

obtain an extension permit or extension permits from the municipality or municipalities having jurisdiction in the extension area. If the franchise of the core service unit is being exercised pursuant to section 238.09, subdivisions 3, 4, 5, or 9, the franchisee may continue to provide service in the extension area without further proceedings until such time as the certificate of confirmation currently in effect is required to be renewed. The franchisee shall, thereafter, be required to have established a cable service territory approved by the board which includes all areas to be served by the cable communications system and to have obtained an extension permit from each municipality in the cable service territory, except where two or more municipalities agree upon the joint exercise of powers pursuant to section 471.59. Nothing in this subdivision shall be construed to prevent a municipality from requiring an extension permit prior to the time required by this subdivision.

Subd. 8. RULES. The board may promulgate such rules as it deems necessary to effectuate the purposes and provisions of this section.

Sec. 6. This act is effective the day following final enactment.

Approved April 5, 1978.

CHAPTER 772-H.F.No.2027

[Coded in Part]

An act relating to marriage and divorce; modifying prohibitions of marriage between certain parties; modifying requirements to receive a marriage license; modifying penalties for certain offenses; providing that children born of a prohibited marriage are legitimate; revising procedures and grounds for annulment actions; declaring the legal rights of putative spouses; providing new procedures for actions of dissolution and legal separation; limiting grounds for a dissolution to a finding that the marriage is irretrievably broken; modifying procedures for custody proceedings; declaring the right of a custodial parent to determine a child's upbringing; defining marital property; defining provisions for an award of maintenance to a spouse; amending Minnesota Statutes 1976, Sections 517.03; 517.04; 517.05; 517.06; 517.07; 517.09; 517.13; 517.14; 517.15; 517.16; 517.19; 518.01; 518.02; 518.03; 518.05; 518.06, Subdivision 1, and by adding a subdivision; 518.07; 518.09; 518.10; 518.11; 518.13; 518.14; 518.16; 518.165; 518.17; 518.175, Subdivisions 1 and 3, and by adding a subdivision; 518.18; 518.24; 518.27; 518.54; 518.55; 518.57; 518.58; 518.61; 518.62; 518.63; 518.64; 518.65; Chapter 517, by adding a section; and Chapter 518, by adding sections; and Minnesota Statutes, 1977 Supplement, Sections 517.01; 517.08, Subdivisions 1 and 3; 518.155; and 518.551; repealing Minnesota Statutes 1976, Sections 517.17; 518.06, Subdivision 2; 518.15; 518.29; 518.59; and 518.67.

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

Section 1. Minnesota Statutes, 1977 Supplement; Section 517.01, is amended to read:

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517.01 **MARRIAGE A CIVIL CONTRACT.** Marriage, so far as its validity in law is concerned, is a civil contract between a man and a woman, to which the consent of the parties, capable in law of contracting, is essential. Lawful marriage hereafter may be contracted only when a license has been obtained ~~therefor~~ as provided by law and when ~~such~~ the marriage is contracted in the presence of two witnesses and solemnized by one authorized, or whom ~~one~~ or ~~both~~ of the parties in good faith believe to be authorized, so to do. Marriages subsequent to April 26, 1941, not so contracted shall be null and void.

Sec. 2. Minnesota Statutes 1976, Section 517.03, is amended to read:

517.03 **PROHIBITED MARRIAGES.** ~~No marriage shall be contracted while either of the parties has a husband or wife living; nor within six months after either has been divorced from a former spouse; excepting re-intermarriage between such parties; nor within six months after either was a party to a marriage which has been adjudged a nullity; excepting intermarriage between such parties; nor between parties who are nearer than second cousins; whether of the half or whole blood; computed by the rules of the civil law; nor between persons one of whom is a male person under 18 years of age or one of whom is a female person under the age of 16 years; The following marriages are prohibited:~~

(a) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(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 ~~such~~ consent unless it appears from his investigation that ~~such~~ 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 ~~such~~ the ward or conservatee shall not issue the license unless ~~and until~~ he has received a signed copy of the consent of the commissioner of public welfare.

Sec. 3. Minnesota Statutes 1976, Section 517.04, is amended to read:

517.04 **SOLEMNIZATION.** Marriages may be solemnized by ~~any justice of the peace in the county in which he is elected, and throughout the state by any a judge of a court of record, the superintendent of the department for the deaf and dumb; in the state school for the deaf and blind a clerk of court, the residential school administrators of the Minnesota school for the deaf and the Minnesota braille and sight-saving school, or any a licensed or ordained minister of the gospel in regular communion with a religious society~~

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any religious denomination, or by any mode recognized in section 517.18.

Sec. 4. Minnesota Statutes 1976, Section 517.05, is amended to read:

517.05 **CREDENTIALS OF MINISTER.** Ministers of the gospel any religious denomination, before they are authorized to ~~perform the solemnize~~ a marriage ~~rite~~, shall file a copy of their credentials of license or ordination with the clerk of the district court of ~~some~~ a county in this state, who shall record the same and give a certificate thereof; ~~and~~. The place where ~~such~~ the credentials are recorded shall be endorsed upon and recorded with each certificate of marriage granted by a minister.

