

than six months of service in the employee's position at the time of the transfer shall serve a probationary period appropriate for the employee's classification under section 43A.16. The probation period must include the time since the employee's hire in the unclassified position from which the employee was transferred. This section does not apply to the chair of the board, the assistant to the chair, and one confidential secretary to the board.

Sec. 29. CERTAIN FOOD SERVICE EMPLOYEES.

Food service employees covered by section 15 who participate in the state group insurance plan are transferred to the public employees insurance plan under Minnesota Statutes, section 43A.316, effective January 1, 1990, or when the commissioner of employee relations certifies that the plan is able to enroll and provide coverage for groups, whichever is later. Food service employees covered by section 15 who do not participate in the state group insurance plan are eligible to participate in the public employees insurance plan under Minnesota Statutes, section 43A.316, effective September 1, 1989.

Approved April 26, 1988

CHAPTER 668—S.F.No. 2009

An act relating to family law; modifying and clarifying provisions for the collection and enforcement of child support; providing for cost-of-living adjustments in spousal maintenance awards; providing for grandparent visitation rights in all family law proceedings; providing for reopening of judgments; providing for custody rights; clarifying and modifying provisions relating to pension plan rights in marriage dissolutions; amending Minnesota Statutes 1986, sections 69.62; 123.35, by adding a subdivision; 256.978; 257.022, subdivision 2; 270A.03, subdivision 4; 383B.51; 423A.16; 424A.02, subdivision 6; 490.126, by adding a subdivision; 518.145; 518.17, subdivision 3; 518.171, by adding a subdivision; 518.175, by adding a subdivision; 518.551, subdivision 5, and by adding a subdivision; 518.552, by adding a subdivision; 518.54, by adding a subdivision; 518.611, subdivision 10; 518.64, subdivision 2; and 518.641; Minnesota Statutes 1987 Supplement, sections 356.80; 518.54, subdivision 10; 518.58, subdivision 2; 518.581, subdivision 4; and 518.611, subdivision 2.

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

Section 1. Minnesota Statutes 1986, section 69.62, is amended to read:

69.62 PENSION PAYMENTS EXEMPT FROM PROCESS.

No payment made or to be made by any fire department relief association in a city of the first class under the provisions of ~~section~~ sections 69.25 to 69.53 to any member of the pension roll shall be subject to judgment, garnishment, execution, or other legal process, except as provided in section 518.58, 518.581, or 518.611; and. No person entitled to ~~this~~ a payment from a fire department

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relief association shall have the right to assign the same, nor shall the association have the authority to recognize any assignment or pay over any sum which has been assigned.

Sec. 2. Minnesota Statutes 1986, section 123.35, is amended by adding a subdivision to read:

Subd. 18. NONCUSTODIAL PARENT ACCESS TO RECORDS.
Upon request, a noncustodial parent has the right of access to, and to receive copies of, school records and information, to attend conferences, and to be informed about the child's welfare, educational progress, and status, as authorized under section 518.17, subdivision 3. The school is not required to hold a separate conference for each parent.

Sec. 3. Minnesota Statutes 1986, section 256.978, is amended to read:

256.978 LOCATION OF PARENTS DESERTING THEIR CHILDREN, ACCESS TO RECORDS.

The commissioner of human services, in order to carry out the child support enforcement program and to assist in the location of parents who have, or appear to have, deserted their children, may request information from the records of all departments, boards, bureaus or other agencies of this state, which shall, notwithstanding the provisions of section 290.61, section 268.12, subdivision 12 or any other law to the contrary, provide the information necessary for this purpose. Employers and utility companies doing business in this state shall provide information upon written request by an agency responsible for child support enforcement regarding individuals owing or allegedly owing a duty to support. A request for this information may be made to an employer when there is reasonable cause to believe that the subject of the inquiry is or was employed by the employer where the request is made. The request must include a statement that reasonable cause exists. Information to be released by utility companies is restricted to place of residence. Information to be released by employers is restricted to place of residence, employment status and wage information. Information relative to the identity, whereabouts, employment, income, and property of a person owing or alleged to be owing an obligation of support may be requested and used or transmitted by the commissioner pursuant to the authority conferred by this section. The commissioner of human services may make such information available only to public officials and agencies of this state and its political subdivisions and other states of the union and their political subdivisions who are seeking to enforce the support liability of parents or to locate parents who have, or appear to have, deserted their children. Any person who, pursuant to this section, obtains information from the department of revenue the confidentiality of which is protected by law shall not divulge the information except to the extent necessary for the administration of the child support enforcement program or when otherwise authorized by law.

