation~~ shall be granted unless (1) one of the parties has resided in this state, or has been a member of the armed services stationed in this state, for not less than 180 days immediately preceding the commencement of the proceeding; or (2) one of the parties has been a domiciliary of this state for not less than 180 days immediately preceding commencement of the proceeding.

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Sec. 7. Minnesota Statutes 1978, Section 518.09, is amended to read:

518.09 PROCEEDING; HOW AND WHERE BROUGHT; VENUE. A proceeding for dissolution or legal separation may be brought by either or both spouses and shall be commenced by personal service of the summons and petition venued in the county where the petitioner resides or, if the petitioner is not a resident of the state, then venued in the county where the respondent resides. If neither party resides in the state and jurisdiction is based on the domicile of one or both of the parties, the proceeding may be brought in the county where either party is domiciled. This venue shall be subject to the power of the court to change the place of hearing by consent of the parties, or when it appears to the court that an impartial hearing cannot be had in the county where the proceedings are pending, or when the convenience of the parties or the ends of justice would be promoted by the change. No summons shall be required if a joint petition is filed.

Sec. 8. Minnesota Statutes 1978, Section 518.10, is amended to read:

518.10 REQUISITES OF PETITION. The petition for dissolution of marriage or legal separation shall state and allege:

(1) State the name and address of the petitioner and his attorney and the length of petitioner's residence in this state;

(2) State the place and date of marriage of the parties;

(3) State the name and address, if known, of the respondent and the length of residence in this state;

(4) State the name and age of each minor child by date of birth, whether any child is under the jurisdiction of a juvenile court, and whether the wife is pregnant;

(5) State whether or not a separate proceeding for dissolution of marriage has been commenced by the respondent and whether such proceeding is pending in any court in this state or elsewhere;

(6) Allege that there has been an irretrievable breakdown of the marriage relationship, or in a proceeding for legal separation, allege the need for legal separation and state the date on which the parties last separated;

(7) Set forth any application for temporary support of a spouse and any children;
and

(8) Set forth any application for permanent maintenance or support, child custody, or disposition of property, as well as attorneys' fees and suit money, without enumerating the amounts;

(a) The name and address of the petitioner;

(b) The name and, if known, the address of the respondent;

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(c) The place and date of the marriage of the parties;

(d) In the case of a petition for dissolution, that either the petitioner or the respondent or both;

(1) Has resided in this state for not less than 180 days immediately preceding the commencement of the proceeding, or

(2) Has been a member of the armed services and has been stationed in this state for not less than 180 days immediately preceding the commencement of the proceeding, or

(3) Has been a domiciliary of this state for not less than 180 days immediately preceding the commencement of the proceeding;

(e) The name, age and date of birth of each minor or dependent child of the parties;

(f) Whether or not a separate proceeding for dissolution, legal separation, or custody is pending in a court in this state or elsewhere;

(g) In the case of a petition for dissolution, that there has been an irretrievable breakdown of the marriage relationship;

(h) In the case of a petition for legal separation, that there is a need for a decree of legal separation; and

(i) Any temporary or permanent maintenance, child support, child custody, disposition of property, attorneys' fees, costs and disbursements applied for without setting forth the amounts.

The petition shall be verified by the petitioner or petitioners, and its allegations established by competent evidence.

Sec. 9. Minnesota Statutes 1978, Section 518.12, is amended to read:

518.12 TIME FOR ANSWERING. The respondent shall have 30 days in which to answer the petition. In case of service by publication, the 30 days shall not begin to run until the expiration of the period allowed for publication. In the case of a counter-petition for dissolution or legal separation to a petition for dissolution or legal separation, no answer shall be required to the counter-petition and the original petitioner shall be deemed to have denied each and every statement, allegation and claim in the counter-petition.

Sec. 10. Minnesota Statutes 1978, Section 518.13, is amended to read:

518.13 FAILURE TO ANSWER; FINDINGS; HEARING. Subdivision 1. If the respondent does not appear after service duly made and proved, the court may hear and

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determine the proceeding at a ~~general or special term; or in vacation as a default matter~~ .