Sec. 5. Minnesota Statutes 1976, Section 517.06, is amended to read:

517.06 **PARTIES EXAMINED.** Every person authorized by law to perform the marriage ceremony, before solemnizing ~~any~~ a marriage, may examine the parties on oath, which oath he is authorized to administer, as to the legality of ~~such~~ the intended marriage, and no ~~such~~ person shall solemnize a marriage unless he is satisfied that there is no legal impediment ~~thereto~~ to it.

Sec. 6. Minnesota Statutes 1976, Section 517.07, is amended to read:

517.07 **LICENSE.** Before any persons ~~shall be~~ are joined in marriage, a license shall be obtained from the clerk of the district court of the county in which the woman resides; ~~or, if not a resident of this state, then from the clerk of the district court of any county and~~. The marriage need not take place in the county where the license is obtained.

Sec. 7. Minnesota Statutes, 1977 Supplement, Section 517.08, Subdivision 1, is amended to read:

517.08 **APPLICATION FOR LICENSE.** Subdivision 1 la. Application for a marriage license shall be made ~~at least five days before a license shall be issued. Such application shall be made~~ upon a form provided for the purpose and shall contain the following information:

the full names of the parties,

their post office addresses and county and state of residence,

their full ages,

if either party has previously been married, his married name, and the date, place and court in which the marriage was dissolved or annulled or the date and place of death of the former spouse,

if either party is a minor, the name and address of the minor's parents or guardian,

whether the parties are related to each other, and, if so, their relationship,

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the name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated,

address of the bride and groom after the marriage to which the clerk shall send a certified copy of the marriage certificate,

and the full names the parties will have after marriage.

Subd. 1b. The clerk shall examine upon oath the party applying for a license relative to the legality of ~~such the~~ contemplated marriage ~~and,~~ If at the expiration of ~~this~~ a five-day period, he is satisfied that there is no legal impediment ~~thereto to it,~~ he shall issue ~~such the~~ license, containing the full names of the parties before and after marriage, and county and state of residence, with the district court seal attached, and make a record of the date of issuance ~~thereof, which,~~ The license shall be valid for a period of six months. In case of emergency or extraordinary circumstances, ~~the a judge of the probate county court, the court commissioner, or any a judge of the district court, of the county in which the application is made,~~ may authorize the license to be issued at any time before the expiration of the five days. The clerk shall collect from the applicant a fee of \$11 for administering the oath, issuing, recording, and filing all papers required, and preparing and transmitting to the state registrar of vital statistics the reports of marriage required by this section. If illness or other extenuating circumstances, it may be surrendered to the clerk for cancellation, and in ~~such that~~ case a new license shall issue upon request of the parties of the original license without fee ~~therefor.~~ ~~Any A~~ clerk who ~~shall~~ knowingly issue or ~~sign issues or signs~~ a marriage license in any ~~other~~ manner ~~other~~ than as provided in this section ~~provided shall forfeit and pay to for the use of the parties aggrieved an amount~~ not to exceed \$1,000.

Sec. 8. Minnesota Statutes, 1977 Supplement, Section 517.08, Subdivision 3, is amended to read:

Subd. 3. The personal information necessary to complete the report of marriage shall be furnished by the applicant prior to the issuance of the license. The report shall contain only the following information:

(a) Personal information on bride and groom.

1. Name.
2. Residence.
3. Date and place of birth.
4. Race.
5. If previously married, how terminated.
6. Name after marriage.

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7. Signature of applicant and date signed.

(b) Information concerning the marriage.

1. Date of marriage.

2. Place of marriage.

3. Civil or religious ceremony.

(c) Signature of clerk of court and date signed.

(d) ~~Address of the bride and groom after the marriage to which the clerk shall send a certified copy of the marriage certificate.~~

Sec. 9. Minnesota Statutes 1976, Section 517.09, is amended to read:

517.09 SOLEMNIZATION. ~~In the solemnization of marriage~~ No particular form shall be ~~is~~ required to solemnize a marriage, except: ~~that the parties shall declare in the presence of a person authorized by section 517.04 to solemnize marriages; and the two attending witnesses that they take each other as husband and wife; or the marriage shall be solemnized in a manner provided by section 517.18. In each case at least two witnesses shall be present besides the person performing the ceremony.~~

Sec. 10. Minnesota Statutes 1976, Section 517.13, is amended to read:

517.13 PENALTY FOR FAILURE TO DELIVER AND FILE CERTIFICATE. Every person solemnizing a marriage who ~~shall neglect neglects~~ to make and deliver to the clerk a certificate thereof within the time above specified set forth in section 517.10 shall forfeit a sum not exceeding \$100, and every clerk who neglects to record ~~such a~~ certificate shall forfeit a like sum.

