

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **2397**

03/11/2019 Authored by Pryor and Pierson
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division
03/14/2019 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Policy
03/18/2019 Adoption of Report: Placed on the General Register
Read for the Second Time
05/20/2019 Pursuant to Rule 4.20, returned to the Committee on Health and Human Services Policy

- 1.1 A bill for an act
- 1.2 relating to human services; modifying policy provisions governing children and
- 1.3 families services; amending Minnesota Statutes 2018, sections 13.461, subdivision
- 1.4 28; 119B.02, subdivision 6; 518A.35, subdivision 1; 518A.53, subdivision 11;
- 1.5 518A.685; proposing coding for new law in Minnesota Statutes, chapter 518A.
- 1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.7 Section 1. Minnesota Statutes 2018, section 13.461, subdivision 28, is amended to read:
- 1.8 Subd. 28. **Child care assistance program.** Data collected, maintained, used, or
- 1.9 disseminated by the welfare system pertaining to persons selected as legal nonlicensed child
- 1.10 care providers by families receiving child care assistance are classified under section 119B.02,
- 1.11 subdivision 6, paragraph (a). Child care assistance program payment data is classified under
- 1.12 section 119B.02, subdivision 6, paragraph (b).
- 1.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.
- 1.14 Sec. 2. Minnesota Statutes 2018, section 119B.02, subdivision 6, is amended to read:
- 1.15 Subd. 6. **Data.** (a) Data collected, maintained, used, or disseminated by the welfare
- 1.16 system pertaining to persons selected as legal nonlicensed child care providers by families
- 1.17 receiving child care assistance shall be treated as licensing data as provided in section 13.46,
- 1.18 subdivision 4.
- 1.19 (b) For purposes of this paragraph, "child care assistance program payment data" means
- 1.20 data for a specified time period showing (1) that a child care assistance program payment
- 1.21 under this chapter was made, and (2) the amount of child care assistance payments made
- 1.22 to a child care center. Child care assistance program payment data may include the number

of families and children on whose behalf payments were made for the specified time period.
Any child care assistance program payment data that may identify a specific child care assistance recipient or benefit paid on behalf of a specific child care assistance recipient, as determined by the commissioner, is private data on individuals as defined in section 13.02, subdivision 12. Data related to a child care assistance payment is public if the data relates to a child care assistance payment made to a licensed child care center or a child care center exempt from licensure and:

(1) the child care center receives payment of more than \$100,000 from the child care assistance program under this chapter in a period of one year or less; or

(2) when the commissioner or county agency either:

(i) disqualified the center from receipt of a payment from the child care assistance program under this chapter for wrongfully obtaining child care assistance under section 256.98, subdivision 8, paragraph (c);

(ii) refused a child care authorization, revoked a child care authorization, stopped payment, or denied payment for a bill for the center under section 119B.13, subdivision 6, paragraph (d); or

(iii) made a finding of financial misconduct under section 245E.02.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2018, section 518A.35, subdivision 1, is amended to read:

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

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

(c) If a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children, and the parent's individual parental income for determining child support, not the combined parental incomes for determining child support of the parents. Unless a parent has court-ordered parenting time, the parenting expense adjustment formula under section 518A.34 must not be applied.

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

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

Sec. 4. Minnesota Statutes 2018, section 518A.53, subdivision 11, is amended to read:

Subd. 11. **Lump-sum payments.** Before transmittal to the obligor of a lump-sum payment of \$500 or more including, but not limited to, severance pay, accumulated sick pay, vacation pay, bonuses, commissions, or other pay or benefits, a payor of funds:

(1) who has been served with an order for or notice of income withholding under this section shall:

(i) notify the public authority of the lump-sum payment that is to be paid to the obligor;

(ii) hold the lump-sum payment for 30 days after the date on which the lump-sum payment would otherwise have been paid to the obligor, notwithstanding sections 176.221, 176.225, 176.521, 181.08, 181.101, 181.11, 181.13, and 181.145; and