Subd. 2. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken; or one of the parties has so stated and the other has not denied it; the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

Subd. 3. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the commencement of the proceeding and the prospect of reconciliation, and shall

(a) make a finding whether the marriage is irretrievably broken; or

(b) unless either party objects, continue the matter for further hearing and may suggest to the parties that they seek counseling. At the adjourned hearing, or after a further continuance ordered by the court, the court shall make a finding whether the marriage is irretrievably broken.

A finding of irretrievable breakdown under this subdivision is a determination that there is no reasonable prospect of reconciliation. The finding must be supported by evidence that (i) the parties have lived separate and apart for a period of ~~more not less~~ than 180 days immediately preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage.

Subd. 3. If both parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding that the marriage is irretrievably broken.

Subd. 4. The court or judge, upon application, may refer the proceeding to a referee to take and report the evidence therein. Hearings for dissolution of marriage shall be heard in open court or before a referee appointed by the court to receive the testimony of the witnesses, or depositions taken as in other equitable actions. However, the court may in its discretion close the hearing.

Sec. 11. Minnesota Statutes 1978, Chapter 518, is amended by adding a section to read:

[518.131] TEMPORARY ORDERS AND RESTRAINING ORDERS. Subdivision 1. In a proceeding brought for custody, dissolution, or legal separation, or for disposition of property, maintenance, or child support following the dissolution of a marriage, either party may, by motion, request from the court and the court may grant a temporary order pending the final disposition of the proceeding to or for:

(a) Temporary custody and visitation rights of the minor children of the parties;

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(b) Temporary maintenance of either spouse;

(c) Temporary child support for the children of the parties;

(d) Award the temporary use and possession, exclusive or otherwise, of the family home, furniture, household goods, automobiles and other property of the parties;

(e) Restrain one or both parties from transferring, encumbering, concealing or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions and expenditures made after the order is served or communicated to the party restrained in open court;

(f) Restrain one or both parties from harassing, vilifying, mistreating, molesting, disturbing the peace, or restraining the liberty of the other party or the children of the parties;

(g) Restrain one or both parties from removing any minor child of the parties from the jurisdiction of the court;

(h) Exclude a party from the family home of the parties or from the home of the other party; and

(i) Require one or both of the parties to perform or to not perform such additional acts as will facilitate the just and speedy disposition of the proceeding, or will protect the parties or their children from physical or emotional harm.

Subd. 2. No temporary order shall:

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

(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.

Subd. 3. A party may request and the court may make an ex parte restraining order which may include any matter that may be included in a temporary order except:

(a) A restraining order may not exclude either party from the family home of the parties except upon a finding by the court of immediate danger of physical harm to the other party or the children of either party; and

(b) A restraining order may not deny visitation to either party or grant custody of the minor children to either party except upon a finding by the court of immediate danger of physical harm to the minor children of the parties.

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Subd. 4. Restraining orders shall be personally served upon the party to be restrained and shall be accompanied with a notice of the time and place of hearing for disposition of the matters contained in the restraining order at a hearing for a temporary order. When a restraining order has been issued, a hearing on the temporary order shall be held at the earliest practicable date. The restrained party may upon written notice to the other party advance the hearing date to a time earlier than that noticed by the other party. The restraining order shall continue in full force and effect only until the hearing time noticed, unless the court, for good cause and upon notice extends the time for hearing.

Subd. 5. A temporary order shall continue in full force and effect until the earlier of its amendment or vacation, dismissal of the main action or entry of a final decree of dissolution or legal separation.

Subd. 6. If a proceeding for dissolution or legal separation is dismissed, a temporary custody order is vacated unless one of the parties or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parties and the best interests of the child require that a custody order be issued.

Subd. 7. The court shall be guided by the factors set forth in sections 518.17 (concerning child support), 518.552 (concerning maintenance) and 518.17 to 518.175 (concerning custody and visitation) in making temporary orders and restraining orders.

Subd. 8. Temporary orders shall be made solely on the basis of affidavits and argument of counsel except upon demand by either party in his motion or responsive motion made within the time limit for making and filing a responsive motion that the matter be heard on oral testimony before the court, or if the court in its discretion orders the taking of oral testimony.

