

nity to solicit public comment and participate in the project development on an ongoing basis; and

(d) considered the comments of each affected municipality.

#### Sec. 4. APPLICATION.

This act applies in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

#### Sec. 5. EFFECTIVE DATE.

This act is effective on the day following its final enactment.

Presented to the governor April 10, 1998

Signed by the governor April 20, 1998, 11:25 a.m.

### CHAPTER 382—S.F.No. 2276

*An act relating to children; modifying certain parentage and child support enforcement provisions; changing terminology; amending Minnesota Statutes 1996, sections 257.64, subdivision 3; 518.54, subdivision 8, and by adding a subdivision; 518.55, by adding a subdivision; 518.551, subdivisions 1, 5, 9, and by adding a subdivision; 518.615, subdivision 2; 550.136, subdivision 2; and 571.921; Minnesota Statutes 1997 Supplement, sections 13.99, subdivision 76b; 256.741, subdivision 1; 257.352, subdivision 3a; 259.49, subdivision 1; 259.52, subdivisions 1, 2, 4, 6, 8, 9, 10, 11, 12, 14, and by adding a subdivision; 260.221, subdivisions 1 and 1a; 357.021, subdivision 2; 518.54, subdivision 6; 518.551, subdivision 5b; 518.5511, subdivision 2; 518.5512, subdivision 6; 518.6111, subdivisions 8, 9, and 14; 518.615, subdivision 1; 518.6195; 518.64, subdivision 2; 552.04, subdivision 4; Laws 1995, chapter 257, article 1, section 34; Laws 1997, chapter 203, article 6, section 90; proposing coding for new law in Minnesota Statutes, chapter 518.*

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

#### ARTICLE 1

#### CHILD SUPPORT

Section 1. Minnesota Statutes 1997 Supplement, section 256.741, subdivision 1, is amended to read:

Subdivision 1. **PUBLIC ASSISTANCE.** (a) The term "public assistance" as used in this chapter and chapters 257, 518, and 518C, includes any form of assistance provided under AFDC, MFIP, and MFIP-R under chapter 256, MFIP-S under chapter 256J, and work first under chapter 256K; child care assistance provided through the child care fund according to chapter 119B; any form of medical assistance under chapter 256B; MinnesotaCare under chapter ~~256~~ 256L; and foster care as provided under title IV-E of the Social Security Act.

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(b) The term "child support agency" as used in this section refers to the public authority responsible for child support enforcement.

(c) The term "public assistance agency" as used in this section refers to a public authority providing public assistance to an individual.

Sec. 2. Minnesota Statutes 1996, section 257.64, subdivision 3, is amended to read:

Subd. 3. If a party refuses to accept a recommendation made under subdivision 1 and blood or genetic tests have not been taken, the court shall require the parties to submit to blood or genetic tests. Any objection to blood or genetic testing results must be made in writing no later than 15 days before any hearing at which time the results may be introduced into evidence. Test results served upon a party must include a notice of this right to object. Thereafter the court shall make an appropriate final recommendation. If a party refuses to accept the final recommendation the action shall be set for trial.

Sec. 3. Minnesota Statutes 1997 Supplement, section 518.54, subdivision 6, is amended to read:

Subd. 6. **INCOME.** "Income" means any form of periodic payment to an individual including, but not limited to, wages, salaries, payments to an independent contractor, workers' compensation, reemployment insurance, annuity, military and naval retirement, pension and disability payments. Benefits received under Title IV-A of the Social Security Act and chapter 256J are not income under this section.

Sec. 4. Minnesota Statutes 1996, section 518.54, subdivision 8, is amended to read:

Subd. 8. **OBLIGOR.** "Obligor" means a person obligated to pay maintenance or support. A person who is designated as the sole physical custodian of a child is presumed not to be an obligor for purposes of calculating current support under section 518.551 unless the court makes specific written findings to overcome this presumption.

Sec. 5. Minnesota Statutes 1996, section 518.54, is amended by adding a subdivision to read:

Subd. 13. **ARREARS.** Arrears are amounts that accrue pursuant to an obligor's failure to comply with a support order. Past support and pregnancy and confinement expenses contained in a support order are arrears if the court order does not contain repayment terms. Arrears also arise by the obligor's failure to comply with the terms of a court order for repayment of past support or pregnancy and confinement expenses. An obligor's failure to comply with the terms for repayment of amounts owed for past support or pregnancy and confinement turns the entire amount owed into arrears.

Sec. 6. Minnesota Statutes 1996, section 518.55, is amended by adding a subdivision to read:

Subd. 4. **DETERMINATION OF CONTROLLING ORDER.** The public authority or a party may request the district court to determine a controlling order in situations in which more than one order involving the same obligor and child exists.

Sec. 7. Minnesota Statutes 1996, section 518.551, subdivision 1, is amended to read:

Subdivision 1. **SCOPE; PAYMENT TO PUBLIC AGENCY.** (a) This section applies to all proceedings involving an award of child a support order, including, but not

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limited to, a support order establishing an order for past support or reimbursement of public assistance.

(b) The court shall direct that all payments ordered for maintenance and support be made to the public agency responsible for child support enforcement so long as the obligee is receiving or has applied for public assistance, or has applied for child support and maintenance collection services. Public authorities responsible for child support enforcement may act on behalf of other public authorities responsible for child support enforcement. This includes the authority to represent the legal interests of or execute documents on behalf of the other public authority in connection with the establishment, enforcement, and collection of child support, maintenance, or medical support, and collection on judgments. Amounts received by the public agency responsible for child support enforcement greater than the amount granted to the obligee shall be remitted to the obligee.

Sec. 8. Minnesota Statutes 1996, section 518.551, subdivision 5, is amended to read:

**Subd. 5. NOTICE TO PUBLIC AUTHORITY; GUIDELINES.** (a) The petitioner shall notify the public authority of all proceedings for dissolution, legal separation, determination of parentage or for the custody of a child, if either party is receiving ~~aid to~~ public assistance or applies for it subsequent to the commencement of the proceeding. ~~The notice must contain the full names of the parties to the proceeding, their social security account numbers, and their birth dates. After receipt of the notice, the court shall set child support as provided in this subdivision. 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 the child's support, without regard to marital misconduct. The court shall approve a child support stipulation of the parties if each party is represented by independent counsel, unless the stipulation does not meet the conditions of paragraph (i). In other cases the court shall determine and order child support in a specific dollar amount in accordance with the guidelines and the other factors set forth in paragraph (c) and any departure therefrom. The court may also order the obligor to pay child support in the form of a percentage share of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount.~~

(b) The court shall derive a specific dollar amount for child support by multiplying the obligor's net income by the percentage indicated by the following guidelines:

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Net Income Per Month of Obligor	Number of Children						
	1	2	3	4	5	6	7 or more
\$550 and Below	Order based on the ability of the obligor to provide support at these income levels, or at higher levels, if the obligor has the earning ability.						
\$551 – 600	16%	19%	22%	25%	28%	30%	32%
\$601 – 650	17%	21%	24%	27%	29%	32%	34%
\$651 – 700	18%	22%	25%	28%	31%	34%	36%
\$701 – 750	19%	23%	27%	30%	33%	36%	38%
\$751 – 800	20%	24%	28%	31%	35%	38%	40%
\$801 – 850	21%	25%	29%	33%	36%	40%	42%
\$851 – 900	22%	27%	31%	34%	38%	41%	44%
\$901 – 950	23%	28%	32%	36%	40%	43%	46%
\$951 – 1000	24%	29%	34%	38%	41%	45%	48%
\$1001– 5000	25%	30%	35%	39%	43%	47%	50%

or the amount in effect under paragraph (k)

Guidelines for support for an obligor with a monthly income in excess of the income limit currently in effect under paragraph (k) shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income equal to the limit in effect.

