

CHAPTER 518

MARRIAGE DISSOLUTION

518.55 Maintenance or support money.
 518.551 Maintenance and support payments made to welfare agencies.
 518.552 Maintenance.

518.611 Income withholding.
 518.64 Modification of orders or decrees.
 518.645 Form of order.

518.55 MAINTENANCE OR SUPPORT MONEY.

[For text of subds 1 and 2, see M.S.1984]

Subd. 3. **Notice of address or residence change.** Every obligor shall notify the obligee 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. Every order for support or maintenance must contain a conspicuous notice of the requirements of this subdivision. The court may waive or modify the requirements of this subdivision by order if necessary to protect the obligor from contact by the obligee.

History: 1985 c 131 s 6

518.551 MAINTENANCE AND SUPPORT PAYMENTS MADE TO WELFARE AGENCIES.

[For text of subds 1 to 6, see M.S.1984]

Subd. 7. **Service fee.** When the public agency responsible for child support enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the public agency may upon written notice to the obligor charge a monthly collection fee equivalent to the full monthly cost to the county of providing collection services, in addition to the amount of the child support which was ordered by the court. The fee shall be deposited in the county general fund. The service fee assessed is limited to ten percent of the monthly court ordered child support and shall not be assessed to obligors who are current in payment of the monthly court ordered child support. An application fee not to exceed \$5 shall be paid by the person who applies for child support and maintenance collection services, except persons who transfer from public assistance to nonpublic assistance status. Fees assessed by state and federal tax agencies for collection of overdue support owed to or on behalf of a person not receiving public assistance must be imposed on the person for whom these services are provided.

However, the limitations of this subdivision on the assessment of fees shall not apply to the extent inconsistent with the requirements of federal law for receiving funds for the programs under Title IV-A and Title IV-D of the Social Security Act, United States Code, title 42, sections 601 to 613 and United States Code, title 42, sections 651 to 662.

[For text of subds 8 and 9, see M.S.1984]

History: 1985 c 131 s 7

518.552 MAINTENANCE.

Subdivision 1. In a proceeding for dissolution of marriage or legal separation, or in a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse and which has since

acquired jurisdiction, the court may grant a maintenance order for either spouse if it finds that the spouse seeking maintenance:

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

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Subd. 2. The maintenance order shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;

(c) the standard of living established during the marriage;

(d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;

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

(f) the age, and the physical and emotional condition of the spouse seeking maintenance;

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

(h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

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

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

History: 1985 c 266 s 2

518.611 INCOME WITHHOLDING.

[For text of subd 1, see M.S.1984]

Subd. 2. **Notice of income withholding.** Each order for withholding shall provide for a conspicuous notice to the obligor that:

(a) Withholding shall result if the obligor fails to make the maintenance or support payments, and that no withholding shall be made until the following conditions are met:

(1) The obligee or the public authority determines that the obligor is at least 30 days in arrears;

(2) The obligee or the public authority serves written notice of its determination of income withholding, showing arrearage, on the obligor at least 15 days before service of the notice of income withholding and a copy of the court's order for withholding on the payor of funds;

(3) Within the 15-day period, the obligor fails to move the court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding, or on other grounds limited to mistakes of fact, and, ex parte, to stay service on the payor of funds until the motion to deny withholding is heard. Within 45 days from the date of the notice of income withholding, the court shall hold the hearing on the motion to deny withholding and notify the parties of its decision; and

(4) The obligee or the public authority serves a copy of the notice of income withholding and a copy of the court's withholding order on the payor of funds; and

(5) The obligee serves on the public authority a copy of the notice of income withholding, a copy of the court's withholding order, an application and the fee to use the public authority's collection services.

(b) To pay the arrearage specified in the notice of income withholding, the employer or payor of funds shall withhold from the obligor's income an additional amount equal to 20 percent of the monthly child support or maintenance obligation until the arrearage is paid.

(c) The obligor may, at any time, waive the written notice required by this subdivision.

(d) The obligor may move the court, under section 518.64, to modify the order respecting the amount of maintenance or support.

Subd. 3. Withholding hearing. At the hearing to deny withholding, if the court finds that there was no mistake of fact, the court shall order income withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing. If the court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but finds a mistake in the amount of arrearage, the court shall order income withholding, but it shall correct the amount of arrearage to be withheld under subdivision 2, paragraph (b).

Subd. 4. Effect of order. Notwithstanding any law to the contrary, the order is binding on the employer, trustee, or other payor of the funds when service under subdivision 2 has been made. Withholding must begin no later than the first pay period that occurs after 14 days following the date of the notice. An employer or other payor of funds in this state is required to withhold income according to court orders for withholding issued by other states or territories. The payor shall withhold from the income payable to the obligor the amount specified in the order and amounts required under subdivision 2, paragraph (b) and shall remit, monthly or more frequently, the amounts withheld to the public authority. Amounts received by the public authority which are in excess of public assistance expended for the party or for a child shall be remitted to the party. An employer shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this section. The employer or other payor of funds shall be liable to the obligee for any amounts required to be withheld.

