

Presented to the governor March 23, 1996

Signed by the governor March 27, 1996, 10:58 a.m.

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## CHAPTER 391—S.F.No. 1996

*An act relating to family law; requiring specificity in visitation orders; providing for enforcement of visitation orders; modifying provisions for visitation expeditors; providing for suspension of interest on child support arrearages in certain cases; imposing penalties; amending Minnesota Statutes 1994, sections 518.175, subdivisions 1 and 6; 518.1751; 518.68, subdivisions 2 and 3; and 548.091, subdivision 1a; Minnesota Statutes 1995 Supplement, section 518.5512, by adding a subdivision; repealing Minnesota Statutes 1994, section 518.175, subdivision 4.*

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

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### ARTICLE 1

### VISITATION

Section 1. Minnesota Statutes 1994, section 518.175, subdivision 1, is amended to read:

Subdivision 1. **GENERAL.** (a) In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such rights of visitation on behalf of the child and noncustodial parent as will enable the child and the noncustodial parent to maintain a child to parent relationship that will be in the best interests of the child. If the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict visitation by the noncustodial parent as to time, place, duration, or supervision and may deny visitation entirely, as the circumstances warrant. 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. 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.

(b) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with visitation.

(c) Upon request of either party, to the extent practicable a visitation order must include a specific schedule for visitation, including the frequency and duration of visitation and visitation during holidays and vacations, unless visitation is restricted, denied, or reserved.

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(d) The court administrator shall provide a form for a pro se motion regarding visitation disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the visitation expeditor process under section 518.1751. The form may not include a request for a change of custody. The court shall provide instructions on serving and filing the motion.

Sec. 2. Minnesota Statutes 1994, section 518.175, subdivision 6, is amended to read:

Subd. 6. **COMPENSATORY VISITATION REMEDIES.** (a) The court may provide for one or more of the following remedies for denial of or interference with visitation as provided under this subdivision. All visitation orders must include notice of the provisions of this subdivision.

(b) If the court finds that a person has been wrongfully deprived of the duly established right to visitation, the court shall order the custodial parent to permit additional visits to compensate for the visitation of which the person was deprived. Additional visits must be:

- (1) of the same type and duration as the wrongfully denied visit;
- (2) taken within one year after the wrongfully denied visit; and
- (3) at a time acceptable to the person deprived of visitation.

(c) If the court finds that a party has wrongfully failed to comply with a visitation order or a binding agreement or decision under section 518.1751, the court may:

(1) impose a civil penalty of up to \$500 on the party; or

(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance.

A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a visitation expeditor program in a county with this program. In other counties, the civil penalty must be deposited in the state general fund.

(d) If the court finds that a party has been denied visitation and has incurred expenses in connection with the denied visitation, the court may require the party who denied visitation to post a bond in favor of the other party in the amount of prepaid expenses associated with an upcoming planned visitation.

(e) Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of court and may be sufficient cause for reversal of custody.

Sec. 3. Minnesota Statutes 1994, section 518.1751, is amended to read:

### 518.1751 VISITATION DISPUTE RESOLUTION.

Subdivision 1. **VISITATION EXPEDITOR.** (a) Upon agreement request of all parties either party or upon the court's own motion, the court may appoint a visitation expeditor to resolve visitation disputes that occur under a visitation order while a matter is pending under this chapter, chapter 257 or 518A, or after a decree is entered. Prior to appointing the visitation expeditor, the court shall give the parties notice that the costs of the visitation expeditor will be apportioned among the parties and that if the parties do not

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reach an agreement, the visitation expeditor will make a nonbinding decision resolving the dispute.

(b) For purposes of this section, "visitation dispute" means a disagreement among parties about visitation with a child, including a dispute about an anticipated denial of a future scheduled visit. "Visitation dispute" includes a claim by a custodial parent that a noncustodial parent is not visiting a child as well as a claim by a noncustodial parent that a custodial parent is denying or interfering with visitation.