Subd. 9. A temporary order or restraining order:

(a) Shall not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding; and

(b) May be revoked or modified by the court before the final disposition of the proceeding upon the same grounds and subject to the same requirements as the initial granting of the order.

Subd. 10. In addition to being punishable by contempt, a violation of a provision of a temporary order or restraining order granting the relief authorized in subdivision 1, clauses (f), (g), or (h) is a misdemeanor.

Sec. 12. Minnesota Statutes 1978, Section 518.145, is amended to read:

518.145 DECREE. A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken

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does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision. A party may remarry before the time for appeal has run if it is not contested that the marriage is irretrievably broken or if a stipulation that the marriage is irretrievably broken is incorporated in the decree of dissolution.

Sec. 13. Minnesota Statutes 1978, 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 ~~or~~, legal separation, or child custody has been commenced shall not issue, revise, modify or amend any order, pursuant to sections 518.16, 518.165, 518.168, 518.17, 518.175 or 518.18, which affects the custody of a minor child or the visitation rights of a noncustodial parent unless the court has jurisdiction over the matter pursuant to the provisions of sections 518A.01 to 518A.25.

Sec. 14. Minnesota Statutes 1978, Section 518.156, is amended to read:

518.156 COMMENCEMENT OF CUSTODY PROCEEDING. Subdivision 1. In a court of this state which has jurisdiction to decide child custody matters, a child custody proceeding is commenced:

(a) By a parent

(1) By filing a petition for dissolution or legal separation; or

(2) Where a decree of dissolution or legal separation has been entered or where none is sought, by filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found; or

(b) By a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found.

Subd. 2. Written notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

Sec. 15. Minnesota Statutes 1978, Section 518.165, is amended to read:

518.165 GUARDIANS FOR MINOR CHILDREN. In all proceedings for child custody or for dissolution or legal separation ~~in which where~~ custody or visitation of a minor child is in issue, the court may appoint a guardian ad litem from a panel established by the court to represent the interests of the child. The guardian ad litem shall advise the court with respect to custody, support and visitation. The court may enter an order for costs, fees and disbursements in favor of the child's guardian ad litem. The order may be made against either or both parties, except that; if the responsible party is indigent, any part of the costs, fees, and disbursements which the court finds the parties are incapable of paying shall be borne by the county.

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Sec. 16. Minnesota Statutes 1978, Section 518.166, is amended to read:

518.166 INTERVIEWS. The court may interview the child in chambers to ascertain the child's reasonable preference as to his custodian, if the court deems the child to be of sufficient age to express preference. The court ~~may~~ shall permit counsel to be present at the interview and shall permit counsel to propound reasonable questions to the child either directly or through the court. The court shall cause a record of the interview to be made and to be made part of the record in the case unless waived by the parties.

In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian requests, the court may seek the recommendations of professional personnel whether or not they are employed on a regular basis by the court. The recommendations given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination of professional personnel consulted by the court.

Sec. 17. Minnesota Statutes 1978, Section 518.17, Subdivision 1, is amended to read:

518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.
Subdivision 1. "The best interests of the child" means all relevant factors to be considered and evaluated by the court including:

- (a) The wishes of the child's parent or parents as to his custody;
- (b) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
- (d) The child's adjustment to his home, school, and community;
- (e) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (f) The permanence, as a family unit, of the existing or proposed custodial home;
~~and~~
- (g) The mental and physical health of all individuals involved;
- (h) The capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in his culture and religion or creed, if any; and
- (i) The child's cultural background.

The court shall not consider conduct of a proposed custodian that does not affect

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his relationship to the child.

Sec. 18. Minnesota Statutes 1978, Section 518.175, Subdivision 1, is amended to read:

518.175 VISITATION OF CHILDREN AND NONCUSTODIAL PARENT. Subdivision 1. 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 the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a child to parent relationship that will be ~~beneficial to~~ in the best interests of the child unless. If the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health or impair his emotional development, the court may restrict visitation by the noncustodial parent as to time, place, duration, or supervision and may deny visitation 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 visitation.