Net Income defined as:

- Total monthly income less
  - \*(i) Federal Income Tax
  - \*(ii) State Income Tax
  - (iii) Social Security Deductions
  - (iv) Reasonable Pension Deductions
- \*Standard Deductions apply—use of tax tables recommended
  - (v) Union Dues
  - (vi) Cost of Dependent Health Insurance Coverage
  - (vii) Cost of Individual or Group Health/Hospitalization Coverage or an Amount for Actual Medical Expenses
  - (viii) A Child Support or Maintenance Order that is Currently Being Paid.

“Net income” does not include:

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(1) the income of the obligor's spouse, but does include in-kind payments received by the obligor in the course of employment, self-employment, or operation of a business if the payments reduce the obligor's living expenses; or

(2) compensation received by a party for employment in excess of a 40-hour work week, provided that:

(i) support is nonetheless ordered in an amount at least equal to the guidelines amount based on income not excluded under this clause; and

(ii) the party demonstrates, and the court finds, that:

(A) the excess employment began after the filing of the petition for dissolution;

(B) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;

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

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

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

The court shall review the work-related and education-related child care costs paid and shall allocate the costs to each parent in proportion to each parent's net income, as determined under this subdivision, after the transfer of child support and spousal maintenance, unless the allocation would be substantially unfair to either parent. There is a presumption of substantial unfairness if after the sum total of child support, spousal maintenance, and child care costs is subtracted from the noncustodial parent's income, the income is at or below 100 percent of the federal poverty guidelines. The cost of child care for purposes of this paragraph is 75 percent of the actual cost paid for child care, to reflect the approximate value of state and federal tax credits available to the custodial parent. The actual cost paid for child care is the total amount received by the child care provider for the child or children of the obligor from the obligee or any public agency. The court shall require verification of employment or school attendance and documentation of child care expenses from the obligee and the public agency, if applicable. If child care expenses fluctuate during the year because of seasonal employment or school attendance of the obligee or extended periods of visitation with the obligor, the court shall determine child care expenses based on an average monthly cost. The amount allocated for child care expenses is considered child support but is not subject to a cost-of-living adjustment under section 518.641. The amount allocated for child care expenses terminates when either party notifies the public authority that the child care costs have ended and without any legal action on the part of either party. The public authority shall verify the information received under this provision before authorizing termination. The termination is effective as of the date of the notification. In other cases where there is a substantial increase or decrease in child care expenses, the parties may modify the order under section 518.64.

The court may allow the noncustodial parent to care for the child while the custodial parent is working, as provided in section 518.175, subdivision 8. Allowing the noncustodial parent to care for the child under section 518.175, subdivision 8, is not a reason to deviate from the guidelines.

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(c) In addition to the child support guidelines, the court shall take into consideration the following factors in setting or modifying child support or in determining whether to deviate from the guidelines:

(1) all earnings, income, and resources of the parents, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of paragraph (b), clause (2)(ii);

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

(3) the standard of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;

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

(5) the parents' debts as provided in paragraph (d); and

(6) the obligor's receipt of public assistance under sections ~~256.72 to 256.87~~ or ~~256B.01 to 256B.40~~.

(d) In establishing or modifying a support obligation, the court may consider debts owed to private creditors, but only if:

(1) the right to support has not been assigned under section 256.74;

(2) the court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income. If the debt was incurred for the necessary generation of income, the court shall consider only the amount of debt that is essential to the continuing generation of income; and

(3) the party requesting a departure produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the amount of the original debt, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.

(e) Any schedule prepared under paragraph (d), clause (3), shall contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the party's control.

(f) Any further departure below the guidelines that is based on a consideration of debts owed to private creditors shall not exceed 18 months in duration, after which the support shall increase automatically to the level ordered by the court. Nothing in this section shall be construed to prohibit one or more step increases in support to reflect debt retirement during the 18-month period.

(g) If payment of debt is ordered pursuant to this section, the payment shall be ordered to be in the nature of child support.

(h) Nothing shall preclude the court from receiving evidence on the above factors to determine if the guidelines should be exceeded or modified in a particular case.

(i) The guidelines in this subdivision are a rebuttable presumption and shall be used in all cases when establishing or modifying child support. If the court does not deviate

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from the guidelines, the court shall make written findings concerning the amount of the obligor's income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the determination of child support. If the court deviates from the guidelines, the court shall make written findings giving the amount of support calculated under the guidelines, the reasons for the deviation, and shall specifically address the criteria in paragraph (c) and how the deviation serves the best interest of the child. The court may deviate from the guidelines if both parties agree and the court makes written findings that it is in the best interests of the child, except that in cases where child support payments are assigned to the public agency under section 256.74, the court may deviate downward only as provided in paragraph (j). Nothing in this paragraph prohibits the court from deviating in other cases. The provisions of this paragraph apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The court shall review stipulations presented to it for conformity to the guidelines and the court is not required to conduct a hearing, but the parties shall provide the documentation of earnings required under subdivision 5b.

(j) If the child support payments are assigned to the public agency under section 256.74, the court may not deviate downward from the child support guidelines unless the court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.

(k) The dollar amount of the income limit for application of the guidelines must be adjusted on July 1 of every even-numbered year to reflect cost-of-living changes. The supreme court shall select the index for the adjustment from the indices listed in section 518.641. The state court administrator shall make the changes in the dollar amount required by this paragraph available to courts and the public on or before April 30 of the year in which the amount is to change.

(l) In establishing or modifying child support, if a child receives a child's insurance benefit under United State's Code, title 42, section 402, because the obligor is entitled to old age or disability insurance benefits, the amount of support ordered shall be offset by the amount of the child's benefit. The court shall make findings regarding the obligor's income from all sources, the child support amount calculated under this section, the amount of the child's benefit, and the obligor's child support obligation. Any benefit received by the child in a given month in excess of the child support obligation shall not be treated as an arrearage payment or a future payment.

Sec. 9. Minnesota Statutes 1997 Supplement, section 518.551, subdivision 5b, is amended to read:

Subd. 5b. **DETERMINATION OF INCOME.** (a) The parties shall timely serve and file documentation of earnings and income. When there is a prehearing conference, the court must receive the documentation of income at least ten days prior to the prehearing conference. Documentation of earnings and income also includes, but is not limited to, pay stubs for the most recent three months, employer statements, or statement of receipts and expenses if self-employed. Documentation of earnings and income also includes copies of each parent's most recent federal tax returns, including W-2 forms, 1099 forms, reemployment insurance statements, workers' compensation statements, and all other documents evidencing income as received that provide verification of income over a longer period.

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(b) In addition to the requirements of paragraph (a), at any time after an action seeking child support has been commenced or when a child support order is in effect, a party or the public authority may require the other party to give them a copy of the party's most recent federal tax returns that were filed with the Internal Revenue Service. The party shall provide a copy of the tax returns within 30 days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause.

(c) If a parent under the jurisdiction of the court does not appear at a court hearing after proper notice of the time and place of the hearing, the court shall set income for that parent based on credible evidence before the court or in accordance with paragraph (d). Credible evidence may include documentation of current or recent income, testimony of the other parent concerning recent earnings and income levels, and the parent's wage reports filed with the Minnesota department of economic security under section 268.044.