[For text of subd 5, see M.S.1984]

Subd. 6. **Priority.** An order for withholding under this section or execution or garnishment upon a judgment for child support arrearages 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, United States Code, title 15, section 1673(b)(2). If there is more than one withholding order on a single employee, the employer shall put them into effect in the order received up to the maximum allowed in the Consumer Credit Protection Act.

[For text of subds 7 and 8, see M.S.1984]

Subd. 9. **Forms.** The commissioner of human services shall prepare and make available to courts and obligors a form to be submitted by the obligor in support of a motion to deny withholding under this section. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

History: 1985 c 131 s 8-12

518.64 MODIFICATION OF ORDERS OR DECREES.

[For text of subd 1, see M.S.1984]

Subd. 2. **Modification.** The terms of a decree 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; (3) receipt of assistance under sections 256.72 to 256.87; or (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. On a motion for modification of maintenance, 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 shall take into consideration the needs of the children and the financial circumstances of each party's spouse, if any. A modification which decreases support or maintenance may be made retroactive only upon a showing that any failure to pay in accord with the terms of the original order was not willful. A modification which increases support or maintenance shall not be made retroactive if the obligor has substantially complied with the previous order. 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. 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.

[For text of subds 3 to 5, see M.S.1984]

History: 1985 c 266 s 3

518.645 FORM OF ORDER.

Unless otherwise ordered by the court, an order for withholding of support or maintenance payments issued under this chapter shall be substantially in the following form:

IT IS ORDERED THAT:

1. The sum of per, representing child support and/or spousal maintenance, ordered by the Court, shall be withheld from the (Husband/Wife Respondent/Petitioner)'s income on by (his/her) present employer or other payor of funds,, and any future employer or other payor of funds, and shall be remitted to:, monthly or more frequently, in accordance with the provisions of Minnesota Statutes, Chapter 518. The file number above and the Obligor's name shall be included with each remittance.

2. An additional amount equal to 20 percent of the amount required to be withheld by paragraph 1 shall be withheld from the income of the Obligor by the employer or payor until the entire arrearage in paragraph 3(b) is paid.

3. The parties are notified that **CHILD SUPPORT AND/OR MAINTENANCE WILL BE WITHHELD FROM INCOME ONLY AFTER ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:**

(a) or the Obligea determines that the Obligor is at least thirty days in arrears in the payment of child support and/or spousal maintenance;

(b) or the Obligea serves written notice of income withholding on the Obligor showing the determination that child support and/or maintenance payments are thirty days in arrears;

(c) Within fifteen days after service of the notice of income withholding, the Obligor fails to move the Court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding or on other grounds limited to mistakes of fact and, ex parte, to stay service of withholding on the employer or other payor of funds until the motion to deny withholding is heard. Within 45 days from the date of the notice of income withholding, the court shall hold the hearing on the motion to deny withholding and notify the parties of its decision; and

(d) Not sooner than 15 days after service of written notice of income withholding on the Obligor, or the Obligea serves a copy of the notice of income withholding and a copy of the Court's withholding order on the employer or other payor of funds, who will then be obligated to withhold payments from income and forward the amount withheld to

4. The parties and the employer or other payor of funds are further notified that **NO EMPLOYER MAY DISCHARGE, SUSPEND, OR OTHERWISE PENALIZE OR DISCIPLINE AN EMPLOYEE BECAUSE THE EMPLOYER MUST WITHHOLD SUPPORT OR MAINTENANCE MONEY.** Minnesota Statutes, section 518.611.

5. The payments shall begin to be withheld no later than the first pay period that occurs after 14 days following the date of mailing of the notice to the employer or other payor of funds in paragraph 3(d) and from that date the employer or other payor of funds is liable for amounts required to be withheld.

6. This order for withholding takes priority over any attachment, execution, garnishment, or wage assignment levied against the income of the Obligor. Amounts withheld are not subject to other statutory limitations on amounts levied against the income of the Obligor but must not exceed the maximum permitted under the federal Consumer Credit Protection Act, United States Code, title 15, section 1673(b)(2). If there is more than one withholding order on a single Obligor, the employer or other payor of funds shall put them into effect in the order received, up to the maximum allowed under the Consumer Credit Protection Act.

7. When the Obligor's employment is terminated or the periodic payment ends, the employer or other payor of funds is required to notify within 30 days of the termination date. The notice must include the Obligor's home address of record and, if known, the name and address of the Obligor's new employer or other payor of funds.

8. If the Obligea serves the employer or other payor of funds under paragraph 3(d), the Obligea shall also serve the determination and order on, together with an application and fee to use collection services.

9. Service of this Order shall be

.....

History: 1985 c 131 s 13