Sec. 4. Minnesota Statutes 1986, section 257.022, subdivision 2, is amended to read:

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Subd. 2. **WHEN PARENTS' MARRIAGE IS DISSOLVED FAMILY COURT PROCEEDINGS.** In all proceedings for dissolution, custody, legal separation, annulment, or parentage subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, legal separation, annulment, or determination of parentage during minority if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

Sec. 5. Minnesota Statutes 1986, section 270A.03, subdivision 4, is amended to read:

Subd. 4. "Debtor" means a natural person obligated on a debt to a claimant agency or having a delinquent account with a public agency responsible for child support enforcement.

Sec. 6. Minnesota Statutes 1987 Supplement, section 356.80, is amended to read:

356.80 PROVISION OF INFORMATION IN THE EVENT OF MARRIAGE DISSOLUTION.

Subdivision 1. **INFORMATION FOR A PENDING MARRIAGE DISSOLUTION.** (a) Upon written request by a person with access to the data under subdivision 3 who cites this statute, a public or private pension plan administrator must provide the court and the parties to a marriage dissolution action involving a plan member or former plan member with information regarding pension benefits or rights of the plan member or former plan member. The pension plan shall provide this information upon request of the court or a party to the action without requiring a signed authorization from the plan member or former plan member.

(b) The information must include the pension benefits or rights of the plan member or former plan member as of the first day of the month following the date of the request, ~~as of the first day of the seventh month following the date of the request if the action involves an active plan member,~~ and as of the date of valuation of marital assets under section 518.58, if the person requesting the information specifies that date. The information must ~~also~~ include the accrued service credit of the person, the credited salary of the person for the most current five-year period, a summary of the benefit plan, and any other information relevant to the calculation of the present value of the benefits or rights.

Subd. 2. **INFORMATION FOR AN EXISTING DISSOLUTION DECREE.** If a marriage dissolution decree rendered by a court of competent jurisdiction prior to August 1, 1987, provided a procedure for ~~dividing pension benefits or rights in the form of the~~ distribution of future pension plan payments, upon

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request the applicable pension plan administrator shall provide on a timely basis to the court and the parties to the action the required information to implement that procedure without requiring a signed authorization from the plan member or former plan member.

Subd. 3. **ACCESS TO DATA.** Notwithstanding any provision of chapter 13 to the contrary, a ~~responsible authority~~ an administrator may release private or confidential data on individuals to the court, the parties to a marriage dissolution, their attorneys, and an actuary appointed under section 518.582, to the extent necessary to comply with this section.

Sec. 7. Minnesota Statutes 1986, section 383B.51, is amended to read:

383B.51 NO ASSIGNMENT OR GARNISHMENT.

The right of a participant who has shares to the credit of the participant's share account record to redeem all or any portion of the shares is a personal right only and shall ~~not be assignable. Legal title to the assets of the Hennepin county supplemental retirement program~~ shall be in the state of Minnesota or the state board of investment or the nominee of either, subject to the rights of the county of Hennepin. Any assignment or attempted assignment of shares to the credit of a participant's share account record by any person is null and void. The shares are exempt from garnishment or levy under attachment or execution and or other legal process, except as provided in section 518.58, 518.581, or 518.611. The shares are also exempt from all taxation by the state of Minnesota.

Sec. 8. Minnesota Statutes 1986, section 423A.16, is amended to read:

423A.16 EXEMPTION FROM ASSIGNMENTS; PROCESS.

Notwithstanding any law to the contrary, none of the moneys, annuities, or other benefits provided by any police or salaried firefighters' relief association shall be assignable in law or in equity, nor be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, 518.581, or 518.611.

Sec. 9. Minnesota Statutes 1986, section 424A.02, subdivision 6, is amended to read:

Subd. 6. **PAYMENT OF SERVICE PENSIONS; NONASSIGNABILITY.** The method of calculating service pensions shall be applied uniformly for all years of active service and credit shall be given for all years of active service, except as otherwise provided in this section. No service pension shall be paid to any person while the person remains an active member of the respective fire department, and no person who is receiving a service pension shall be entitled to receive any other benefits from the special fund of the relief association. No service pension or ancillary benefits paid or payable from the special fund of a relief association to any person receiving or entitled to receive a service pension

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or ancillary benefits shall be subject to garnishment, judgment, execution or other legal process, except as provided in section 518.58, 518.581, or 518.611. No person entitled to a service pension or ancillary benefits from the special fund of a relief association may assign any service pension or ancillary benefit payments, nor shall the association have the authority to recognize any assignment or pay over any sum which has been assigned.