Sec. 11. Minnesota Statutes 1976, Section 517.14, is amended to read:

517.14 ILLEGAL MARRIAGE; FALSE CERTIFICATE; PENALTY. ~~If any A~~ person authorized by law to join persons in marriage shall solemnize marriages who knowingly solemnize any solemnizes a marriage contrary to the provisions of this chapter, or knowing of any legal impediment to the proposed marriage, or who wilfully make any makes a false certificate of any marriage; or pretended marriage; ~~he shall forfeit for every such offense a sum not exceeding \$500, or may be imprisoned not exceeding one year is guilty of a misdemeanor.~~

Sec. 12. Minnesota Statutes 1976, Section 517.15, is amended to read:

517.15 UNAUTHORIZED PERSON PERFORMING CEREMONY. ~~If any A~~ person who undertakes to join others in marriage solemnize a marriage, knowing that he is not lawfully authorized to do so, or knowing of any legal impediment to the proposed marriage, he shall be is guilty of a gross misdemeanor; ~~and, upon conviction thereof,~~

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punished by imprisonment of not more than one year, or by a fine of not more than \$500, or by both such fine and imprisonment.

Sec. 13. Minnesota Statutes 1976, Section 517.16, is amended to read:

517.16 IMMATERIAL IRREGULARITY OF OFFICIATING PERSON DOES NOT VOID. ~~No~~ A marriage solemnized before ~~any~~ a person professing to be a judge, justice of the peace, or minister of the gospel lawfully authorized to do so shall ~~not~~ be deemed or adjudged to be void, nor shall ~~the~~ its validity thereof be in any way affected, on account of ~~any~~ a want of jurisdiction or authority in ~~such~~ the supposed officer or person; ~~provided, if~~ the marriage is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Sec. 14. Minnesota Statutes 1976, Section 517.19, is amended to read:

517.19 ILLEGITIMATE CHILDREN. Illegitimate children shall become legitimized by the subsequent marriage of their parents to each other, and the issue of marriages declared null in law shall nevertheless be legitimate.

Children born of a prohibited marriage are legitimate.

Sec. 15. Minnesota Statutes 1976, Chapter 517, is amended by adding a section to read:

[517.20] APPLICATION. All marriages contracted within this state prior to the effective date of this act or outside this state that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

Sec. 16. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to read:

[518.005] RULES GOVERNING PROCEEDINGS. Subdivision 1. Unless otherwise specifically provided, the rules of civil procedure for the district court apply to all proceedings under chapter 518.

Subd. 2. A proceeding for dissolution of marriage, legal separation, or annulment shall be entitled "In re the Marriage of and" "A custody or support proceeding shall be entitled "In re the Custody Support of" "

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

Subd. 4. In Minnesota Statutes, Sections 518.001 to 518.66, "decree" includes "judgment".

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Sec. 17. Minnesota Statutes 1976, Section 518.01, is amended to read:

518.01 VOID MARRIAGES. All marriages which are prohibited by law on account of consanguinity, or on account of either or both parties being under the age established for marriage by section 517.03, or on account of either party having a former husband or wife then living; if solemnized within this state; section 517.03 shall be absolutely void, without any decree of dissolution or other legal proceedings; ~~provided, that~~ except if any a person whose husband or wife has been absent for four successive years, without being known to ~~such~~ the person to be living during that time, marries during the lifetime of ~~such~~ the absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged. If the absentee is declared dead in accordance with section 576.142, the subsequent marriage shall not be void.

Sec. 18. Minnesota Statutes 1976, Section 518.02, is amended to read:

518.02 VOIDABLE MARRIAGES. ~~When either party to a marriage is incapable of assenting thereto for want of age or understanding, or when the consent of either has been obtained by force or fraud; and there is no subsequent voluntary cohabitation of the parties; the marriage may be annulled at the suit of the injured party; and shall be void from the time its nullity is adjudged~~ A marriage shall be declared a nullity under the following circumstances:

(a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity and the other party at the time the marriage was solemnized did not know of the incapacity; or because of the influence of alcohol, drugs, or other incapacitating substances; or because consent of either was obtained by force or fraud and there was no subsequent voluntary cohabitation of the parties;

(b) A party lacks the physical capacity to consummate the marriage by sexual intercourse and the other party at the time the marriage was solemnized did not know of the incapacity;

(c) A party was under the age for marriage established by section 517.02.

Sec. 19. Minnesota Statutes 1976, Section 518.03, is amended to read:

518.03 ACTION TO ANNUL; DECREE. ~~When the validity of a marriage is disputed for any of the causes mentioned in section 518.01 or 518.02, either party may begin an action in the district court of the county where either resides, to annul the same. In such action~~ An annulment shall be commenced and the complaint shall be filed and proceedings had thereon as in proceedings for dissolution, ~~and,~~ Upon due proof of the nullity of the marriage, it shall be adjudged null and void.

The provisions of Minnesota Statutes, Sections 518.54 to 518.66 relating to property rights of the spouses, maintenance, support and custody of children on dissolution of marriage are applicable to proceedings for annulment.