(d) If the court finds that a parent is voluntarily unemployed or underemployed or was voluntarily unemployed or underemployed during the period for which past support is being sought, child support shall be calculated based on a determination of imputed income. A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that the unemployment or underemployment: (1) is temporary and will ultimately lead to an increase in income; or (2) represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child. Imputed income means the estimated earning ability of a parent based on the parent's prior earnings history, education, and job skills, and on availability of jobs within the community for an individual with the parent's qualifications.

(e) ~~If the court is unable to determine or estimate the earning ability of a parent~~ If there is insufficient information to determine actual income or to impute income pursuant to paragraph (d), the court may calculate child support based on full-time employment of 40 hours per week at 150 percent of the federal minimum wage or the Minnesota minimum wage, whichever is higher. If the court is unable to determine or estimate the earning ability of a parent, any medical support or child care contribution must be calculated based upon the obligor's proportionate share of the child care expenses using 40 hours per week at 150 percent of the federal minimum wage or the Minnesota minimum wage, whichever is higher. If a parent is a recipient of public assistance under section 256.741, or is physically or mentally incapacitated, it shall be presumed that the parent is not voluntarily unemployed or underemployed.

(f) Income from self employment is equal to gross receipts minus ordinary and necessary expenses. Ordinary and necessary expenses do not include amounts allowed by the Internal Revenue Service for accelerated depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining income for purposes of child support. The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary. Net income under this section may be different from taxable income.

Sec. 10. Minnesota Statutes 1996, section 518.551, is amended by adding a subdivision to read:

Subd. 5f. SUBSEQUENT CHILDREN. The needs of subsequent children shall not be factored into a support guidelines calculation under subdivision 5. The fact that an

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obligor had additional children after the entry of a child support order is not grounds for a modification to decrease the amount of support owed. However, the fact that an obligor has subsequent children shall be considered in response to a request by an obligee for a modification to increase child support. In order to deviate from the support guidelines in subdivision 5 to consider the needs of subsequent children, the trial court must:

(1) find the obligor's total ability to contribute to dependent children, taking into account the obligor's income and reasonable expenses exclusive of child care. The obligor's expenses must be:

(i) reduced as appropriate to take into account contributions to those costs by other adults who share the obligor's current household; and

(ii) apportioned between the parent and any subsequent child with regard to shared benefits, including but not limited to, housing and transportation;

(2) find the total needs of all the obligor's children, and if these needs are less than the obligor's ability to pay, the needs may become the obligor's child support obligation. When considering the needs of subsequent children, the trial court must reduce those amounts as appropriate to take into account the ability to contribute to those needs by another parent of the children;

(3) make specific findings on the needs of the child or children who are the subject of the support order under consideration; and

(4) exercise discretion to fairly determine the current support obligation and the contribution left available for other children, considering that the support obligation being determined should be in an amount at least equal to the contribution for a subsequent child.

Sec. 11. Minnesota Statutes 1996, section 518.551, subdivision 9, is amended to read:

**Subd. 9. ASSIGNMENT OF RIGHTS; JUDGMENT.** The public agency responsible for child support enforcement is joined as a party in each case in which rights are assigned under section ~~256.74~~ 256.741, subdivision 5 2. The court administrator shall enter and docket a judgment obtained by operation of law under section 548.091, subdivision 1, in the name of the public agency to the extent that the obligation has been assigned. When arrearages are reduced to judgment under circumstances in which section 548.091 is not applicable, the court shall grant judgment in favor of, and in the name of, the public agency to the extent that the arrearages are assigned. After filing notice of an assignment with the court administrator, who shall enter the notice in the docket, the public agency may enforce a judgment entered before the assignment of rights as if the judgment were granted to it, and in its name, to the extent that the arrearages in that judgment are assigned.

Sec. 12. Minnesota Statutes 1997 Supplement, section 518.551, subdivision 2, is amended to read:

**Subd. 2. UNCONTESTED ADMINISTRATIVE PROCEEDING.** (a) Following the initiation of the administrative process under subdivision 1, paragraph (c) or (d), the public authority shall, on the basis of all information available, complete and sign a proposed order and notice. The public authority shall attach a support order worksheet. In

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preparing the proposed order, the public authority will establish child support in the highest amount permitted under section 518.551, subdivision 5. The proposed order shall include written findings in accordance with section 518.551, subdivision 5, clauses (i) and (j). If the public authority has incomplete or insufficient information upon which to prepare a proposed order, the public authority shall use the default standard established in section 518.551, subdivision 5b, ~~paragraph (d)~~, to prepare the proposed order. The notice shall state that the proposed order will be entered as a final and binding default order unless one of the parties contacts the public authority regarding the proposed order within 30 days following the date of service of the proposed order. The notice and proposed order shall be served under the rules of civil procedure on the noninitiating party and by first class mail on the initiating party. After receipt of the notice and proposed order, the court administrator shall file the documents.

For the purposes of the administrative process, and notwithstanding any law or rule to the contrary, the service of the proposed order under this paragraph shall be deemed to have commenced a proceeding and the judge shall have jurisdiction over a contested administrative proceeding.

(b) If the public authority is not contacted by a party within 30 days after the date of service of the proposed order, the public authority may submit the proposed order as the default order. The default order becomes enforceable upon signature by an administrative law judge. The default order shall be a final order, and shall be served under the rules of civil procedure.

(c) If the public authority obtains new information after service of the proposed order, the public authority may prepare one notice and revised proposed order. The revised order must be served by first class mail on the parties. If the public authority is not contacted within seven days after the date of service of the revised order, the public authority may submit the revised order as a default order but in no event sooner than 30 days after the service of the original proposed order.

(d) The public authority shall file in the district court copies of all notices served on the parties, proof of service, the support order worksheet, and all orders.

Sec. 13. Minnesota Statutes 1997 Supplement, section 518.5512, subdivision 6, is amended to read:

**Subd. 6. CONTROLLING ORDER DETERMINATION.** The public authority or a party may request the office of administrative hearings to determine a controlling order according to section 518C.207, paragraph (c), or in situations in which more than one order involving the same obligor and child exists.

Sec. 14. Minnesota Statutes 1997 Supplement, section 518.6111, subdivision 8, is amended to read:

**Subd. 8. CONTEST.** (a) The obligor may contest withholding under subdivision 7 on the limited grounds that the withholding or the amount withheld is improper due to mistake of fact. If the obligor chooses to contest the withholding, the obligor must do so no later than 15 days after the employer commences withholding, by doing all of the following:

(1) file a request for contested hearing according to section 518.5511, subdivision 4 3a, and include in the request the alleged mistake of fact;

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(2) serve a copy of the request for contested hearing upon the public authority and the obligee; and

(3) secure a date for the contested hearing no later than 45 days after receiving notice that withholding has commenced.

(b) The income withholding must remain in place while the obligor contests the withholding.

(c) If the court finds a mistake in the amount of the arrearage to be withheld, the court shall continue the income withholding, but it shall correct the amount of the arrearage to be withheld.

Sec. 15. Minnesota Statutes 1997 Supplement, section 518.6111, subdivision 9, is amended to read:

Subd. 9. **PRIORITY.** (a) An order for or notice of withholding under this section or execution or garnishment upon a judgment for child support arrearage or preadjudicated expenses shall have priority over an attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor. Amounts withheld from an employee's income must not exceed the maximum permitted under the Consumer Credit Protection Act, title 15 of the United States Code, section 1673(b).

