

State of Minnesota

H. F. No. **4631**

1.1 A bill for an act

1.2 relating to domestic relations; modifying provisions regarding spousal maintenance;

1.3 amending Minnesota Statutes 2018, sections 518.131, by adding subdivisions;

1.4 518.552; 518A.39, subdivisions 1, 2; repealing Minnesota Statutes 2018, sections

1.5 518.131, subdivision 11; 518A.39, subdivision 3.

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

1.7 Section 1. Minnesota Statutes 2018, section 518.131, is amended by adding a subdivision

1.8 to read:

1.9 Subd. 11. **Presumption regarding temporary maintenance.** During the pendency of

1.10 a dissolution or legal separation, it is presumed that the court should award temporary

1.11 maintenance to a spouse who would qualify for an award of maintenance under section

1.12 518.552.

1.13 Sec. 2. Minnesota Statutes 2018, section 518.131, is amended by adding a subdivision to

1.14 read:

1.15 Subd. 12. **Effective date of award of temporary support or maintenance.** In a

1.16 temporary order issued under this section or in the final decree, an award of temporary

1.17 support or temporary maintenance during the pendency of a marriage dissolution or legal

1.18 separation proceeding may be effective as early as the date that the proceeding commenced.

1.19 In determining whether to issue an award with an effective date as early as the

1.20 commencement of the proceeding, and the amount to be awarded, the court shall consider

1.21 the applicable factors set forth in chapter 518A and section 518.552 and the extent to which

1.22 the needs of the children and the parties were met during the pendency of the proceeding.

Sec. 3. Minnesota Statutes 2018, section 518.131, is amended by adding a subdivision to read:

Subd. 13. Payment of temporary costs and reasonable attorney fees. During the pendency of a marriage dissolution or legal separation proceeding, it is presumed that the court should award temporary costs and reasonable attorney fees to a spouse who otherwise lacks immediate access to sufficient income or assets to pay attorney fees and costs. The court will thereby ensure that the parties have comparable resources to pay for the dissolution or legal separation proceeding. In making this determination, the court will consider each party's comparative income and assets during the pendency of the proceeding, including each party's debt financing and third-party resources. Nothing in this subdivision is intended to limit a party's ability to seek temporary attorney fees and costs from the other party under section 518.14.

Sec. 4. Minnesota Statutes 2018, section 518.552, is amended to read:

518.552 MAINTENANCE.

Subdivision 1. **Grounds.** 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) (1)~~ lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, ~~especially, including~~ but not limited to, a period of training or education; ~~or;~~

~~(b) (2)~~ is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, ~~through appropriate employment;~~ or

~~(3)~~ 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. **Amount; Factors in determining the amount and duration of maintenance.** The maintenance order shall be in amounts and for periods of time, ~~either temporary or permanent,~~ as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(a) (1) the financial resources of the party seeking maintenance, ~~including marital property apportioned to the party~~; and the party's ability to meet 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)~~ (2) the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;

~~(c)~~ (3) the standard of living established during the marriage and the extent to which the standard of living was funded by debt;

~~(d)~~ (4) the duration of the marriage and, ~~in the case of a homemaker~~, the spouse's foregone earnings, seniority, benefits, and other employment opportunities to support the other spouse or children and the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;

~~(e) the loss of earnings, seniority, retirement benefits, and other employment opportunities foregone by the spouse seeking spousal maintenance;~~

~~(f)~~ (5) the age, ~~and the physical and emotional condition of the spouse seeking maintenance~~, mental, or chemical health of both spouses;

~~(g)~~ (6) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; ~~and~~

~~(h)~~ (7) 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 or a spouse~~ in furtherance of the other party's employment or business; and

(8) the need and ability of each spouse to prepare for retirement and the anticipated time of retirement.

Subd. 3. ~~Permanency of award~~ Presumptions for the duration of maintenance. ~~Nothing in this section shall be construed to favor a temporary award of maintenance over a permanent award, where the factors under subdivision 2 justify a permanent award.~~

~~Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.~~

4.1 (a) A maintenance award may be transitional or indefinite. If a court awards temporary
4.2 maintenance before the effective date of this statute, it is deemed transitional maintenance.
4.3 If a court awards permanent maintenance before the effective date of this statute, it is deemed
4.4 indefinite maintenance. If a court awards maintenance during the pendency of an initial
4.5 dissolution or legal separation proceeding pursuant to section 518.131, it is deemed temporary
4.6 maintenance.

4.7 (b) For purposes of this subdivision, "length of the marriage" shall mean the period from
4.8 the date of marriage until the commencement date of the action.