Sec. 10. Minnesota Statutes 1986, section 490.126, is amended by adding a subdivision to read:

Subd. 5. EXEMPTION FROM PROCESS; NO ASSIGNMENT. None of the money, annuities, or other benefits provided in this chapter is assignable either in law or equity or is subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, 518.581, or 518.611.

Sec. 11. Minnesota Statutes 1986, section 518.145, is amended to read:

518.145 DECREE, FINALITY AND REOPENING.

Subdivision 1. APPEAL. A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. When entered, the findings of fact and conclusions of law may constitute the judgment and decree. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken 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.

Subd. 2. REOPENING. On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under chapter 518, except for provisions dissolving the bonds of marriage, annulling the marriage, or directing that the parties are legally separated, and may order a new trial or grant other relief as may be just for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the rules of civil procedure, rule 59.03;
- (3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment and decree or order is void; or
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

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The motion must be made within a reasonable time, and for a reason under clause (1), (2), or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment and decree or order or suspend its operation. This subdivision does not limit the power of a court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a party not actually personally notified as provided in the rules of civil procedure, or to set aside a judgment for fraud upon the court.

Sec. 12. Minnesota Statutes 1986, section 518.17, subdivision 3, is amended to read:

Subd. 3. **CUSTODY ORDER.** (a) Upon adjudging the nullity of a marriage, or in a dissolution or separation proceeding, or in a child custody proceeding, the court shall make such further order as it deems just and proper concerning:

(a) (1) the legal custody of the minor children of the parties which shall be sole or joint;

(b) (2) their physical custody and residence; and

(c) (3) their support. In determining custody, the court shall consider the best interests of ~~the~~ each child and shall not prefer one parent over the other solely on the basis of the sex of the parent.

(b) The court shall grant the following rights to each of the parties, unless specific findings are made under paragraph (c), and every custody order must include the following notice to the parties:

NOTICE IS HEREBY GIVEN TO THE PARTIES:

Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

Each party shall keep the other party informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent-teacher conferences. The school is not required to hold a separate conference for each party.

In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

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Each party has the right to reasonable access and telephone contact with the minor children.

(c) The court may waive all or part of the notice required under paragraph (b) if it finds that it is necessary to protect the welfare of a party or child.

Sec. 13. Minnesota Statutes 1986, section 518.171, is amended by adding a subdivision to read:

Subd. 10. ENFORCEMENT. Remedies available for the collection and enforcement of child support apply to medical support. For the purpose of enforcement, the costs of individual or group health or hospitalization coverage or liabilities established pursuant to section 518.171, subdivision 8, are additional child support.

Sec. 14. Minnesota Statutes 1986, section 518.175, is amended by adding a subdivision to read:

Subd. 7. GRANDPARENT VISITATION. In all proceedings for dissolution or legal separation, the court may make an order granting visitation rights to grandparents under section 257.022, subdivision 2.

Sec. 15. Minnesota Statutes 1987 Supplement, section 518.54, subdivision 10, is amended to read:

Subd. 10. ~~PUBLIC PENSION PLAN BENEFITS OR RIGHTS.~~ "Public pension plan benefits or rights" means a benefit or right from a public or private pension plan accrued to the end of the month in which marital assets are valued, as determined under the terms of the laws or other plan document provisions governing the plan, including section 356.30.

Sec. 16. Minnesota Statutes 1986, section 518.54, is amended by adding a subdivision to read:

Subd. 12. PRIVATE PENSION PLAN. "Private pension plan" means a plan, fund, or program maintained by an employer or employee organization that provides retirement income to employees or results in a deferral of income by employees for a period extending to the termination of covered employment or beyond.

Sec. 17. Minnesota Statutes 1986, 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 aid to families with dependent children or applies for it subsequent to the commencement of the proceeding. 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

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to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct. The court shall approve a child support agreement of the parties if each party is represented by independent counsel, unless the agreement is not in the interest of justice. In other cases the court shall order child support in accordance with the guidelines and the other factors set forth in paragraph (b) and any departure therefrom.

The court shall multiply 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
\$400 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.						
\$401 - 500	14%	17%	20%	22%	24%	26%	28%
\$501 - 550	15%	18%	21%	24%	26%	28%	30%
\$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- 4000	25%	30%	35%	39%	43%	47%	50%

Guidelines for support for an obligor with a monthly income of \$4001 or more shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income of \$4000.

Net Income defined as:

Total monthly income less

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

*Standard Deductions apply-use of tax tables recommended

- (v) Union Dues
- (vi) Cost of Dependent Insurance Coverage
- (vii) Cost of Individual or Group Health/Hospitalization Coverage or an Amount for Actual Medical Expenses

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

(viii) A Child Support or
Maintenance Order that is
Currently Being Paid.

