

A bill for an act
relating to child support; providing for support for a child who resides or has
resided in a foreign country; amending Minnesota Statutes 2006, sections
518A.39, subdivision 2; 518A.43, subdivision 1.

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

Section 1. Minnesota Statutes 2006, section 518A.39, subdivision 2, is amended to
read:

Subd. 2. **Modification.** (a) The terms of an order respecting maintenance or support
may be modified upon a showing of one or more of the following, any of which makes
the terms unreasonable and unfair: (1) substantially increased or decreased gross income
of an obligor or obligee; (2) substantially increased or decreased need of an obligor or
obligee or the child or children that are the subject of these proceedings; (3) receipt of
assistance under the AFDC program formerly codified under sections 256.72 to 256.87
or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for
either party as measured by the Federal Bureau of Labor Statistics; (5) extraordinary
medical expenses of the child not provided for under section 518A.41; (6) the addition
of work-related or education-related child care expenses of the obligee or a substantial
increase or decrease in existing work-related or education-related child care expenses; or
(7) upon the emancipation of the child, as provided in subdivision 5.

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

(1) the application of the child support guidelines in section 518A.35, to the current
circumstances of the parties results in a calculated court order that is at least 20 percent

and at least \$75 per month higher or lower than the current support order or, if the current support order is less than \$75, it results in a calculated court order that is at least 20 percent per month higher or lower;

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

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

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

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

(6) a deviation was granted under section 518A.43, subdivision 1, clause (4), and the child can no longer maintain a comparable standard of living with the lower child support amount because the child no longer resides in a foreign country.

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

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

(1) shall apply section 518A.35, and shall not consider the financial circumstances of each party's spouse, if any; and

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

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

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

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

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

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

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

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

(f) Except for an award of the right of occupancy of the homestead, provided in section 518.63, all divisions of real and personal property provided by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state, including motions under section 518.145, subdivision 2. The court may impose a lien or charge on the divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property as is provided by section 518A.71.

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

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

(i) Except as expressly provided, an enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order.

(j) There may be no modification of an existing child support order during the first year following January 1, 2007, except as follows:

(1) there is at least a 20 percent change in the gross income of the obligor;

(2) there is a change in the number of joint children for whom the obligor is legally responsible and actually supporting;

(3) a parent or another caregiver of the child who is supported by the existing support order begins to receive public assistance, as defined in section 256.741;

(4) there are additional work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses;

(5) there is a change in the availability of health care coverage, as defined in section 518A.41, subdivision 1, paragraph (a), or a substantial increase or decrease in the cost of existing health care coverage;

(6) the child supported by the existing child support order becomes disabled; or

(7) both parents consent to modification of the existing order under section 518A.34.

A modification under clause (4) may be granted only with respect to child care support. A modification under clause (5) may be granted only with respect to medical support. This paragraph expires January 1, 2008.

(k) On the first modification under the income shares method of calculation, the modification of basic support may be limited if the amount of the full variance would create hardship for either the obligor or the obligee.

Sec. 2. Minnesota Statutes 2006, section 518A.43, subdivision 1, is amended to read:

Subdivision 1. **General factors.** Among other reasons, deviation from the presumptive child support obligation computed under section 518A.34 is intended to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty. In addition to the child support guidelines and other factors used to calculate the child support obligation under section 518A.34, the court must take into consideration the following factors in setting or modifying child support or in determining whether to deviate upward or downward from the presumptive child support obligation:

(1) all earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of section 518A.29, paragraph (b);

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

(3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

(4) whether the child is able to maintain a comparable standard of living with a lower amount of child support because the child resides in a foreign country;

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

~~(5)~~ (6) the parents' debts as provided in subdivision 2; and

~~(6)~~ (7) the obligor's total payments for court-ordered child support exceed the limitations set forth in section 571.922.