Subd. 2. **APPOINTMENT; COSTS.** The court shall appoint the visitation expeditor and indicate the term of the appointment. If the parties cannot agree on a visitation expeditor, the court shall present a list of candidates with one more candidate than there are parties to the dispute. In developing the list of candidates, the court must give preference to persons who agree to volunteer their services or who will charge a variable fee for services based on the ability of the parties to pay for them. Each party shall strike one name and the court shall appoint the remaining individual as the visitation expeditor. In its order appointing the visitation expeditor, the court shall apportion the costs of the visitation expeditor among the parties, with each party bearing the portion of costs that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a visitation dispute and there is not a court order that provides for apportionment of the costs of an expeditor, the court administrator may require the party requesting the appointment of an expeditor to pay the costs of the expeditor in advance. Neither party may be required to submit a dispute to a visitation expeditor if the party cannot afford to pay for the costs of an expeditor and an affordable expeditor is not available, unless the other party agrees to pay the costs. After costs are incurred, a party may by motion request that the costs be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. The court may consider information from the expeditor in determining bad faith.

Subd. 3. **AGREEMENT OR DECISION.** (a) If a visitation dispute arises, the visitation expeditor shall meet with the parties together or separately within five days and make a diligent effort to facilitate an agreement to resolve the visitation dispute. If a visitation dispute requires immediate resolution, the visitation expeditor may confer with the parties through a telephone conference or similar means. An expeditor may make a decision without conferring with a party if the expeditor made a good faith effort to confer with the party, but the party chose not to participate in resolution of the dispute.

(b) If the parties do not reach an agreement, the expeditor shall make a decision resolving the dispute as soon as possible but not later than five days after the final meeting or conference with the parties. Resolution of a dispute may include compensatory visitation under section 518.175, subdivision 6. The visitation expeditor may not make a decision that modifies visitation rights ordered by the court. The expeditor shall put an agreement or decision in writing, provide a copy to the parties, and file a copy with the court. If a party does not comply with an agreement of the parties or a decision of the expeditor, any party may bring a motion with the court to resolve the dispute. The court may consider the agreement of the parties or the decision of the expeditor, but neither is binding on the court.

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Subd. 4. **OTHER AGREEMENTS.** This section does not preclude the parties from voluntarily agreeing to submit their visitation dispute to a neutral third party or from otherwise resolving visitation disputes on a voluntary basis.

Subd. 5. **IMMUNITY.** A visitation expeditor is immune from civil liability for actions taken or not taken when acting under this section.

Subd. 6. **MANDATORY VISITATION DISPUTE RESOLUTION.** (a) Subject to subdivision 7, a judicial district may establish a mandatory visitation dispute resolution program as provided in this subdivision. In a district where a program has been established, parties may be required to submit visitation disputes to a visitation expeditor as a prerequisite to a motion on the dispute being heard by the court, or either party may submit the dispute to a visitation expeditor. A party may file a motion with the court for purposes of obtaining a court date, if necessary, but a hearing may not be held until resolution of the dispute with the visitation expeditor.

(b) If a visitation expeditor has not been previously appointed for the parties under subdivision 1 and the parties cannot agree on a visitation expeditor, the court or court administrator shall appoint a visitation expeditor from a list of candidates established by the judicial district, giving preference to candidates who agree to volunteer their services or charge a variable fee based on the ability of the parties to pay.

(c) Notwithstanding subdivision 1, an agreement of the parties or decision of the visitation expeditor under this subdivision is binding on the parties unless vacated or modified by the court. The expeditor shall put the agreement or decision in writing, provide a copy to the parties, and file a copy with the court. The court may consider the agreement of the parties or the decision of the expeditor, but neither is binding on the court.

Subd. 7. **EXCEPTIONS.** A party may not be required to refer a visitation dispute to a visitation expeditor under this section if:

(1) the party has obtained an order for protection under chapter 518B against the other party; or

(2) the party is unable to pay the costs of the expeditor, as provided under subdivision 2.