"Net income" does not include the income of the obligor's spouse.

(b) In addition to the child support guidelines, the court shall take into consideration the following factors in setting or modifying child support:

(1) all earnings, income, and resources of the parents, including real and personal property;

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

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

(4) the amount of the aid to families with dependent children grant for the child or children; ~~and~~

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

(6) the parents' debts as provided in paragraph (c).

(c) 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 256.74;

(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.

Any schedule prepared under paragraph (c), 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.

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.

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Where payment of debt is ordered pursuant to this section, the payment shall be ordered to be in the nature of child support.

(d) 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.

(e) The above guidelines are binding in each case unless the court makes express findings of fact as to the reason for departure below or above the guidelines.

Sec. 18. Minnesota Statutes 1986, section 518.551, is amended by adding a subdivision to read:

Subd. 11. REOPENING SUPPORT AWARDS. Section 518.145, subdivision 2, applies to awards of child support.

Sec. 19. Minnesota Statutes 1986, section 518.552, is amended by adding a subdivision to read:

Subd. 4. REOPENING MAINTENANCE AWARDS. Section 518.145, subdivision 2, applies to awards of spousal maintenance.

Sec. 20. Minnesota Statutes 1987 Supplement, section 518.58, subdivision 2, is amended to read:

Subd. 2. **PENSION PLANS.** The division of marital property that represents ~~vested public pension plan~~ benefits or rights in the form of future public pension plan payments:

(1) ~~may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable;~~

(2) ~~is payable only to the extent of the amount of the public pension plan benefit payable under the terms of the plan;~~

(3) ~~(2) is not payable for a period that exceeds the time that public pension plan benefits are payable to the public pension plan benefit recipient;~~

(4) ~~(3) is not payable in a lump sum amount from public pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a public pension plan; and~~

(5) ~~(4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and~~

(5) in the case of public pension plan benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

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Sec. 21. Minnesota Statutes 1987 Supplement, section 518.581, subdivision 4, is amended to read:

Subd. 4. **DEFINITIONS.** For purposes of this section, the following terms have the meanings given in this subdivision.

(a) "Current or former ~~public~~ employee" or "employee" means an individual who has an interest in a pension plan.

(b) "Surviving spouse benefit" means (1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement, or (2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement.

Sec. 22. Minnesota Statutes 1987 Supplement, section 518.611, subdivision 2, is amended to read:

Subd. 2. **CONDITIONS OF INCOME WITHHOLDING.** (a) Withholding shall result whenever the obligor fails to make the maintenance or support payments, and the following conditions are met:

(1) The obligor is at least 30 days in arrears;

(2) The obligee or the public authority serves written notice of income withholding, showing arrearage, on the obligor at least 15 days before service of the notice of income withholding and a copy of the court's order on the payor of funds;

(3) Within the 15-day period, the obligor fails to move the court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding, or on other grounds limited to mistakes of fact, and, ex parte, to stay service on the payor of funds until the motion to deny withholding is heard; and

(4) The obligee or the public authority serves a copy of the notice of income withholding, a copy of the court's order, and the provisions of this section on the payor of funds; and

(5) The obligee serves on the public authority a copy of the notice of income withholding, a copy of the court's order, an application, and the fee to use the public authority's collection services.

(b) To pay the arrearage specified in the notice of income withholding, the employer or payor of funds shall withhold from the obligor's income an additional amount equal to 20 percent of the monthly child support or maintenance obligation until the arrearage is paid.

(c) The obligor may, at any time, waive the written notice required by this subdivision.

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(d) The obligor may move the court, under section 518.64, to modify the order respecting the amount of maintenance or support.

(e) Every order for support or maintenance shall provide for a conspicuous notice of the provisions of this subdivision. An order without this notice remains subject to this subdivision.

Sec. 23. Minnesota Statutes 1986, section 518.611, subdivision 10, is amended to read:

Subd. 10. **ORDER TERMINATING INCOME WITHHOLDING.** (a) Whenever an obligation for support of a child or maintenance of a spouse, or both, terminates under the terms of the order or decree establishing the obligation, and where the obligation is enforced by an order for income withholding from the obligor, the court shall enter an order, directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

The order must be entered once the following conditions have been met:

(1) the obligor serves written notice of the application for termination of income withholding by mail upon the obligee at the obligee's last known mailing address; and a duplicate copy of the application is served upon the public authority responsible for the processing of support collection services;

(2) the application for termination of income withholding specifies the event that terminates the support obligation, the effective date of the termination of the support obligation, and the applicable provisions of the order or decree that established the support obligation;

(3) the application includes the complete name of the obligor's employer or other payer of funds, the business mailing address, the court action and court file number, and the support and collections file number, if known; and

(4) after receipt of the application for termination of income withholding, the obligee or the public authority fails within 20 days to request a hearing on the issue of whether income withholding of support should continue clearly specifying the basis for the continued support obligation and, ex parte, to stay the service of the order terminating income withholding upon the obligor's employer or other payer of funds, pending the outcome of the hearing.