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Sec. 20. Minnesota Statutes 1976, Section 518.05, is amended to read:

518.05 ANNULMENT; WHEN TO BRING. ~~No marriage shall be adjudged a nullity at the suit of the party capable of contracting, on the ground that the other party was under the age of legal consent, or was idiotic or insane, if such idiocy or insanity was known to the party capable of contracting at the time of such marriage~~ An annulment may be sought by any of the following persons and must be commenced within the times specified, but in no event may an annulment be sought after the death of either party to the marriage:

(a) For a reason set forth in section 18, clause (a), by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;

(b) For the reason set forth in section 18, clause (b), by either party no later than one year after the petitioner obtained knowledge of the described condition;

(c) For the reason set forth in section 18, clause (c), by the underaged party, his parent or guardian, before the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

Sec. 21. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to read:

[518.055] PUTATIVE SPOUSE. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited or declared a nullity. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Sec. 22. Minnesota Statutes 1976, Section 518.06, Subdivision 1, is amended to read:

518.06 DISSOLUTION OF MARRIAGE; LEGAL SEPARATION. Subdivision 1. A dissolution of a marriage may be granted by a county or district court of competent jurisdiction upon a showing to the satisfaction of when the court finds that there has been an irretrievable breakdown of the marriage relationship.

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

Sec. 23. Minnesota Statutes 1976, Section 518.06, is amended by adding a **Changes or additions indicated by underline deletions by strikeout**

subdivision to read:

Subd. 3. If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

Sec. 24. Minnesota Statutes 1976, Section 518.07, is amended to read:

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

Sec. 25. Minnesota Statutes 1976, Section 518.09, is amended to read:

518.09 PROCEEDING; HOW AND WHERE BROUGHT; VENUE. A proceeding for dissolution or ~~separate maintenance~~ legal separation may be brought by a petitioner either or both spouses and ~~all such proceedings~~ shall be commenced by summons and petition in the county where the petitioner resides; ~~as hereinafter provided; or, if the petitioner is not a resident of the state, then 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 ~~shall appear~~ 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.

Sec. 26. Minnesota Statutes 1976, Section 518.10, is amended to read:

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

- (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 whose welfare may be affected by the controversy, 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

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commenced by the respondent and whether such proceeding is pending in any court in this state or elsewhere;

~~(6) Allege that the petition has been filed in good faith and for the purposes set forth therein;~~

~~(7) (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;~~

~~(8) (7) Set forth any application for temporary support of the petitioner a spouse and any children; and~~

~~(9) (8) Set forth any application for permanent alimony maintenance or support, child custody, or disposition of property, as well as attorneys' fees and suit money, without enumerating the amounts thereof; and~~

~~(10) State that the petitioner has been for the last year a resident of the state.~~

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

Sec. 27. Minnesota Statutes 1976, Section 518.11, is amended to read:

518.11 **SERVICE; PUBLICATION.** Unless a proceeding is brought by both parties, copies of the summons and petition shall be served on the respondent personally; ~~and;~~ When such service is made out of this state and within the United States, it may be proved by the affidavit of the person making the same; ~~and.~~ When service is made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same; But, if personal service cannot well be made, the court may order service of the summons by publication, which publication shall be made as in other actions.

Sec. 28. Minnesota Statutes 1976, 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 determine the proceeding at a general or special term, or in vacation; ~~provided, that,~~

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.

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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 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 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. 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. Hearings held for the purpose of determining child custody may be limited in attendance by the court to the affected parties and necessary witnesses if any.

Sec. 29. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to read:

[518.135] TEMPORARY ORDER OR INJUNCTION; PENALTY. Subdivision 1. In a proceeding brought for dissolution or legal separation or for disposition of property, maintenance, or support following the dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse but has since acquired personal jurisdiction over the spouse, either party may move for temporary maintenance or temporary support of children of the marriage entitled to support or for a temporary order relative to property of the parties. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

Subd. 2. (a) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit either party may request the court to issue a restraining order:

(i) Restraining a person from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the order is issued;

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(ii) Restraining a party from molesting or disturbing the peace or restraining the personal liberty of the other party or of a child;

(iii) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result. A party may be excluded from the family home only upon due notice and hearing. If a party makes specific allegations of an immediate danger of physical harm, the court shall waive the requirement of notice and shall hold a hearing on the request for a restraining order at the earliest possible time.

(b) The court may issue an ex parte restraining order only if it finds on the basis of the moving affidavit or other evidence that immediate and irreparable injury would result to the moving party if an order is not issued before the adverse party can be heard in opposition and the moving party states to the court in writing the efforts that have been made to give notice or the reasons why notice should not be required.

(c) A response may be filed within 20 days after service of notice of motion or at the time specified in the ex parte restraining order.

(d) On the basis of the showing made and in conformity with section 51 on maintenance and section 39, subdivision 2 on support the court may issue a restraining order and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances.

(e) A temporary order or restraining order:

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

(ii) May be revoked or modified before the final decree on notice to the other party and on a showing by affidavit of the facts which support the necessity for revocation or modification; and

(iii) Terminates when the final judgment is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Subd. 3. A person who violates an order issued pursuant to subdivision 2, clause (a), item (ii) or (iii) is guilty of a misdemeanor.