(b) If more than one order for or notice of withholding exists involving the same obligor and child, the public authority shall enforce the most ~~current~~ recent order or notice. An order for or notice of withholding that was previously implemented according to this section shall end as of the date of the most ~~current~~ recent order. The public authority shall notify the payor of funds to withhold under the most ~~current~~ recent withholding order or notice.

Sec. 16. Minnesota Statutes 1997 Supplement, section 518.6111, subdivision 14, is amended to read:

Subd. 14. **TERMINATION BY THE PUBLIC AUTHORITY.** If the public authority determines that income withholding is no longer applicable, the public authority shall notify the obligee and the obligor of intent to terminate income withholding.

Five days following notification to the obligee and obligor, the public authority shall issue a notice to the payor of funds terminating income withholding, without a requirement for a court order unless the obligee has requested a contested hearing under section 518.5511, subdivision 4 3a.

Sec. 17. Minnesota Statutes 1997 Supplement, section 518.615, subdivision 1, is amended to read:

Subdivision 1. **ORDERS BINDING.** Notices or orders for income withholding or medical support orders issued pursuant to sections 518.171 and 518.6111 are binding on the employer, trustee, or other payor of funds after the order and or notice of for income withholding or enforcement of medical support has been served on transmitted pursuant to section 518.6111 to the employer, trustee, or payor of funds.

Sec. 18. Minnesota Statutes 1996, section 518.615, subdivision 2, is amended to read:

Subd. 2. **CONTEMPT ACTION.** An obligee or the public agency responsible for child support enforcement may initiate a contempt action against an employer, trustee, or

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payor of funds, within the action that created the support obligation, by serving an order to show cause upon the employer, trustee, or payor of funds.

The employer, trustee, or payor of funds is presumed to be in contempt:

(1) if the employer, trustee, or payor of funds has intentionally failed to withhold support after receiving the order ~~and~~ or notice ~~of~~ for income withholding or notice of enforcement of medical support; or

(2) upon presentation of pay stubs or similar documentation showing the employer, trustee, or payor of funds withheld support and demonstration that the employer, trustee, or payor of funds intentionally failed to remit support to the agency responsible for child support enforcement.

Sec. 19. Minnesota Statutes 1997 Supplement, section 518.6195, is amended to read:

**518.6195 COLLECTION; ARREARS ONLY.**

(a) Remedies available for the collection and enforcement of support in this chapter and chapters 256, 257, and 518C also apply to cases in which the child or children for whom support is owed are emancipated and the obligor owes past support or has an accumulated arrearage as of the date of the youngest child's emancipation. Child support arrearages under this section include arrearages for child support, medical support, child care, pregnancy and birth expenses, and unreimbursed medical expenses as defined in section 518.171.

(b) This section applies retroactively to any support arrearage that accrued on or before the date of enactment and to all arrearages accruing after the date of enactment.

(c) Past support or pregnancy and confinement expenses ordered for which the obligor has specific court ordered terms for repayment may not be enforced using drivers' and occupational or professional license suspension, credit bureau reporting, and additional income withholding under section 518.6111, subdivision 10, paragraph (a), unless the obligor fails to comply with the terms of the court order for repayment.

Sec. 20. Minnesota Statutes 1997 Supplement, section 518.64, subdivision 2, is amended to read:

Subd. 2. **MODIFICATION.** (a) The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following: (1) substantially increased or decreased earnings of a party; (2) substantially increased or decreased need of a party or the child or children that are the subject of these proceedings; (3) receipt of assistance under sections 256.72 to 256.87 or 256B.01 to 256B.40; (4) a change in the cost of living for either party as measured by the federal bureau of statistics, any of which makes the terms unreasonable and unfair; (5) extraordinary medical expenses of the child not provided for under section 518.171; or (6) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses.

On a motion to modify support, the needs of any child the obligor has after the entry of the support order that is the subject of a modification motion shall be considered as provided by section 518.551, subdivision 5f.

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

(1) the application of the child support guidelines in section 518.551, subdivision 5, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$50 per month higher or lower than the current support order;

(2) the medical support provisions of the order established under section 518.171 are not enforceable by the public authority or the custodial parent;

(3) health coverage ordered under section 518.171 is not available to the child for whom the order is established by the parent ordered to provide; or

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

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

(1) shall apply section 518.551, subdivision 5, and shall not consider the financial circumstances of each party's spouse, if any; and

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

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

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

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

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

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

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

(d) A modification of support or maintenance may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the public authority if public assistance is being furnished or the county attorney is the attorney of record. However, modification may be applied to an earlier period if the court makes express findings that:

(1) the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability, a material misrepresentation of another party, or fraud upon the court and that the party seeking modification, when no longer precluded, promptly served a motion;

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(2) the party seeking modification was a recipient of federal Supplemental Security Income (SSI), Title II Older Americans, Survivor's Disability Insurance (OASDI), other disability benefits, or public assistance based upon need during the period for which retroactive modification is sought; or

(3) the order for which the party seeks amendment was entered by default, the party shows good cause for not appearing, and the record contains no factual evidence, or clearly erroneous evidence regarding the individual obligor's ability to pay.

The court may provide that a reduction in the amount allocated for child care expenses based on a substantial decrease in the expenses is effective as of the date the expenses decreased.

(e) Except for an award of the right of occupancy of the homestead, provided in section 518.63, all divisions of real and personal property provided by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state, including motions under section 518.145, subdivision 2. The court may impose a lien or charge on the divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property as is provided by section 518.24.

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

(g) Section 518.14 shall govern the award of attorney fees for motions brought under this subdivision.

#### Sec. 21. ~~[518.642]~~ OVERPAYMENTS.

If child support or maintenance is not assigned under section 256.741, and an obligor has overpaid a child support or maintenance obligation because of a modification or error in the amount owed, the public authority shall:

(1) apply the amount of the overpayment to reduce the amount of any child support or maintenance-related arrearages or debts owed to the obligee; and

(2) if an overpayment exists after the reduction of any arrearage or debt, reduce the amount of the child support remitted to the obligee by an amount no greater than 20 percent of the current monthly support or maintenance obligation and remit this amount to the obligor until the overpayment is reduced to zero.

Sec. 22. Minnesota Statutes 1997 Supplement, section 552.04, subdivision 4, is amended to read:

Subd. 4. **SERVICE OF THIRD PARTY LEVY; NOTICE AND DISCLOSURE FORMS.** When levying upon money owed to the judgment debtor by a third party, the public authority shall serve a copy of the notice of support judgment levy upon the third party either by registered or certified mail, or by personal service, or by electronic transmission. Along with a copy of the notice of support judgment levy, the public authority shall serve upon the third party a notice of support judgment levy and disclosure form that must be substantially in the form set forth below.

New language is indicated by underline, deletions by strikeout.

OFFICE OF ADMINISTRATIVE HEARINGS

File No. ....

..... (Public authority)
against
..... (Judgment Debtor)
and
..... (Third Party)

NOTICE OF SUPPORT JUDGMENT
LEVY AND DISCLOSURE
(OTHER THAN EARNINGS)

PLEASE TAKE NOTICE that pursuant to Minnesota Statutes, chapters 518 and 522, the undersigned, as representative of the public authority responsible for child support enforcement, makes demand and levies execution upon all money due and owing by you to the judgment debtor for the amount of the judgment specified below. A copy of the notice of support judgment levy is enclosed. The unpaid judgment balance is \$.....