Sec. 19. Minnesota Statutes 1978, Section 518.175, Subdivision 3, is amended to read:

Subd. 3. The custodial parent shall not move the residence of the child to another state ~~or more than 100 miles within this state~~ except upon order of the court or with the consent of the noncustodial parent, when the noncustodial parent has been given visitation rights by the decree.

Sec. 20. Minnesota Statutes 1978, Section 518.176, is amended to read:

518.176 JUDICIAL SUPERVISION. ~~(a)~~ Subdivision 1. Except as otherwise agreed by the parties in writing at the time of the custody order, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical or emotional health is likely to be endangered or his emotional development impaired.

~~(b)~~ Subd. 2. If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical or emotional health is likely to be endangered or his emotional development impaired, the court may order the county welfare board or the department of court services to exercise continuing supervision over the case under guidelines established by the court to assure that the custodial or visitation terms of the decree are carried out.

Sec. 21. Minnesota Statutes 1978, 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 may be made earlier than one year after the date of the order entry of a decree of dissolution or legal separation containing a

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provision dealing with custody, except in accordance with clause (c).

(b) If a motion for modification has been filed 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 clause (c).

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

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order unless it finds, upon the basis of facts 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 his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custodian established by the prior order unless:

(i) The custodian agrees to the modification;

(ii) The child has been integrated into the family of the petitioner with the consent of the custodian; or

(iii) The child's present environment endangers his physical or emotional health or impairs his 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.

Sec. 22. Minnesota Statutes 1978, Section 518.27, is amended to read:

518.27 **NAME OF PARTY.** When a decree of dissolution of marriage is granted in this state, the decree shall completely dissolve the marriage contract as to both parties. If a dissolution is granted, the court shall, if requested by a party whose name was changed by the marriage, change the name of a party who had acquired the name of his spouse back to that person's family name or the name acquired from a prior spouse, and that person shall thereafter be known by that family name and be so designated in the court's decree. In the final decree of dissolution or legal separation the court shall, if requested by a party, change the name of that party to another name as the party requests. The court shall grant a request unless it finds that there is an intent to defraud or mislead. The party's new name shall be so designated in the final decree.

Sec. 23. Minnesota Statutes 1978, Section 518.54, Subdivision 5, is amended to read:

Subd. 5. **MARITAL PROPERTY; EXCEPTIONS.** "Marital property" means property, real or personal, including ~~nonforfeitable~~ vested pension benefits or rights, acquired by the parties, or either of them, to a dissolution, legal separation, or annulment proceeding at any time during the existence of the marriage relation between them, or at

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any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceeding. All property acquired by either spouse subsequent to the marriage and before a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. The presumption of marital property is overcome by a showing that the property is of a type listed in clauses (a) to (f) (e).

"Marital property" does not include "Non-marital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse; (b) is acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or inheritance before the marriage; (c) is acquired in exchange for or is the increase in value of property acquired before the marriage which is described in clauses (a), (b), (d), and (e); (d) is acquired by a spouse after a decree of legal separation; (e) is any property transferred from one spouse to the other; or (f) or (e) is excluded by valid agreement of the parties, including a valid antenuptial contract.

Sec. 24. Minnesota Statutes 1978, Section 518.55, is amended to read:

518.55 MAINTENANCE OR SUPPORT MONEY. 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 is presumed to be maintenance and an award of payments from the future income or earnings of the noncustodial parent 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. 25. Minnesota Statutes 1978, Section 518.551, is amended to read:

518.551 MAINTENANCE AND SUPPORT PAYMENTS MADE TO WELFARE AGENCIES. A court having jurisdiction over proceedings for dissolution or legal separation shall direct that all payments ordered for maintenance and support shall be made to the agency responsible for the welfare payments, when it appears that the party who is to receive the maintenance and support payments will receive public assistance. Amounts received by the agency greater than the amount granted to the party receiving public assistance shall be remitted to that party.

The petitioner shall notify the agency responsible for the welfare payments of all proceedings for dissolution, legal separation or for the custody of a child if either party is receiving aid to families of dependent children or applies for such aid subsequent to the commencement of the proceeding. After receipt of the notice, the agency shall

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recommend to the court the support that is proper and adequate for the care and support of the child or children before the issuance of the order for judgment and decree in the proceeding.