4.9 (c) In determining the appropriate duration of maintenance, the court shall consider:

4.10 (1) when the length of the marriage is less than five years, it is rebuttably presumed that
4.11 the court should award no maintenance;

4.12 (2) when the length of the marriage is five years and less than 20 years, it is rebuttably
4.13 presumed that the court should award transitional maintenance with a duration of no longer
4.14 than one-half of the length of the marriage if the factors set forth in subdivision 1 support
4.15 awarding maintenance; and

4.16 (3) when the length of the marriage is 20 years or more, it is rebuttably presumed that
4.17 the court should award indefinite maintenance if the factors set forth in subdivision 1 support
4.18 awarding maintenance.

4.19 Subd. 4. **Reopening maintenance awards.** Section 518.145, subdivision 2, applies to
4.20 awards of spousal maintenance.

4.21 Subd. 5. **Private agreements.** The parties may expressly preclude or limit modification
4.22 of maintenance through a stipulation, if the court makes specific findings that the stipulation
4.23 is fair and equitable, is supported by consideration described in the findings, and that full
4.24 disclosure of each party's financial circumstances has occurred. The stipulation must be
4.25 made a part of the judgment and decree or a post-decree stipulated order. The parties may
4.26 restore the court's authority or jurisdiction to award or modify maintenance through a binding
4.27 stipulation.

4.28 Subd. 5a. **Maintenance on death or remarriage.** Unless otherwise agreed upon in
4.29 writing or expressly provided in the decree, the party's obligation to pay future maintenance
4.30 terminates upon the death of either party or the remarriage of the party receiving maintenance.

4.31 Subd. 5b. **Modification.** (a) Upon either party's motion, the court may modify the amount
4.32 and duration of maintenance and may issue an order it might have issued in the original
4.33 proceeding, except as otherwise provided in this subdivision.

(b) The court may modify the terms of a maintenance order upon a showing of one or more of the following, which renders the terms of the existing order unreasonable and unfair:

(1) a substantial increase or decrease to the gross income of the obligor or obligee;

(2) a substantial increase or decrease to the financial need of an obligor or obligee; or

(3) a substantial change in the federal or state tax laws which affect spousal maintenance.

(c) Upon a party's motion to modify 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 subdivisions 1 to 3 that exist at the time of the motion.

(d) A modification of maintenance, including interest that accrued pursuant to section 548.091, may be retroactive from the date that notice of the motion was served on the responding party and on the public authority if the obligee is receiving public assistance or the county attorney is the attorney of record, unless the court adopts an alternative effective date under paragraph (f). The court's adoption of an alternative effective date under paragraph (f) shall not be considered a retroactive modification of maintenance.

(e) The court need not hold an evidentiary hearing on a motion of modification of maintenance.

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

Subd. 6. **Cohabitation.** (a) Spousal maintenance may be modified pursuant to ~~section 518A.39, subdivision 2, subdivision 7~~ based on the cohabitation by the maintenance obligee with another adult following dissolution of the marriage. The modification may consist of a reduction, suspension, reservation, or termination of maintenance. In determining if maintenance should be modified due to cohabitation, the court shall consider:

(1) whether the obligee would marry the cohabitant but for the maintenance award;

(2) the economic benefit the obligee derives from the cohabitation;

(3) the length of the cohabitation and the likely future duration of the cohabitation; and

(4) the economic impact on the obligee if maintenance is modified and the cohabitation ends.

(b) The court must not modify a maintenance award based solely on cohabitation if a marriage between the obligee and the cohabitant would be prohibited under section 517.03, subdivision 1, clause (2) or (3). A modification under this subdivision must be precluded

or limited to the extent ~~the parties have entered into a private agreement under subdivision 5~~ provided in that agreement.

(c) A motion to modify a spousal maintenance award on the basis of cohabitation may not be brought within one year of the date of entry of the decree of dissolution or legal separation that orders spousal maintenance, unless the parties have agreed in writing that a motion may be brought or the court finds that failing to allow the motion to proceed would create an extreme hardship for one of the parties.

Subd. 7. **Retirement.** (a) In the event of either party's retirement, the court may modify spousal maintenance. The modification of maintenance may consist of a change in the amount, suspension, reservation, or termination of maintenance.

(b) In determining whether the court should modify maintenance due to a party's retirement, the court shall consider:

(1) whether the party's retirement is in good faith or is an unjustifiable self-limitation of income;

(2) whether the party has attained the age to receive the party's full retirement benefits under section 216 of the Social Security Act, United States Code, title 42, section 416, or the customary age for retirement in the party's occupation; and

(3) whether a party has reasonably and prudently managed the party's assets since the dissolution of the marriage.