Sec. 30. Minnesota Statutes 1976, Section 518.14, is amended to read:

518.14 COSTS AND DISBURSEMENTS AND ATTORNEY'S FEES. In any a proceeding brought either for dissolution or ~~separate maintenance~~ legal separation under chapter 518, the court, ~~in its discretion from time to time~~, after considering the financial resources of both parties, may require one party to pay a reasonable amount; necessary to enable the other spouse to carry on; or to contest the proceeding, and ~~to support such spouse and the children during its pendency to pay attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement or after entry of~~

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judgment. The court may adjudge costs and disbursements against either party. The court may authorize the collection of ~~any~~ money ~~so~~ awarded by execution, or out of ~~any~~ property sequestered, or in any other manner within the power of the court. An award of attorney's fees made by the court during the pendency of the proceeding or in the final judgment survives the proceeding and if not paid by the party directed to pay the same may be enforced as above provided or by a separate civil action brought by the attorney in his own name. If the proceeding is dismissed or abandoned prior to determination and award of attorney's fees, the court may nevertheless award attorney's fees upon the attorney's motion ~~and such~~. The award shall also survive the proceeding and may be enforced in the same manner as last above provided.

Sec. 31. Minnesota Statutes 1976, Chapter 518, is amended by adding a section 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 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.

Sec. 32. Minnesota Statutes, 1977 Supplement, 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 has been ~~or may be~~ commenced shall not issue, revise, modify or amend any order, pursuant to sections 518.16, 518.165, 518.17, 518.175 or 518.18 or sections 38 or 44 of this act, 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. 33. Minnesota Statutes 1976, Chapter 518, is amended by adding a section 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 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.

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Subd. 2. 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. 34. Minnesota Statutes 1976, Section 518.16, is amended to read:

518.16 CUSTODY OF CHILDREN DURING PENDENCY. The court, on the ~~application~~ motion of either party, may make ~~such an~~ order concerning the care and custody of the minor children of the parties; and their suitable maintenance; during the pendency of ~~such a~~ proceeding; ~~and such temporary orders relative to the persons or property of the parties;~~ as shall be deemed necessary and proper. The motion must be supported by an affidavit. The court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

If a proceeding for dissolution of marriage or legal separation is dismissed, a temporary custody order is vacated unless a parent 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 parents and the best interests of the child require that a custody order be issued.

Sec. 35. Minnesota Statutes 1976, Section 518.165, is amended to read:

518.165 GUARDIANS FOR MINOR CHILDREN. In all ~~actions~~ proceedings for ~~divorce~~ dissolution or ~~separate maintenance~~ legal separation in which 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 ~~any such~~ the child. The guardian ad litem shall advise the court with respect to custody, support and visitation. ~~The court may assess costs incident hereto against either or both parties. 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, the costs, fees, and disbursements shall be borne by the county.~~

Sec. 36. Minnesota Statutes 1976, Chapter 518, is amended by adding a section 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 permit counsel to be present at the interview. 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.

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. 37. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to

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read:

[518.167] INVESTIGATIONS AND REPORTS. Subdivision 1. In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare agency or department of court services.

Subd. 2. In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past after obtaining the consent of the parents or the child's custodian or guardian. If the requirements of subdivision 3 are fulfilled, the investigator's report may be received in evidence at the hearing.

Subd. 3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days before the hearing. The investigator shall make available to counsel and to a party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subdivision 2, and the names and addresses of all persons whom the investigator has consulted. A party to the proceeding may call the investigator and any person whom he has consulted for cross-examination at the hearing. A party may not waive his right of cross-examination before the hearing.

Sec. 38. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to read:

[518.168] HEARINGS. (a) Custody proceedings shall receive priority in being set for hearing.

(b) The court may tax as costs the payment of necessary travel and other expenses incurred by a person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(c) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct interest in the particular case.

(d) If the court finds it necessary for the protection of the child's welfare that the record of an interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

Sec. 39. Minnesota Statutes 1976, Section 518.17, is amended to read:

518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.

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Subdivision 1. For the purposes of this section "The best interest interests of the children child " means the sum total of the following all relevant factors to be considered and evaluated by the court including:

(a) The love, affection and other emotional ties existing between the competing parties and the child;

(b) The capacity and disposition of competing parties to give the child love, affection and guidance and continuation of the educating and raising of the child in its religion or creed, if any, or culture;

(c) The capacity and disposition of competing parties to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs;

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(e) The permanence, as a family unit, of the existing or proposed custodial home;

(f) The cultural background of the child;

(g) The mental and physical health of the competing parties;

(h) The home, school and community record of the child;

(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;

(j) Any other factor considered by the court to be relevant to a particular child custody dispute.

(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

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(g) The mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

Subd. 2. Upon adjudging the nullity of a marriage, or a dissolution or separation, the court may make such further order as it deems just and proper concerning the care, custody, and maintenance of the minor children of the parties and may determine with which of the parents they, or any of them, shall remain. In determining the parent with whom a child shall remain, the court shall consider the best interest interests of the children child and shall not prefer one parent over the other solely on the basis of the sex of the parent. In determining the amount of child support to be paid by each parent, the court shall consider the earning capacity and financial circumstances of each parent. On petition for any change in child support because of alleged change in circumstances the court shall take into consideration the earning capacity and financial circumstances of each parent and the custodial parent's spouse, if any

Subd. 3. The court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(a) The financial resources and needs of the child;

(b) The financial resources and needs of the custodial parent;

(c) The standard of living the child would have enjoyed had the marriage not been dissolved;

(d) The physical and emotional condition of the child, and his educational needs;
and

(e) The financial resources and needs of the noncustodial parent.