(b) If the public authority determines that the support obligation has terminated under the terms of the order or decree establishing the obligation, the public authority shall notify the obligee and obligor of intent to terminate income withholding. Five days following this notice, the public authority shall issue a notice to the payor of funds terminating income withholding, without a requirement for a court order terminating income withholding, unless a hearing has been requested under paragraph (a).

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Sec. 24. Minnesota Statutes 1986, section 518.64, subdivision 2, is amended to read:

Subd. 2. **MODIFICATION.** The terms of a decree 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; (3) receipt of assistance under sections 256.72 to 256.87; or (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. On a motion for modification of maintenance, 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 shall take into consideration the needs of the children and shall not consider the financial circumstances of each party's spouse, if any. A modification which decreases support or maintenance may be made retroactive only with respect to any period during which the support obligor has pending a motion for modification but only from the date that notice of the motion has been given to the obligee and to the court or other entity which issued each support order. 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, 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.

Sec. 25. Minnesota Statutes 1986, section 518.641, is amended to read:

518.641 COST-OF-LIVING ADJUSTMENTS IN MAINTENANCE OR CHILD SUPPORT ORDER.

Subdivision 1. **REQUIREMENT.** An order for maintenance or child support shall provide for a biennial adjustment in the amount to be paid based on a change in the cost-of-living. ~~The An~~ order that provides for a cost-of-living adjustment shall specify the cost-of-living index to be applied. The court may use the consumer price index for all urban consumers, Minneapolis-St. Paul (CPI-U), the consumer price index for wage earners and clerical, Minneapolis-St. Paul (CPI-W), or another cost-of-living index published by the department of labor which it specifically finds is more appropriate. The court may specify that the housing component be excluded from the cost-of-living adjustment. Cost-of-living increases under this section shall be compounded. ~~‡~~ The court may also increase the amount by more than the cost-of-living adjustment by agreement of the parties or by making further findings. The adjustment becomes effective on the first of May of the year in which it is made. A court may waive

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the requirement of the cost-of-living clause if it expressly finds that the obligor's occupation or income, or both, does not provide for cost-of-living adjustment or that the order for maintenance or child support has a provision such as a step increase that has the effect of a cost-of-living clause. The court may waive a cost-of-living adjustment in a maintenance order if the parties so agree in writing. The commissioner of human services may promulgate rules for child support adjustments under this section in accordance with the rulemaking provisions of chapter 14.

Subd. 2. **CONDITIONS.** No adjustment under this section may be made unless the order provides for it and until the following conditions are met:

(a) the obligee or public authority serves notice of its application for adjustment by mail on the obligor at the obligor's last known address at least 20 days before the effective date of the adjustment;

(b) the notice to the obligor shall inform the obligor that an adjustment in payments shall become effective on the first of May; and

(c) after receipt of notice and before the effective day of the adjustment, the obligor fails to request a hearing on the issue of whether the adjustment should take effect, and ex parte, to stay imposition of the adjustment pending outcome of the hearing.

Subd. 3. **RESULT OF HEARING.** If, at a hearing pursuant to this section, the obligor establishes an insufficient cost of living or other increase in income that prevents fulfillment of the adjusted maintenance or child support obligation, the court may direct that all or part of the adjustment not take effect. If, at the hearing, the obligor does not establish this insufficient increase in income, the adjustment shall take effect as of the date it would have become effective had no hearing been requested.

Subd. 4. **FORM.** The department of human services shall prepare and make available to the court and obligors a form to be submitted to the department by the obligor in support of a request for hearing under this section regarding a child support order. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

Subd. 5. **REQUEST FOR COST-OF-LIVING CLAUSE.** A motion for enforcement or modification of an existing maintenance or child support order shall include a request for a cost-of-living clause. The court may deny the request only upon an express finding that the obligor's occupation, income, or both, does not provide for a cost-of-living adjustment or that the existing maintenance or child support order either has a cost-of-living clause or sets forth a step increase which has the effect of a cost-of-living adjustment.

Approved April 26, 1988

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