(c) There is a rebuttable presumption that a party has retired in good faith and has not unjustifiably self-limited the party's income if the party's retirement occurs on or after the party attains the age to receive full retirement benefits under section 216 of the Social Security Act, United States Code, title 42, section 416, or the customary age for retirement in the party's occupation.

(d) If a court determines that modification is appropriate, the court shall apply the factors in subdivision 2 to determine the amount and duration of maintenance.

(e) Before a party retires, a party may bring a motion to modify maintenance due to retirement, provided that the moving party specifies the date by which the party's retirement will occur. The court may then order the modification to be effective from the date of retirement.

Subd. 8. **Form.** The state court administrator's office shall prepare and make available to court administrators, obligors, and persons to whom spousal maintenance is owed, a form

7.1 to submit in support of a motion for modifying an order for maintenance or for contempt
7.2 of court.

7.3 Sec. 5. Minnesota Statutes 2018, section 518A.39, subdivision 1, is amended to read:

7.4 Subdivision 1. **Authority.** After an order under this chapter or chapter 518 for
7.5 ~~maintenance or~~ support money, temporary or permanent, or for the appointment of trustees
7.6 to receive property awarded as ~~maintenance or~~ support money, the court may from time to
7.7 time, on motion of either of the parties, a copy of which is served on the public authority
7.8 responsible for child support enforcement if payments are made through it, or on motion
7.9 of the public authority responsible for support enforcement, modify the order respecting
7.10 the amount of ~~maintenance or~~ support money or medical support, and the payment of it,
7.11 and also respecting the appropriation and payment of the principal and income of property
7.12 held in trust, and may make an order respecting these matters which it might have made in
7.13 the original proceeding, except as herein otherwise provided. A party or the public authority
7.14 also may bring a motion for contempt of court if the obligor is in arrears in support ~~or~~
7.15 ~~maintenance~~ payments.

7.16 Sec. 6. Minnesota Statutes 2018, section 518A.39, subdivision 2, is amended to read:

7.17 Subd. 2. **Modification.** (a) The terms of an order respecting ~~maintenance or~~ support
7.18 may be modified upon a showing of one or more of the following, any of which makes the
7.19 terms unreasonable and unfair: (1) substantially increased or decreased gross income of an
7.20 obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee or
7.21 the child or children that are the subject of these proceedings; (3) receipt of assistance under
7.22 the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40,
7.23 or chapter 256J or 256K; (4) a change in the cost of living for either party as measured by
7.24 the federal Bureau of Labor Statistics; (5) extraordinary medical expenses of the child not
7.25 provided for under section 518A.41; (6) a change in the availability of appropriate health
7.26 care coverage or a substantial increase or decrease in health care coverage costs; (7) the
7.27 addition of work-related or education-related child care expenses of the obligee or a
7.28 substantial increase or decrease in existing work-related or education-related child care
7.29 expenses; or (8) upon the emancipation of the child, as provided in subdivision 5.

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

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

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

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

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

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

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

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

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

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

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

9.1 (i) multiply the combined basic support obligation under section 518A.34, paragraph
9.2 (b), clause (5), by 0.75;

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

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

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

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

9.12 (2) shall not consider compensation received by a party for employment in excess of a
9.13 40-hour work week, provided that the party demonstrates, and the court finds, that:

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

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

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

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

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

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

9.25 (f) A modification of ~~support or~~ maintenance, including interest that accrued pursuant
9.26 to section 548.091, may be made retroactive only with respect to any period during which
9.27 the petitioning party has pending a motion for modification but only from the date of service
9.28 of notice of the motion on the responding party and on the public authority if public assistance
9.29 is being furnished or the county attorney is the attorney of record, unless the court adopts
9.30 an alternative effective date under paragraph (l). The court's adoption of an alternative
9.31 effective date under paragraph (l) shall not be considered a retroactive modification of
9.32 ~~maintenance or~~ support.

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

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

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

(j) An enactment, amendment, or repeal of law constitutes a substantial change in the circumstances for purposes of modifying a child support order when it meets the standards for modification in this section.

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

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

Sec. 7. **REPEALER.**

Minnesota Statutes 2018, sections 518.131, subdivision 11; and 518A.39, subdivision 3, are repealed.

APPENDIX
Repealed Minnesota Statutes: 20-6065

518.131 TEMPORARY ORDERS AND RESTRAINING ORDERS.

Subd. 11. **Temporary support and maintenance.** Temporary support and maintenance may be ordered during the time a parenting plan is being developed under section 518.1705.

518A.39 MODIFICATION OF ORDERS OR DECREES.

Subd. 3. **Maintenance on death or remarriage.** Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.