In responding to this levy, you are to complete the attached disclosure form and mail it to the public authority, together with your check payable to the public authority, for the nonexempt amount owed by you to the judgment debtor or for which you are obligated to the judgment debtor, within the time limits in chapter 552.

Public Authority
Address
(.....)
Phone number

DISCLOSURE

On the ... day of ....., 19..., the time of service of the execution levy herein, there was due and owing the judgment debtor from the third party the following:

(1) Money. Enter on the line below any amounts due and owing the judgment debtor, except earnings, from the third party.

.....

(2) Setoff. Enter on the line below the amount of any setoff, defense, lien, or claim which the third party claims against the amount set forth on line (1). State the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to you incurred by the judgment debtor within ten days prior to the receipt of the first execution levy on a debt may not be claimed as a setoff, defense, lien, or claim against the amount set forth on line (1).)

.....

(3) Exemption. Enter on the line below any amounts or property claimed by the judgment debtor to be exempt from execution.

.....

(4) Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the judgment debtor's property.

.....

New language is indicated by underline, deletions by ~~strikeout~~.

(5) Enter on the line below the total of lines (2), (3), and (4).

.....

(6) Enter on the line below the difference obtained (never less than zero when line (5) is subtracted from the amount on line (1)).

.....

(7) Enter on the line below 100 percent of the amount of the public authority's claim which remains unpaid.

.....

(8) Enter on the line below the lesser of line (6) and line (7). You are instructed to remit this amount only if it is \$10 or more.

.....

AFFIRMATION

I, ..... (person signing Affirmation), am the third party or I am authorized by the third party to complete this nonearnings disclosure, and have done so truthfully and to the best of my knowledge.

Dated: .....

Signature

.....

Title

.....

Telephone Number

Sec. 23. Laws 1995, chapter 257, article 1, section 34, is amended to read:

Sec. 34. **REPORT.**

(a) The commissioner of human services shall evaluate all child support programs and enforcement mechanisms. The evaluation must include a cost-benefit analysis of each program or enforcement mechanism, and information related to which programs produce the highest revenue, reduce arrears, avoid litigation, and result in the best outcome for children and their parents.

The reports related to the provisions in this chapter are due two years after the implementation date. All other reports on existing programs and enforcement mechanisms are due January 15, 1997 to determine the following:

(1) Minnesota's performance on the child support and incentive measures submitted by the federal Office of Child Support to the United States Congress;

(2) Minnesota's performance relative to other states;

(3) individual county performance; and

(4) recommendations for further improvement.

(b) The commissioner shall evaluate in separate categories the federal, state, and local government costs of child support enforcement in this state. The evaluation must also

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include a representative sample of private business costs relating to child support enforcement based on a survey of at least 50 Minnesota businesses and nonprofit organizations.

(c) The commissioner shall also report on the amount of child support arrearages in this state with separate categories for the amount of child support in arrears for 90 days, six months, one year, and two or more years. The report must establish a process for determining when an arrearage is considered uncollectible based on the age of the arrearage and likelihood of collection of the amount owed. The amounts determined to be uncollectible must be deducted from the total amount of outstanding arrearages for purposes of determining arrearages that are considered collectible.

(d) The first report on these topics shall be submitted to the legislature by January 1, 1999, and subsequent reports shall be submitted biennially before January 15 of each odd-numbered year.

Sec. 24. Laws 1997, chapter 203, article 6, section 90, is amended to read:

**Sec. 90. CHILD SUPPORT ENFORCEMENT PROGRAM; SERVICES DELIVERY STUDY.**

The commissioner of human services, in consultation with the commissioner's advisory committee, shall conduct a study of the overall state child support enforcement delivery system and shall recommend to the legislature a program design that will best meet the following goals:

- (1) comply with all state and federal laws and regulations;
- (2) deliver child support and paternity services in a timely manner;
- (3) meet federal performance criteria;
- (4) provide respectful and efficient service to custodial and noncustodial parents;
- (5) make efficient use of public money funding the program; and
- (6) provide a consistent level of services throughout the state.

The study may make specific recommendations regarding staffing, training, program administration, customer access to services, use of technology, and other features of a successful child support program. The commissioner may contract with a private vendor to complete the study. The commissioner shall provide the study and recommendations to the legislature by ~~July 1, 1998~~ December 1, 1998.

## ARTICLE 2

### OTHER PROVISIONS

Section 1. Minnesota Statutes 1997 Supplement, section 13.99, subdivision 76b, is amended to read:

Subd. 76b. ~~PUTATIVE FATHERS' ADOPTION REGISTRY.~~ Data in the ~~putative fathers'~~ adoption registry are classified under section 259.52, subdivision 4.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 2. Minnesota Statutes 1997 Supplement, section 257.352, subdivision 3a, is amended to read:

Subd. 3a. **UNKNOWN FATHER.** If the local social service agency, private child-placing agency, the court, petitioner, or any other party has reason to believe that a child who is the subject of an adoptive placement proceeding is or may be an Indian child but the father of the child is unknown and has not registered with the putative fathers' adoption registry pursuant to section 259.52, the agency or person shall provide to the tribe believed to be the Indian child's tribe information sufficient to enable the tribe to determine the child's eligibility for membership in the tribe, including, but not limited to, the legal and maiden name of the birth mother, her date of birth, the names and dates of birth of her parents and grandparents, and, if available, information pertaining to the possible identity, tribal affiliation, or location of the birth father.

Sec. 3. Minnesota Statutes 1997 Supplement, section 259.49, subdivision 1, is amended to read:

Subdivision 1. **TO WHOM GIVEN.** Except as provided in subdivision 3, and subject to section 259.52, notice of the hearing upon a petition to adopt a child must be given to:

- (a) the guardian, if any, of a child;
- (b) the parent of a child if:
  - (1) the person's name appears on the child's birth certificate, as a parent;
  - (2) the person has substantially supported the child;
  - (3) the person either was married to the person designated on the birth certificate as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth;
  - (4) the person is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both;
  - (5) the person has been adjudicated the child's parent;
  - (6) the person has filed a paternity action within 30 days after the child's birth and the action is still pending;
  - (7) the person and the mother of the child have signed a declaration of parentage under section 257.34 before August 1, 1995, which has not been revoked or a recognition of parentage under section 257.75, which has not been revoked or vacated; or
  - (8) the person:
    - (i) is not entitled to notice under clauses (1) to (7);
    - (ii) has registered with the putative fathers' adoption registry;
    - (iii) after receiving a putative fathers' adoption registry notice, has timely filed an intent to retain parental rights with entry of appearance form under section 259.52; and
    - (iv) within 30 days of receipt of the putative fathers' adoption registry notice has initiated a paternity action, unless, for good cause shown, he is unable to do so within the

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30 days; a paternity action must be initiated by the putative father in district court; application to the public authority for paternity establishment services does not constitute initiation of an action; and

(c) the child's tribe pursuant to section 257.352, subdivision 3, if the child is an Indian child.

Notice under this section need not be given to a person listed in this subdivision whose parental rights have been terminated. The notice of the hearing may be waived by a parent, guardian, or other interested party by a writing executed before two competent witnesses and duly acknowledged. The waiver must be filed in the adoption proceedings before the matter is heard.

Sec. 4. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 1, is amended to read:

Subdivision 1. **ESTABLISHMENT OF REGISTRY; PURPOSE; FEES.** (a) The commissioner of health shall establish a putative fathers' adoption registry for the purpose of determining the identity and location of a putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice under section 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health may establish informational material and public service announcements necessary to implement this section. Any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health has no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update his personal information on the registry.