(iii) upon order of the court, and after a showing of past willful nonpayment of support, pay any specified amount of the lump-sum payment to the public authority for future support; or

(2) shall pay the lesser of the amount of the lump-sum payment or the total amount of the judgment and arrearages upon service by United States mail of a sworn affidavit from the public authority or a court order that includes the following information:

(i) that a judgment entered pursuant to section 548.091, subdivision 1a, exists against the obligor, or that other support arrearages exist;

(ii) the current balance of the judgment or arrearage; and

(iii) that a portion of the judgment or arrearage remains unpaid.

~~The Consumer Credit Protection Act, title 15 of the United States Code, section 1673(b), does not apply to lump-sum payments.~~

Sec. 5. Minnesota Statutes 2018, section 518A.685, is amended to read:

518A.685 CONSUMER REPORTING AGENCY; REPORTING ARREARS.

(a) If a public authority determines that an obligor has not paid the current monthly support obligation plus any required arrearage payment for three months, the public authority must report this information to a consumer reporting agency.

(b) Before reporting that an obligor is in arrears for court-ordered child support, the public authority must:

(1) provide written notice to the obligor that the public authority intends to report the arrears to a consumer reporting agency; and

(2) mail the written notice to the obligor's last known mailing address at least 30 days before the public authority reports the arrears to a consumer reporting agency.

(c) The obligor may, within 21 days of receipt of the notice, do the following to prevent the public authority from reporting the arrears to a consumer reporting agency:

(1) pay the arrears in full; or

(2) request an administrative review. An administrative review is limited to issues of mistaken identity, a pending legal action involving the arrears, or an incorrect arrears balance.

~~(d) If the public authority has reported that an obligor is in arrears for court-ordered child support and subsequently determines that the obligor has paid the court-ordered child support arrears in full, or is paying the current monthly support obligation plus any required arrearage payment, the public authority must report to the consumer reporting agency that the obligor is currently paying child support as ordered by the court.~~

~~(e)~~ (d) A public authority that reports arrearage information under this section must make monthly reports to a consumer reporting agency. The monthly report must be consistent with credit reporting industry standards for child support.

~~(f)~~ (e) For purposes of this section, "consumer reporting agency" has the meaning given in section 13C.001, subdivision 4, and United States Code, title 15, section 1681a(f).

5.1 Sec. 6. **[518A.80] MOTION TO TRANSFER TO TRIBAL COURT.**

5.2 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this
5.3 subdivision have the meanings given them.

5.4 (b) "Case participant" means a party to the case that is a natural person.

5.5 (c) "District court" means a district court of the state of Minnesota.

5.6 (d) "Party" means a person or entity named or admitted as a party or seeking to be
5.7 admitted as a party in the district court action, including the county IV-D agency, whether
5.8 or not named in the caption.

5.9 (e) "Tribal court" means a tribal court of a federally recognized Indian tribe located in
5.10 Minnesota that is receiving funding from the federal government to operate a child support
5.11 program under United States Code, title 42, chapter 7, subchapter IV, part D, sections 654
5.12 to 669b.

5.13 (f) "Tribal IV-D agency" has the meaning given to "tribal IV-D agency" in Code of
5.14 Federal Regulations, title 45, part 309.05.

5.15 (g) "Title IV-D child support case" has the meaning given to "IV-D case" in section
5.16 518A.26, subdivision 10.

5.17 Subd. 2. **Actions eligible for transfer.** For purposes of this section, a postjudgment
5.18 child support, custody, or parenting time action is eligible for transfer to tribal court. A child
5.19 protection action or a dissolution action involving a child is not eligible for transfer to tribal
5.20 court pursuant to this section.