Sec. 40. Minnesota Statutes 1976, Section 518.175, Subdivision 1, is amended to read:

518.175 VISITATION OF CHILDREN AND NONCUSTODIAL PARENT.
Subdivision 1. In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court may shall, upon the request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain such a child to parent relationship as that will be beneficial to the child unless 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 shall consider the age of the child and the child's relationship with the noncustodial parent prior to the commencement of the proceeding. The court may deny visitation rights to the noncustodial parent if such visitation is not in the best interest of the child. 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; unless such inability is willful.

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Sec. 41. Minnesota Statutes 1976, 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. 42. Minnesota Statutes 1976, Section 518.175, is amended by adding a subdivision to read:

Subd. 5. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation is likely to endanger the child's physical or emotional health or impair his emotional development. If the custodial parent makes specific allegations that visitation places the custodial parent in danger of harm, the court shall hold a hearing at the earliest possible time to determine the need to modify the order granting visitation rights. The court may require a third party, including the county welfare board, to supervise the visitation or may restrict a parent's visitation rights if necessary to protect the custodial parent from harm.

Sec. 43. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to read:

[518.176] JUDICIAL SUPERVISION. (a) 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) 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 to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Sec. 44. Minnesota Statutes 1976, Section 518.18, is amended to read:

518.18 MODIFICATION OF ORDER. The court may afterward, from time to time, on the petition of either parent, revise and alter such order concerning the care, custody, and maintenance of the children, or any of them, and make such new order concerning them, as the circumstances of the parents and the benefit of the children shall require: (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 of dissolution or legal separation containing a provision dealing with custody, except in accordance with clause (c).

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(b) If a motion for modification has been filed, 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. 45. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to read:

[518.185] AFFIDAVIT PRACTICE. A party seeking a temporary custody order or modification of a custody order shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits.

Sec. 46. Minnesota Statutes 1976, Section 518.24, is amended to read:

518.24 SECURITY; SEQUESTRATION; CONTEMPT. In all cases when ~~alimony or other allowance~~ is maintenance or support payments are ordered or decreed, the court may require sufficient security to be given for the payment thereof, ~~of them~~ according to the terms of the order or decree; and, upon neglect or refusal to give ~~such~~ security, or upon failure to pay ~~such alimony or allowance~~ the maintenance or support, the court may sequester the obligor's personal estate, and the rents and profits of real estate of the obligor, and appoint a receiver ~~thereof, and of them~~. The court may cause such the personal estate; and the rents and profits of ~~such the~~ real estate, to be applied according to the terms of ~~such the~~ order or decree. If the obligor has an income from ~~any~~ a source sufficient to enable him to pay ~~such alimony or other allowance~~, the maintenance or support and ~~he~~ fails and refuses to pay the same, the court ~~may~~ shall order him to pay

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~~such alimony or allowance it. If any a~~ person or party shall ~~disobey~~ disobeys ~~such the~~ order, he may be punished by the court as for contempt.

Sec. 47. Minnesota Statutes 1976, Section 518.27, is amended to read:

518.27 **EFFECT OF DISSOLUTION; NAME OF PARTY.** When a decree of dissolution ~~from the bonds of matrimony~~ marriage is granted in this state, ~~such the~~ decree shall completely dissolve the marriage contract as to both parties. If a dissolution is granted, the court shall, if requested by ~~the a~~ party whose name was changed by the marriage, change the name of ~~the 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.

Sec. 48. Minnesota Statutes 1976, Section 518.54, is amended to read:

518.54 **DEFINITIONS.** Subdivision 1. **TERMS.** For the purposes of sections 518.54 to ~~518.67~~ 518.66, the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **CHILD.** "Child" means an individual under 18 years of age; or an individual who, by reason of his physical or mental condition, is unable to support himself.

Subd. 3. **MAINTENANCE.** "Alimony Maintenance" means an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.

Subd. 4. **SUPPORT MONEY.** "Support money" means an award in a dissolution, legal separation, or annulment proceeding for the care, support and education of any child of the marriage or of the parties to the annulment proceeding.

Subd. 5. **MARITAL PROPERTY; EXCEPTIONS.** ~~Except as provided in this subdivision; "property acquired during coverture"~~ "Marital property" means any property, real or personal, including nonforfeitable 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 any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment ~~proceedings 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).

" Property acquired during coverture Marital property " does not include any property real or personal, acquired by either spouse before, during, or after ~~coverture;~~ where said property 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;

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(b) is acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or inheritance; (c) is the increase in value of property acquired before the marriage; (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) is excluded by valid agreement of the parties, including a valid antenuptial contract or any property transferred from one spouse to the other.