(b) The putative fathers' adoption registry must contain the following information:

(1) with respect to the putative father, the:

(i) name, including any other names by which the putative father may be known and that he may provide to the registry;

(ii) address at which he may be served with notice of a petition under this chapter, including any change of address;

(iii) social security number, if known;

(iv) date of birth; and

(v) if applicable, a certified copy of an order by a court of another state or territory of the United States adjudicating the putative father to be the father of this child;

(2) with respect to the mother of the child:

(i) name, including all other names known to the putative father by which the mother may be known;

(ii) if known to the putative father, her last address;

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(iii) social security number, if known; and

(iv) date of birth;

(3) if known to the putative father, the name, gender, place of birth, and date of birth or anticipated date of birth of the child;

(4) the date that the commissioner of health received the putative father's registration; and

(5) other information the commissioner of health determines by rule to be necessary for the orderly administration of the registry.

(c) The commissioner of health shall notify the mother of the child whenever a putative father has registered with the father's adoption registry under this section. Notice shall be sent to the name and address submitted by the putative father under paragraph (b), clause (2). If no current address for the mother is submitted by the putative father under paragraph (b), clause (2), the commissioner of health shall not notify the mother. The commissioner of health has no independent obligation to locate the mother. The notice shall be mailed within 14 days of the date that the commissioner received the putative father's adoption registration unless a search has been requested under subdivision 2. There shall be no charge to the birth mother for this notice.

(d) The commissioner of health shall set reasonable fees for the use of the registry; however, a putative father shall not be charged a fee for registering. Revenues generated by the fee must be deposited in the state government special revenue fund and appropriated to the commissioner of health to administer the putative fathers' adoption registry.

Sec. 5. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 2, is amended to read:

**Subd. 2. REQUIREMENT TO SEARCH REGISTRY BEFORE ADOPTION PETITION CAN BE GRANTED; PROOF OF SEARCH.** No petition for adoption may be granted unless the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report required under section 259.53, subdivision 1, requests that the commissioner of health search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of an adoption petition. The search required by this subdivision must be conducted no sooner than 31 days following the birth of the child. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. Certification that the putative fathers' adoption registry has been searched must be filed with the court prior to entry of any final order of adoption. In addition to the search required by this subdivision, the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report under section 259.53, subdivision 1, may request that the commissioner of health search the registry at any time.

Sec. 6. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 4, is amended to read:

**New language is indicated by underline, deletions by strikeout.**

Subd. 4. CLASSIFICATION OF REGISTRY DATA. Data in the putative fathers' adoption registry are private data on individuals, as defined in section 13.02, subdivision 2. Data in the registry may be released to:

(1) a person who is required to search the registry under subdivision 2, if the data relate to the child who is or may be the subject of the adoption petition; or

(2) the mother of the child listed on the putative father's registration form who the commissioner of health is required to notify under subdivision 1, paragraph (c); or

(3) a public authority as provided in subdivision 3.

A person who receives data under this subdivision may use the data only for purposes authorized under this section or other law.

Sec. 7. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 6, is amended to read:

Subd. 6. WHO MAY REGISTER. Any putative father may register with the putative fathers' adoption registry. However, any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7).

Sec. 8. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 8, is amended to read:

Subd. 8. FAILURE TO REGISTER. Except for a putative father who is entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the putative fathers' adoption registry under subdivision 7:

(1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register under subdivision 7 is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights under section 260.221, subdivision 1.

A putative father who has not timely registered under subdivision 7 is considered to have timely registered if he proves by clear and convincing evidence that:

(1) it was not possible for him to register within the period of time specified in subdivision 7;

(ii) his failure to register was through no fault of his own; and

(iii) he registered within ten days after it became possible for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.

Sec. 9. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 9, is amended to read:

Subd. 9. **NOTICE AND SERVICE FOR THOSE ON PUTATIVE FATHERS' ADOPTION REGISTRY WHO ARE NOT OTHERWISE ENTITLED TO NOTICE.** Any time after conception, an interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, may file with the court administrator a written request that the putative fathers on the registry who have registered in relation to the child be served with ~~serve by certified mail a putative fathers' adoption registry notice to registered putative father, an intent to claim parental rights with entry of appearance form, and a denial of paternity with entry of appearance form,~~ and a consent to adoption form pursuant to subdivision 11. These documents may be served on a putative father in the same manner as a summons is served in other civil proceedings, or, in lieu of personal service, service may be made as follows:

(a) ~~The person requesting notice shall pay to the court administrator a mailing fee plus the cost of United States postage for certified or registered mail and furnish to the court administrator an original and one copy of the putative fathers' adoption registry notice, the intent to claim parental rights with entry of appearance form, and the denial of paternity with entry of appearance and consent to adoption form together with an affidavit setting forth the putative father's last known address. The original putative fathers' adoption registry notice, the intent to claim parental rights with entry of appearance form, and the denial of paternity with entry of appearance and consent to adoption form must be retained by the court administrator.~~

(b) ~~The court administrator~~ The interested party or that party's attorney shall mail to the putative father, at the address appearing in the affidavit provided to the registry, the copy of the putative fathers' adoption registry notice to registered putative father, the intent to claim parental rights with entry of appearance form, and the denial of paternity with entry of appearance form, and the consent to adoption form by certified mail, return receipt requested. The envelope and return receipt must bear the return address of the court administrator. The receipt for certified mail must state the name and address of the addressee and the date of mailing and must be attached to the original notice.

(c) ~~(b) The return receipt, when returned to the court administrator filed with the court, must be attached to the original putative fathers' adoption registry notice to registered putative father, the intent to claim parental rights with entry of appearance form, and the denial of paternity with entry of appearance form, and the consent to adoption form and constitutes proof of service.~~

(d) ~~(c) The court administrator shall note the fact of service in a permanent record.~~

Sec. 10. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 10, is amended to read:

Subd. 10. **RESPONSE TO PUTATIVE FATHERS' ADOPTION REGISTRY NOTICE TO REGISTERED PUTATIVE FATHER; LIMITATION OF RIGHTS FOR FAILURE TO RESPOND AND UPON FILING OF DISCLAIMER DENIAL OF PATERNITY.** Within 30 days of receipt of the putative fathers' adoption registry notice to registered putative father, the intent to claim parental rights with entry of ap-

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pearance form, and the denial of paternity with entry of appearance form, and the consent to adoption form, the putative father must file a completed intent to claim parental rights with entry of appearance form with the court administrator stating that he intends to initiate a paternity action within 30 days of receipt of the putative fathers' adoption registry notice to registered putative father in order to preserve the right to maintain an interest in the child and receive notice during the pending adoption proceeding. Failure to initiate a paternity action within 30 days of receipt of the putative fathers' adoption registry notice to registered putative father does not act as a bar to receiving notice under section 259.49. If good cause is shown, the putative father must be allowed more time to initiate the paternity action. A putative father who files a completed denial of paternity with entry of appearance form and consent to adoption form or who fails to timely file an intent to claim parental rights with entry of appearance form with the court:

- (1) is barred from later bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;
- (2) is considered to have waived and surrendered a right to notice of a hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and
- (3) is considered to have abandoned the child.

Failure to register is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights.

Sec. 11. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 11, is amended to read:

Subd. 11. **PUTATIVE FATHERS' ADOPTION REGISTRY NOTICE; INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE FORM; DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE; AND CONSENT TO ADOPTION FORM FORMS.** (a) The putative father's adoption registry notice sent under subdivision 9 must be substantially as follows:

~~"IN THE MATTER OF NOTICE TO ....., REGISTERED PUTATIVE FATHER.~~

You have signed the putative fathers' adoption registry indicating that you are the father of a child born on the ..... day of ....., ...., (or expected to be born on or about the ..... day of ....., ....).