5.21 Subd. 3. **Motion to transfer.** (a) A party's or tribal IV-D agency's motion to transfer to
5.22 tribal court shall state and allege:

5.23 (1) the address of each case participant;

5.24 (2) the tribal affiliation of each case participant, if any;

5.25 (3) the name, tribal affiliation, if any, and date of birth of each living minor or dependent
5.26 child of a case participant who is subject to the action; and

5.27 (4) the legal and factual basis for the court to make a finding that there is concurrent
5.28 jurisdiction in the case.

5.29 (b) A party or tribal IV-D agency bringing a motion to transfer to tribal court must file
5.30 with the court and serve the required documents on each party and the tribal IV-D agency,
5.31 regardless of whether the tribal IV-D agency is a party.

6.1 (c) A party's or tribal IV-D agency's motion to transfer must be accompanied by an
6.2 affidavit setting forth facts in support of its motion.

6.3 (d) When a motion to transfer is not brought by the tribal IV-D agency, an affidavit of
6.4 the tribal IV-D agency stating whether the tribal IV-D agency provides services to a party
6.5 must be filed and served on each party within 15 days from the date of service of the motion.

6.6 **Subd. 4. Order to transfer to tribal court.** (a) Unless a hearing is held under subdivision
6.7 6, upon motion of a party or a tribal IV-D agency, a district court must transfer a
6.8 postjudgment child support, custody, or parenting time action to a tribal court when the
6.9 district court finds:

6.10 (1) the district court and tribal court have concurrent jurisdiction;

6.11 (2) a case participant is receiving services from the tribal IV-D agency; and

6.12 (3) no party or tribal IV-D agency files and serves a timely objection to the transfer.

6.13 (b) When the requirements of this subdivision are satisfied, the district court is not
6.14 required to hold a hearing. The district court's order transferring the action to tribal court
6.15 must contain written findings on each requirement of this subdivision.

6.16 **Subd. 5. Objection to motion to transfer.** (a) To object to a motion to transfer to a
6.17 tribal court, a party or tribal IV-D agency must file with the court and serve on each party
6.18 and the tribal IV-D agency a responsive motion objecting to the motion to transfer within
6.19 30 days from the date of service of the motion to transfer.

6.20 (b) If a party or tribal IV-D agency files with the court and properly serves a timely
6.21 objection to the motion to transfer to a tribal court, the district court must conduct a hearing.

6.22 **Subd. 6. Hearing.** If a hearing is held under this section, the district court must evaluate
6.23 and make written findings on all relevant factors, including:

6.24 (1) whether an issue requires interpretation of tribal law, including the tribal constitution,
6.25 statutes, bylaws, ordinances, resolutions, treaties, or case law;

6.26 (2) whether the action involves tribal traditional or cultural matters;

6.27 (3) whether the tribe is a party;

6.28 (4) whether tribal sovereignty, jurisdiction, or territory is an issue;

6.29 (5) the tribal membership status of each case participant;

6.30 (6) where the claim arises;

6.31 (7) the location of the residence of each case participant and the child;

7.1 (8) whether the parties have by contract chosen a forum or the law to be applied in the
7.2 event of a dispute;

7.3 (9) the timing of any motion to transfer to tribal court, considering each party's and the
7.4 court's expenditure of time and resources, and the district court's scheduling order;

7.5 (10) the court in which the action can be heard and decided most expeditiously;

7.6 (11) the burdens on each party, including cost, access to and admissibility of evidence,
7.7 and matters of procedure; and

7.8 (12) any other factor the court determines relevant.

7.9 Subd. 7. **Future exercise of jurisdiction.** Nothing in this section shall be construed to
7.10 limit the district court's exercise of jurisdiction where the tribal court waives jurisdiction,
7.11 transfers the action back to district court, or otherwise declines to exercise jurisdiction over
7.12 the action.

7.13 Subd. 8. **Transfer to Red Lake Nation Tribal Court.** When a party or tribal IV-D
7.14 agency brings a motion to transfer to the Red Lake Nation Tribal Court, the court must
7.15 transfer the action if the case participants and child resided within the boundaries of the
7.16 Red Lake Reservation for the preceding six months.

7.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.