If the court finds in a dissolution or legal separation proceeding before issuing the order for judgment and decree that notification has not been given to the agency responsible for the welfare payments, the court shall order that notification be made and shall not issue its order for judgment and decree until the agency has made its recommendations. In those proceedings in which no notification has been made pursuant to this section and in which the agency determines that the judgment is not proper and adequate for the care and support of the child or children, it may petition the court for a redetermination of the support payments ordered.

Sec. 26. Minnesota Statutes 1978, Section 518.552, is amended to read:

518.552 MAINTENANCE. Subdivision 1. In a proceeding for dissolution of marriage or legal separation, or in a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse and which has since acquired jurisdiction, the court may grant a maintenance order for either spouse if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, especially during a period of training or education, and

(b) Is unable to adequately support himself after considering all relevant circumstances through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Subd. 2. The maintenance order shall be in amounts and for periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and

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(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance: ; and

(g) The contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.

Sec. 27. Minnesota Statutes 1978, Section 518.58, is amended to read:

518.58 DISPOSITION OF MARITAL PROPERTY. Upon a dissolution of a marriage, an annulment, a ~~legal separation~~; or in a proceeding for disposition of property following a dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property and which has since acquired jurisdiction, the court shall ~~set aside to each spouse his property~~ and make a just and equitable disposition of the marital property of the parties without regard to marital misconduct, after making findings regarding the disposition of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets, the amount of support, maintenance and income of each party, whether the property award is in lieu of or in addition to maintenance or support. The court shall also consider the contribution ~~or dissipation~~ of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the respective estates marital property, as well as the contribution of a spouse as a homemaker. It shall be presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. The court may also award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage.

If the court finds that either spouse's resources or property, including his portion of the marital property as defined in section 518.54, subdivision 5 are so inadequate as to work an extreme unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.54, subdivision 5, clauses (a) to (e) (d) to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

Unless otherwise specifically set forth in the decree, if in a decree of dissolution one party is awarded the homestead and the other party is awarded a fixed dollar amount based on an assumed or appraised market value of the homestead and within 24 months following the decree the homestead is sold, within six months of the sale either party may petition, and the court may grant, an apportionment of the proceeds in the proportion awarded in the decree, based upon the net sale price rather than the assumed or appraised market value.

Changes or additions indicated by underline deletions by ~~strikeout~~

Sec. 28. Minnesota Statutes 1978, Section 518.611, is amended to read:

518.611 **ASSIGNMENTS.** If the person obligated to pay support or maintenance fails to make a required payment, and is given a reasonable opportunity by the court to allege hardship or that the payment has been made, the other party or, in the case of a ~~failure to pay support or support and maintenance combined,~~ the public authority responsible for support enforcement may, after 30 days, move the court to order, and the court, unless hardship is shown, shall order the employer or trustee to withhold from the obligor's periodic earnings or trust income an amount equal to the court's order for support or maintenance. The assignment is binding on the employer, trustee, or other payor of the funds ~~two weeks after~~ upon service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to pay support or maintenance the amount specified in the assignment and shall monthly or more frequently remit the amounts withheld to the other party or, in the case of a public assistance recipient, to the public agency responsible for support enforcement. Amounts received by the public authority responsible for support enforcement which are in excess of public assistance expended for the party or for a child shall be remitted to the party. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Sec. 29. Minnesota Statutes 1978, 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: interference with visitation rights; or without the permission of the court or the noncustodial parent ~~moving a child more than 100 miles within the state; or removing a child from this state without the permission of the court or of the noncustodial parent.~~ Nor is interference with visitation rights ~~or moving a child more than 100 miles within the state~~ or taking a child from this state without permission of the court or the noncustodial parent a defense to nonpayment of support. If a party fails to make support payments, or interferes with visitation rights, or without permission of the court or the noncustodial parent removes a child from this state ~~or moves a child more than 100 miles within the state,~~ the other party may petition the court for an appropriate order.