The mother of the child is .....

The mother has indicated that she intends to place the child for adoption.

As the alleged father of the child by virtue of signing the putative fathers' adoption registry, you have certain legal rights with respect to the child, including the right to notice of the filing of proceedings instituted for the adoption of the child. If you wish to retain your rights with respect to the child, you must file with the court administrator, Court of ..... County, Minnesota, whose address is ....., Minnesota, within 30 days after the date of receipt of this notice, the enclosed intent to claim parental rights with entry of appearance form stating that you are, in fact, the father of the child and that you intend to retain your legal rights with respect to the child by initiating a paternity action within 30 days of receipt of the putative fathers' adoption registry notice.

New language is indicated by underline, deletions by ~~strikeout~~.

If you do not file an intent to claim parental rights with entry of appearance form or a request for notice, then whatever legal rights you have with respect to the child, including the right to notice of any future proceedings for the adoption of the child, may be terminated without any further notice to you. When your legal rights with respect to the child are so terminated, you will not be entitled to notice of any proceeding instituted for the adoption of the child.

If you are not the father of the child, you may file with the court administrator the denial of paternity with entry of appearance and consent to adoption form enclosed herewith and you will receive no further notice with respect to the child."

(b) The intent to claim parental rights with entry of appearance form sent under subdivision 9 must be substantially as follows:

**"INTENT TO CLAIM PARENTAL RIGHTS WITH ENTRY OF APPEARANCE**

I, \_\_\_\_\_, state as follows:

(1) That I am \_\_\_\_\_ years of age; and I reside at \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_

(2) That I have been advised that \_\_\_\_\_ is the mother of a \_\_\_\_\_ male/female child named \_\_\_\_\_ born or expected to be born on or about \_\_\_\_\_ and that such mother has stated that I am the father of this child.

(3) I declare that I am the father of this child.

(4) I understand that the mother of this child wishes to consent to the adoption of this child. I do not consent to the adoption of this child, and I understand that I must return this intent to claim parental rights with entry of appearance form to the court administrator of \_\_\_\_\_ County, located at \_\_\_\_\_, within 30 days of receipt of this notice.

(5) I further understand that I am also obligated to initiate a paternity action under the Parentage Act (Minnesota Statutes, sections 257.51 to 257.74) within 30 days of my receiving the putative fathers' adoption registry notice, or, if the child is not yet born, within 30 days after the birth of the child, unless for good cause shown I am unable to do so. That proceeding is separate and distinct from the above mailing of intent to claim parental rights with entry of appearance form; in the paternity action, I must state that I am, in fact, the father of said child for one or more of the reasons stated in Minnesota Statutes, section 257.55, subdivision 1, and that I intend to retain my legal rights with respect to said child, and request to be notified of any further proceedings with respect to custody or adoption of the child.

(6) I hereby enter my appearance in the above entitled cause.

**OATH**

I have been duly sworn and I say under oath that I have read and understand this intent to claim parental rights with entry of appearance form. The facts that it contains are true and correct to the best of my knowledge, and I understand that by signing this document I admit my paternity. I have signed this document as my free and voluntary act.

New language is indicated by underline, deletions by ~~strikeout~~.

\_\_\_\_\_  
(Signature)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Signed and Sworn Before Me This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(notary public)"

(c) The denial of paternity with entry of appearance and consent to adoption form under subdivision 9 must be substantially as follows:

**“DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE AND  
CONSENT TO ADOPTION**

I, \_\_\_\_\_, state as follows:

(1) That I am \_\_\_\_\_ years of age; and I reside at \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_

(2) That I have been advised that \_\_\_\_\_ is the mother of a \_\_\_\_\_ male/female child named \_\_\_\_\_ born or expected to be born on or about \_\_\_\_\_ and that I have registered with the putative fathers' adoption registry stating that I am the father of this child.

(3) I now deny that I am the father of this child. My denial at this time will not subject me to any criminal liability.

(4) I further understand that the mother of this child wishes to consent to the adoption of the child. I hereby consent to the adoption of this child, and waive any rights, remedies, and defenses that I may have now or in the future. This consent is being given in order to facilitate the adoption of the child and so that the court may terminate what rights I may have to the child. This consent is not in any manner an admission of paternity.

(5) I hereby enter my appearance in the above entitled cause and waive service of summons and other pleading.

**OATH**

I have been duly sworn and I say under oath that I have read and understood this denial of paternity with entry of appearance and consent to adoption. The facts it contains are true and correct to the best of my knowledge, and I understand that by signing this document I have not admitted paternity. I have signed this document as my free and voluntary act in order to facilitate the adoption of the child.

\_\_\_\_\_  
(Signature)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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Signed and Sworn Before Me This ..... day of ....., ....

.....  
(notary public)"

The names of adoptive parents must not be included in the notice. The office of the state court administrator shall develop the following forms:

- (1) notice to registered putative father;
- (2) intent to claim parental rights;
- (3) denial of paternity; and
- (4) consent to adoption.

Sec. 12. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 12, is amended to read:

Subd. 12. **RIGHT TO COUNSEL AT PUBLIC EXPENSE.** Upon proof of indigency, a putative father who has registered with the fathers' adoption registry, has received a ~~putative fathers' adoption registry~~ notice to registered putative father, and has timely filed an intent to claim paternal rights with ~~entry of appearance~~ form with the court administrator, must have counsel appointed at public expense.

Sec. 13. Minnesota Statutes 1997 Supplement, section 259.52, subdivision 14, is amended to read:

Subd. 14. **FEES FOR PUTATIVE FATHERS' ADOPTION REGISTRY.** The district court administrator in every judicial district shall, in addition to any other filing fees, assess a \$75 adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the ~~putative fathers' adoption~~ registry. The court administrator shall forward fees collected under this subdivision to the commissioner of finance for deposit into the state government special revenue fund to be appropriated to the commissioner of health to administer the ~~putative fathers' adoption~~ registry established under this section.

Sec. 14. Minnesota Statutes 1997 Supplement, section 259.52, is amended by adding a subdivision to read:

Subd. 15. INTERNATIONAL ADOPTIONS. This section does not apply to international adoptions.

Sec. 15. Minnesota Statutes 1997 Supplement, section 260.221, subdivision 1, is amended to read:

Subdivision 1. **VOLUNTARY AND INVOLUNTARY.** The juvenile court may upon petition, terminate all rights of a parent to a child with the written consent of a parent who for good cause desires to terminate parental rights; or if it finds that one or more of the following conditions exist:

- (1) that the parent has abandoned the child; or
- (2) that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship,

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including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and reasonable efforts by the social service agency have failed to correct the conditions that formed the basis of the petition; or

(3) that a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a non-custodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth; or

(4) that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child. It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that:

(i) the child was adjudicated in need of protection or services due to circumstances described in section 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8); and

(ii) the parent's parental rights to one or more other children were involuntarily terminated under clause (1), (2), (4), or (7), or under clause (5) if the child was initially determined to be in need of protection or services due to circumstances described in section 260.015, subdivision 2a, clause (1), (2), (3), (5), or (8); or

(5) that following upon a determination of neglect or dependency, or of a child's need for protection or services, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the determination. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of more than one year within a five-year period following an adjudication of dependency, neglect, need for protection or services under section 260.015, subdivision 2a, clause (1), (2), (3), (6), (8), or (9), or neglected and in foster care, and an order for disposition under section 260.191, including adoption of the case plan required by section 257.071;

(ii) conditions leading to the determination will not be corrected within the reasonably foreseeable future. It is presumed that conditions leading to a child's out-of-home placement will not be corrected in the reasonably foreseeable future upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan, and the conditions which led to the out-of-home placement have not been corrected; and

(iii) reasonable efforts have been made by the social service agency to rehabilitate the parent and reunite the family.