Sec. 4. Minnesota Statutes 1994, section 518.68, subdivision 2, is amended to read:

Subd. 2. **CONTENTS.** The required notices must be substantially as follows:

#### IMPORTANT NOTICE

##### 1. PAYMENTS TO PUBLIC AGENCY

Pursuant to Minnesota Statutes, section 518.551, subdivision 1, payments ordered for maintenance and support must be paid to the public agency responsible for child support enforcement as long as the person entitled to receive the payments is receiving or has applied for public assistance or has applied for support and maintenance collection services. MAIL PAYMENTS TO:

##### 2. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS — A FELONY

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or

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person with custodial or visitation rights), pursuant to Minnesota Statutes, section 609.26. A copy of that section is available from any district court clerk.

### 3. RULES OF SUPPORT, MAINTENANCE, VISITATION

(a) Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

(b) Payment of support must be made as it becomes due, and failure to secure or denial of rights of visitation is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

(c) Nonpayment of support is not grounds to deny visitation. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

(d) The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

(e) A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

(f) Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

(g) If there is a layoff or a pay reduction, support may be reduced as of the time of the layoff or pay reduction if a motion to reduce the support is served and filed with the court at that time, but any such reduction must be ordered by the court. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (c).

### 4. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUB-DIVISION 3

Unless otherwise provided by the Court:

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

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

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

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(d) Each party has the right of reasonable access and telephone contact with the minor children.

#### 5. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, sections 518.611 and 518.613, have been met. A copy of those sections is available from any district court clerk.

#### 6. CHANGE OF ADDRESS OR RESIDENCE

Unless otherwise ordered, the person responsible to make support or maintenance payments shall notify the person entitled to receive the payment and the public authority responsible for collection, if applicable, of a change of address or residence within 60 days of the address or residence change.

#### 7. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be adjusted every two years based upon a change in the cost of living (using Department of Labor Consumer Price Index ....., unless otherwise specified in this order) when the conditions of Minnesota Statutes, section 518.641, are met. Cost of living increases are compounded. A copy of Minnesota Statutes, section 518.641, and forms necessary to request or contest a cost of living increase are available from any district court clerk.

#### 8. JUDGMENTS FOR UNPAID SUPPORT

If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain entry and docketing of the judgment WITHOUT NOTICE to the person responsible to make the payment under Minnesota Statutes, section 548.091. Interest begins to accrue on a payment or installment of child support whenever the unpaid amount due is greater than the current support due, pursuant to Minnesota Statutes, section 548.091, subdivision 1a.

#### 9. JUDGMENTS FOR UNPAID MAINTENANCE

A judgment for unpaid spousal maintenance may be entered when the conditions of Minnesota Statutes, section 548.091, are met. A copy of that section is available from any district court clerk.

#### 10. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT

A judgment for attorney fees and other collection costs incurred in enforcing a child support order will be entered against the person responsible to pay support when the conditions of section 518.14, subdivision 2, are met. A copy of section 518.14 and forms necessary to request or contest these attorney fees and collection costs are available from any district court clerk.

#### 11. VISITATION EXPEDITOR PROCESS

On request of either party or on its own motion, the court may appoint a visitation expeditor to resolve visitation disputes under Minnesota Statutes, section 518.1751. A

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copy of that section and a description of the expeditor process is available from any district court clerk.

## 12. VISITATION REMEDIES AND PENALTIES

Remedies and penalties for the wrongful denial of visitation rights are available under Minnesota Statutes, section 518.175, subdivision 6. These include compensatory visitation; civil penalties; bond requirements; contempt; and reversal of custody. A copy of that subdivision and forms for requesting relief are available from any district court clerk.