Sec. 30. Minnesota Statutes 1978, Section 518.62, is amended to read:

518.62 **TEMPORARY MAINTENANCE.** Temporary maintenance and temporary support may be awarded as provided in section ~~518.135~~ 518.131. The court may also award to either party to the proceeding, having due regard to all the circumstances and the party awarded the custody of the children, the right to the exclusive use of the household goods and furniture of the parties pending the proceeding and the right to the use of the homestead of the parties, exclusive or otherwise, pending the proceeding. The court may order either party to remove from the homestead of the parties upon proper application to the court for an order pending the proceeding.

Sec. 31. Minnesota Statutes 1978, Section 518.64, Subdivision 2, is amended to read:

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Subd. 2. ~~Except as otherwise provided in section 518.552, subdivision 2, clause (f).~~ The terms of a decree respecting maintenance or support may be modified only as to installments accruing subsequent to the order for modification and only upon a showing of substantially increased or decreased earnings of a party or substantially increased or decreased need of a party, which makes the terms unreasonable and unfair. On a motion for modification of support, the court shall take into consideration the needs of the children and the financial circumstances of the custodial parent's spouse, if any. A modification which decreases support or maintenance may be made retroactive only upon a showing that any failure to pay in accord with the terms of the original order was not willful. A modification which increases support or maintenance shall not be made retroactive if the obligor has substantially complied with the previous order. 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. 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.

Sec. 32. Minnesota Statutes 1978, Section 518.66, is amended to read:

518.66 POWER OF COURT NOT LIMITED. Nothing contained in sections 518.54 to 518.67 shall be construed as limiting the power of the court in appropriate cases to make adequate provision for the support and education of any children of the parties to any dissolution, legal separation or annulment action where such dissolution, legal separation or annulment is denied.

Sec. 33. Minnesota Statutes 1978, Section 518A.09, Subdivision 1, is amended to read:

518A.09 INFORMATION UNDER OATH TO BE SUBMITTED TO THE COURT. Subdivision 1. ~~Unless it is alleged in the first pleading of a party to a custody proceeding that he believes in good faith that there is no question of jurisdiction under sections 518A.01 to 518A.25, every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give~~ The court shall, upon motion or request of a party or upon its own initiative require a party to a custody proceeding to provide information under oath by affidavit or otherwise as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period: In this pleading or affidavit every party shall further declare under oath, and whether:

(a) he has participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical

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custody of the child or claims to have custody or visitation rights with respect to the child.

The court may require any party in a custody proceeding to furnish under oath the information specified in this subdivision.

Sec. 34. **INSTRUCTIONS TO REVISOR.** In the next and succeeding editions of Minnesota Statutes, the Revisor of Statutes is instructed to separately indent clauses (a) through (e) of section 518.54, subdivision 5, to enhance their readability.

Sec. 35. **REPEALER.** Minnesota Statutes 1978, Sections 518.135 and 518.16 are repealed.

Sec. 36. **EFFECTIVE DATE.** This act is effective the day after final enactment, but shall not invalidate any pending action concluded under preexisting law.

Approved May 29, 1979.

CHAPTER 260—H.F.No.792

An act relating to claims against the state; providing for claims arising out of various restitution programs to be heard by the legislature; amending Minnesota Statutes 1978, Section 3.738, Subdivision 1; and Chapter 3, by adding a section.

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

Section 1. Minnesota Statutes 1978, Section 3.738, Subdivision 1, is amended to read:

3.738 INJURY OR DEATH OF PATIENT OR INMATE. Subdivision 1. **LEGISLATIVE AUTHORITY.** Claims and demands arising out of injury to or death of a patient of a state institution under the control of the commissioner of public welfare or an inmate of a state correctional institution facility while performing assigned duties shall be presented to, heard and determined by the legislature.

Sec. 2. Minnesota Statutes 1978, Chapter 3, is amended by adding a section to read:

[3.739] INJURY OR DEATH OF CONDITIONALLY RELEASED INMATE. Subdivision 1. LEGISLATIVE AUTHORITY. Claims and demands arising out of the circumstances described in this subdivision shall be presented to, heard, and determined by the legislature:

(1) An injury to or death of an inmate who has been conditionally released from a state correctional facility and ordered to perform uncompensated work for a state agency, a political subdivision or public corporation of this state, or a nonprofit educational, medical, or social service agency, as a condition of his release, while performing the work;

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