This clause does not prohibit the termination of parental rights prior to one year after a child has been placed out of the home.

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It is also presumed that reasonable efforts have failed under this clause upon a showing that:

- (i) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;
- (ii) the parent has been required by a case plan to participate in a chemical dependency treatment program;
- (iii) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;
- (iv) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and
- (v) the parent continues to abuse chemicals.

Provided, that this presumption applies only to parents required by a case plan to participate in a chemical dependency treatment program on or after July 1, 1990; or

(6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care; or

(7) that in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the putative fathers' adoption registry under section 259.52; or

(8) that the child is neglected and in foster care; or

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (b), clauses (1) to (3).

In an action involving an American Indian child, sections 257.35 to 257.3579 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws.

Sec. 16. Minnesota Statutes 1997 Supplement, section 260.221, subdivision 1a, is amended to read:

Subd. 1a. **EVIDENCE OF ABANDONMENT.** For purposes of subdivision 1, clause (1):

(a) Abandonment is presumed when:

(1) the parent has had no contact with the child on a regular basis and not demonstrated consistent interest in the child's well-being for six months; and

(2) the social service agency has made reasonable efforts to facilitate contact, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from making contact with the child. This presumption does not apply to children whose custo-

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dy has been determined under chapter 257 or 518. The court is not prohibited from finding abandonment in the absence of this presumption.

(b) The following are prima facie evidence of abandonment where adoption proceedings are pending and there has been a showing that the person was not entitled to notice of an adoption proceeding under section 259.49:

(1) failure to register with the putative fathers' adoption registry under section 259.52; or

(2) if the person registered with the putative fathers' adoption registry under section 259.52:

(i) filing a denial of paternity within 30 days of receipt of notice under section 259.52, subdivision 8;

(ii) failing to timely file an intent to claim parental rights with entry of appearance form within 30 days of receipt of notice under section 259.52, subdivision 10; or

(iii) timely filing an intent to claim parental rights with entry of appearance form within 30 days of receipt of notice under section 259.52, subdivision 10, but failing to initiate a paternity action within 30 days of receiving the putative fathers' adoption registry notice where there has been no showing of good cause for the delay.

Sec. 17. Minnesota Statutes 1997 Supplement, section 357.021, subdivision 2, is amended to read:

Subd. 2. **FEE AMOUNTS.** The fees to be charged and collected by the court administrator shall be as follows:

(1) In every civil action or proceeding in said court, including any case arising under the tax laws of the state that could be transferred or appealed to the tax court, the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of \$122.

The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of \$122.

The party requesting a trial by jury shall pay \$75.

The fees above stated shall be the full trial fee chargeable to said parties irrespective of whether trial be to the court alone, to the court and jury, or disposed of without trial, and shall include the entry of judgment in the action, but does not include copies or certified copies of any papers so filed or proceedings under chapter 103E, except the provisions therein as to appeals.

(2) Certified copy of any instrument from a civil or criminal proceeding, \$10, and \$5 for an uncertified copy.

(3) Issuing a subpoena, \$3 for each name.

(4) Issuing an execution and filing the return thereof; issuing a writ of attachment, injunction, habeas corpus, mandamus, quo warranto, certiorari, or other writs not specifically mentioned, \$10.

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(5) Issuing a transcript of judgment, or for filing and docketing a transcript of judgment from another court, \$7.50.

(6) Filing and entering a satisfaction of judgment, partial satisfaction, or assignment of judgment, \$5.

(7) Certificate as to existence or nonexistence of judgments docketed, \$5 for each name certified to.

(8) Filing and indexing trade name; or recording basic science certificate; or recording certificate of physicians, osteopaths, chiropractors, veterinarians, or optometrists, \$5.

(9) For the filing of each partial, final, or annual account in all trusteeships, \$10.

(10) For the deposit of a will, \$5.

(11) For recording notary commission, \$25, of which, notwithstanding subdivision 1a, paragraph (b), \$20 must be forwarded to the state treasurer to be deposited in the state treasury and credited to the general fund.

(12) When a defendant pleads guilty to or is sentenced for a petty misdemeanor other than a parking violation, the defendant shall pay a fee of \$11.

(13) Filing a motion or response to a motion for modification of child support, a fee fixed by rule or order of the supreme court.

(14) All other services required by law for which no fee is provided, such fee as compares favorably with those herein provided, or such as may be fixed by rule or order of the court.

(15) In addition to any other filing fees under this chapter, a surcharge in the amount of \$75 must be assessed in accordance with section 259.52, subdivision 14, for each adoption petition filed in district court to fund the putative fathers' adoption registry under section 259.52.

The fees in clauses (3) and (4) need not be paid by a public authority or the party the public authority represents.

Sec. 18. Minnesota Statutes 1996, section 550.136, subdivision 2, is amended to read:

Subd. 2. **DEFINITIONS.** For purposes of this section, the following terms have the meanings given them:

(a) "earnings" means:

(1) compensation paid or payable to an employee for personal service whether denominated as wages, salary, commissions, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program; or

(2) compensation paid or payable to the producer for the sale of agricultural products; livestock or livestock products; milk or milk products; or fruit or other horticultural products produced when the producer is operating a family farm, a family farm corporation, or an authorized farm corporation, as defined in section 500.24, subdivision 2; or

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(3) maintenance as defined in section 518.54, subdivision 3.

(b) "disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld;

(c) "employee" means an individual who performs services subject to the right of the employer to control both what is done and how it is done; and

(d) "employer" means a person for whom an individual performs services as an employee.

Sec. 19. Minnesota Statutes 1996, section 571.921, is amended to read:

**571.921 DEFINITIONS.**

For purposes of sections 571.921 to 571.926, the following terms have the meanings given them:

(a) "Earnings" means:

(1) compensation paid or payable to an employee for personal service whether denominated as wages, salary, commissions, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program; or

(2) compensation paid or payable to the producer for the sale of agricultural products; livestock or livestock products; milk or milk products; or fruit or other horticultural products produced when the producer is operating a family farm, a family farm corporation, or an authorized farm corporation, as defined in section 500.24, subdivision 2; or

(3) maintenance as defined in section 518.54, subdivision 3.

(b) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.

(c) "Employee" means an individual who performs services subject to the right of the employer to control both what is done and how it is done.

(d) "Employer" means a person for whom an individual performs services as an employee.

**Sec. 20. EFFECTIVE DATE.**

Sections 1 to 17 are effective the day following final enactment.

Presented to the governor April 10, 1998

Signed by the governor April 20, 1998, 11:25 a.m.

**CHAPTER 383—H.F.No. 3862**

*An act relating to tornado and other natural disaster relief; providing for temporary waivers of certain programs and other relief; appropriating money; amending Minnesota Statutes 1996, section 268.38, by adding a subdivision; Minnesota Statutes 1997 Supplement, sections 41B.043, subdivision 2a; 168.16; and 273.124, subdivision 14; Laws 1997, chapter 203, article 1, sections 15 and*

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