Sec. 49. Minnesota Statutes 1976, Section 518.55, is amended to read:

518.55 MAINTENANCE OR SUPPORT MONEY. Every award of alimony maintenance or support money in a judgment of dissolution shall clearly designate whether the same is alimony maintenance or support money, or what part of the award is alimony maintenance and what part thereof is support money. ~~Any~~ An award of payments from future income or earnings of the custodial parent ~~shall be~~ is presumed to be alimony maintenance and ~~any~~ an award of payments from the future income or earnings of the noncustodial parent ~~shall be~~ is presumed to be support money, unless otherwise designated by the court. In ~~any~~ a judgment of dissolution the court may determine, as one of the issues of the case, whether or not either spouse is entitled to an award of alimony maintenance notwithstanding that no award is then made, or it may reserve jurisdiction of the issue of alimony maintenance for determination at a later date.

Sec. 50. Minnesota Statutes, 1977 Supplement, Section 518.551, is amended to read:

518.551 MAINTENANCE AND SUPPORT PAYMENTS MADE TO WELFARE AGENCIES. ~~Notwithstanding any law to the contrary, any~~ A court having jurisdiction over proceedings for dissolution shall direct that all payments ordered for alimony 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 alimony maintenance and support payments will receive public assistance. Amounts ~~so~~ received by the ~~board~~ over and above 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 ~~shall be notified by the petitioner~~ of all proceedings for dissolution, ~~separate maintenance 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 ~~such~~ the proceeding. After receipt of the notice, the ~~county welfare board or the commissioner of public welfare agency~~ shall recommend to the court the ~~sum of money; or its equivalent; 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 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

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support payments ordered.

Sec. 51. Minnesota Statutes 1976, Chapter 518, is amended by adding a section 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 support himself 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

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

Sec. 52. Minnesota Statutes 1976, Section 518.57, is amended to read:

518.57 MINOR CHILDREN, SUPPORT. Upon a decree of dissolution, legal separation or annulment, the court may make ~~such a~~ further order as it ~~deems~~ which is just and proper concerning the maintenance of the minor children as is provided by section 518.17, and for the maintenance of any child of the parties as defined in ~~this act~~ section 518.54, as support money, and may make the same a lien or charge upon the property of the parties to ~~such~~ the proceeding, or either of them, either at the time of the

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entry of ~~such~~ the judgment or by subsequent order upon proper application therefor.

Sec. 53. Minnesota Statutes 1976, Section 518.58, is amended to read:

518.58 DISPOSITION OF MARITAL PROPERTY. Upon a dissolution of a marriage, or ~~upon~~ 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 may shall set aside to each spouse his property and make such a just and equitable disposition of the marital property of the parties acquired during coverture as shall appear just and equitable, having without regard to the nature and determination of the issues in the case, the amount of alimony or support money, if any, awarded in the judgment, the manner by which said property was acquired and the persons paying or supplying the consideration therefor, the charges or liens imposed thereon to secure payment of alimony or support money, and all the facts and circumstances of the case: 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 value of the respective estates, 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 48, subdivision 5 are so inadequate as to work an extreme hardship, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 48, subdivision 5, clauses (a) to (e) to prevent the 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.

Sec. 54. Minnesota Statutes 1976, Section 518.61, is amended to read:

518.61 TRUSTEE. (a) Upon its own motion or upon motion of either party, the court may appoint trustees a trustee, when it is deemed expedient, to receive any money ordered to be paid as alimony maintenance or support money; or as for remittance to the person entitled to receive the payments. The trustee may also receive property which is part of an award under sections section 518.58 or 518.59, upon trust to invest the same, and pay over the income in such the manner as the court shall direct directs, or to pay

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over the principal sum in ~~such the~~ proportions and at ~~such the~~ times as the court shall order, ~~regard being had orders.~~ The court shall have regard in all such cases to the situation and circumstances of the recipient, and the children, if there are any; ~~and such trustees.~~ The trustee shall give such a bond, as the court shall require requires, for the faithful performance of ~~their his~~ trust. If it appears that the recipient of money ordered to be paid as support will receive public assistance, the court shall appoint as trustee the public authority responsible for support enforcement.

(b) The trustee shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the trustee of a change of address or of other conditions that may affect the administration of the order.

(d) If a required payment of support or of maintenance and support combined is not made within ten days after the due date, the trustee shall send by first class mail notice of the arrearage to the obligor. If payment of the sum due is not received by the trustee within ten days after sending notice, the trustee shall certify the amount due to the public authority responsible for support enforcement, whenever that authority is not the trustee. If the public authority responsible for support enforcement refers the arrearage to the county attorney, the county attorney may initiate enforcement proceedings against the obligor for support or for maintenance and support combined.

(e) The public authority responsible for support enforcement may represent a person entitled to receive support or maintenance or both in court proceedings initiated under this section to enforce compliance with a support order or combined maintenance and support orders.

(f) If the person obligated to pay support or maintenance is beyond the jurisdiction of the court, the county attorney may institute any proceeding available under state or federal law for the enforcement of duties of support or maintenance.