Sec. 5. Minnesota Statutes 1994, section 518.68, subdivision 3, is amended to read:

Subd. 3. **COPIES OF LAW AND FORMS.** The district court administrator shall make available at no charge copies of the sections 518.14, 518.17, 518.611, 518.613, 518.641, 548.091, and 609.26 referred to in subdivision 2, and shall provide forms to request or contest attorney fees and collection costs or a cost-of-living increase under section 518.14, subdivision 2, or 518.641.

Sec. 6. **REPEALER.**

Minnesota Statutes 1994, section 518.175, subdivision 4, is repealed.

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## ARTICLE 2

### CHILD SUPPORT INTEREST

Section 1. Minnesota Statutes 1995 Supplement, section 518.5512, is amended by adding a subdivision to read:

Subd. 4. **TERMINATION OF INTEREST.** The public authority or a party bringing a motion under section 548.091, subdivision 1a, may proceed immediately to a contested administrative proceeding under section 518.5511, subdivision 4.

Sec. 2. Minnesota Statutes 1994, section 548.091, subdivision 1a, is amended to read:

Subd. 1a. **CHILD SUPPORT JUDGMENT BY OPERATION OF LAW.** (a) Any payment or installment of support required by a judgment or decree of dissolution or legal separation, determination of parentage, an order under chapter 518C, an order under section 256.87, or an order under section 260.251, that is not paid or withheld from the obligor's income as required under section 518.611 or 518.613, is a judgment by operation of law on and after the date it is due and is entitled to full faith and credit in this state and any other state. Except as otherwise provided by paragraph (b), interest accrues from the date the unpaid amount due is greater than the current support due at the annual rate provided in section 549.09, subdivision 1, plus two percent, not to exceed an annual rate of 18 percent. A payment or installment of support that becomes a judgment by operation of law between the date on which a party served notice of a motion for modification under section 518.64, subdivision 2, and the date of the court's order on modification may be modified under that subdivision.

(b) Notwithstanding the provisions of section 549.09, upon motion to the court and upon proof by the obligor of 36 consecutive months of complete and timely payments of

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both current support and court-ordered paybacks of a child support debt or arrearage, the court may order interest on the remaining debt or arrearage to stop accruing. Timely payments are those made in the month in which they are due. If, after that time, the obligor fails to make complete and timely payments of both current support and court-ordered paybacks of child support debt or arrearage, the public authority or the obligee may move the court for the reinstatement of interest as of the month in which the obligor ceased making complete and timely payments.

The court shall provide copies of all orders issued under this section to the public authority. The commissioner of human services shall prepare and make available to the court and the parties forms to be submitted by the parties in support of a motion under this paragraph.

Presented to the governor March 26, 1996

Signed by the governor March 28, 1996, 10:20 a.m.

#### CHAPTER 392—H.F.No. 2127

*An act relating to human services; amending Minnesota Statutes 1994, sections 256C.23; 256C.24, as amended; 256C.25, subdivision 1; 256C.26; and 256C.28, as amended; proposing coding for new law in Minnesota Statutes, chapter 256C; repealing Minnesota Statutes 1994, sections 256C.22; and 256C.27.*

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

Section 1. Minnesota Statutes 1994, section 256C.23, is amended to read:

##### 256C.23 DEFINITIONS.

Subdivision 1. For the purposes of sections 256C.21 to 256C.27 the terms defined in this section shall have the meanings given them, unless the context clearly indicates otherwise.

Subd. 2. "Deaf" means a hearing loss of such severity that the individual must depend primarily on visual communication such as writing, lip reading, manual communication, and gestures.

Subd. 2a. "Hard-of-hearing" means a hearing loss resulting in a functional loss of hearing, but not to the extent that the individual must depend primarily upon visual communication.

Subd. 2b. "Deaf-blind" means any combination of vision and hearing loss which interferes with acquiring information from the environment to the extent that compensatory strategies and skills are necessary to access that or other information.

Subd. 3. "Regional service center" means a facility designed to provide an entry point for deaf, deaf-blind, and hard-of-hearing persons of that region in need of education, employment, social, human, or other services.

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