Sec. 55. Minnesota Statutes 1976, Chapter 518, is amended by adding a section to read:

[518.611] ASSIGNMENTS. If the person obligated to pay support or maintenance fails to make a required payment, 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 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 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 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

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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. 56. Minnesota Statutes 1976, Chapter 518, is amended by adding a section 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. 57. Minnesota Statutes 1976, Section 518.62, is amended to read:

518.62 TEMPORARY MAINTENANCE. Temporary alimony may be awarded as provided in section 518.14; maintenance and temporary support money may be awarded as provided in section 518.16, for the support of any children of the parties, including children as defined in section 518.54; and 29. 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; and 2. The court may order and direct either party to remove from the homestead of the parties upon proper application to the court for such an order pending the proceeding.

Sec. 58. Minnesota Statutes 1976, Section 518.63, is amended to read:

518.63 HOMESTEAD, OCCUPANCY. The court, having due regard to all the circumstances and the custody of any children of the parties, may award to either party the right of occupancy of the homestead of the parties, exclusive or otherwise, upon a final decree of dissolution or legal separation; or proper modification thereof of it, for such a period of time as may be determined by the court; and such. An award of the right of occupancy of the homestead, whether exclusive or otherwise, may be in addition to the maximum amount which may be awarded under section 518.59 amounts awarded under sections 53, 54 and 55.

Sec. 59. Minnesota Statutes 1976, Section 518.64, is amended to read:

518.64 MODIFICATION OF ORDERS OR DECREES. Subdivision 1. After an order or decree for alimony maintenance or support money, temporary or permanent, or for the appointment of trustees to receive and hold any property awarded as alimony

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maintenance or support money, the court may from time to time, on petition of either of the parties revise and alter such or on petition of the public authority responsible for support enforcement where the party entitled to support or maintenance receives or has applied for public assistance, modify the order or decree respecting the amount of such alimony, maintenance or support money, and the payment thereof of it, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any an order respecting these matters which it might have made in the original proceeding, except as herein otherwise provided.

Subd. 2. Except as otherwise provided in section 51, 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. Except for an award of the right of occupancy of the homestead, provided in section 58, all divisions of real and personal property provided by sections section 518.58 and 518.59 shall be final, and subject only to the power of 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 to may impose a lien or charge thereon on the divided property at any time while such the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of alimony maintenance or support money, or to may sequester the property as is provided by section 518.24.

Subd. 3. 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.

Subd. 4. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Sec. 60. Minnesota Statutes 1976, Section 518.65. is amended to read:

518.65 PROPERTY; SALE, PARTITION. *In order to effect a division or award of property as is provided by sections section 518.58 and 518.59, the court may order any such property sold or partitioned. Personal property may be ordered sold in such the manner as shall be directed by the court, and real estate may be partitioned in the manner provided by Minnesota Statutes 1949, Chapter 558; insofar as the same is applicable.*

Sec. 61. (a) Sections 1 to 63 apply to all proceedings commenced after February 28, 1979.

(b) Notwithstanding section 645.35, sections 1 to 63 apply to all pending actions and proceedings commenced prior to March 1, 1979 with respect to issues on which a

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judgment has not been entered. Pending actions for dissolution or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after February 28, 1979 shall be in compliance with sections 1 to 63.

(c) Notwithstanding section 645.35, sections 1 to 63 apply to all proceedings commenced after February 28, 1979 for the modification of a judgment or order entered prior to March 1, 1979.

(d) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to March 1, 1979, the law in effect at the time of the order sustaining the appeal of the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

Sec. 62. INSTRUCTIONS TO REVISOR. Whenever the term "alimony" appears in the next or subsequent editions of Minnesota Statutes, the revisor of statutes is directed to substitute "maintenance" or an equivalent term.

Whenever the term "separate maintenance" appears in the next or subsequent editions of Minnesota Statutes, the revisor is directed to substitute "legal separation".

Sec. 63. REPEALER. Minnesota Statutes 1976, Sections 517.17; 518.06, Subdivision 2; 518.15; 518.29; 518.59; and 518.67, are repealed.

Sec. 64. EFFECTIVE DATE. This act is effective March 1, 1979.

Approved April 5, 1978.

CHAPTER 773-H.F.No.2044

An act relating to trees; authorizing municipal subsidies to certain persons; requiring an investigation of uses of diseased wood; authorizing the transfer of certain trees purchased from the state; extending the special levy authority for sanitation and reforestation; clarifying utilization of appropriations for shade tree disease control; authorizing extension of temporary rules; amending Minnesota Statutes 1976, Sections 89.38 and 89.391; and Minnesota Statutes, 1977 Supplement, Sections 18.023, Subdivisions 4 and 11; and 275.50, Subdivision 6.

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

Section 1. Minnesota Statutes, 1977 Supplement, Section 18.023, Subdivision 4, is amended to read:

Subd. 4. **SUBSIDIES TO CERTAIN OWNERS.** A municipality may provide subsidies to nonprofit organizations, to owners of private residential property of five acres or less, to owners of property used for a homestead of more than five acres but less than 20 acres and to nonprofit cemeteries, however organized, for the approved treatment or removal of diseased shade trees.

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