Senator Skoglund introduced--

S.F. No. 2066: Referred to the Committee on Agriculture, Veterans and Gaming.

A bill for an act

relating to animals; providing criminal penalties for activities related to cockfighting, dogfighting, and fighting of other domestic animals; creating procedures for disposition and care of the animals; providing for hearings; clarifying admissibility of certain evidence; amending Minnesota Statutes 2004, section 343.31.

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

Section 1. Minnesota Statutes 2004, section 343.31, is amended to read:

343.31 [ANIMAL FIGHTS ~~PROHIBITED~~ AND POSSESSION OF FIGHTING ANIMALS.]

Subdivision 1. [PENALTY FOR ANIMAL FIGHTING; ATTENDING ANIMAL FIGHT.] ~~Any~~ A person who:

(1) promotes ~~or~~, engages in, or is employed ~~at~~ in the activity of cockfighting, dogfighting, or violent pitting of one domestic animal against another of the same or a different kind; ~~or~~

(2) receives money for the admission of ~~any~~ a person to ~~any~~ a place used, or about to be used, for that activity; ~~or~~

(3) willfully permits ~~any~~ a person to enter or use for that activity premises of which the permitter is the owner, agent, or occupant; or

(4) uses, trains, or possesses a dog or other animal for the purpose of participating in, engaging in, or promoting that activity

is guilty of a felony. ~~Any~~ A person who purchases a ticket of admission or otherwise gains admission to that activity is guilty of a misdemeanor.

Subd. 2. [PENALTY FOR POSSESSING A FIGHTING DOG.] It is a gross misdemeanor for a person to own, possess, or have custody of a dog that has been trained or is being trained for use in dog fights. It is conclusive that a dog has been trained or is being trained to fight if:

(1) the dog exhibits fresh wounds, scarring, or other indications that the dog has been or will be used for fighting; and

(2) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare dogs to be fought.

Subd. 3. [AFFIRMATIVE DEFENSE.] It is an affirmative defense to prosecution, if it is proven by a preponderance of the evidence, that:

(1) the person does not use the dog in dog fighting or train the dog to be used in dog fighting; and

(2) drugs, accompanying drug paraphernalia, or exercise equipment found in the person's possession are used solely to maintain the health of the dog.

Subd. 4. [PENALTY FOR POSSESSING FIGHTING BIRDS.] It is a gross misdemeanor for a person to own, possess, or have custody of a cock or other type of bird that has been trained or is being trained for use in bird fights. It is conclusive that a bird has been trained or is being trained to fight if:

(1) the bird exhibits fresh wounds, scarring, or other indications that the bird has been or will be used for fighting; and

(2) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare birds to be fought.

Subd. 5. [AFFIRMATIVE DEFENSE.] It is an affirmative defense to prosecution, if it is proven by a preponderance of the evidence, that:

(1) the person does not use the bird in bird fighting or train the bird to be used in bird fighting; and

(2) drugs, accompanying drug paraphernalia, or exercise equipment found in the person's possession are used solely to maintain the health of the bird.

Subd. 6. [PEACE OFFICER DUTIES.] Animals described in subdivisions 2 and 4 are dangerous weapons and constitute an immediate danger to the safety of humans. A peace officer or animal control authority may remove, shelter, and care for an animal found in the circumstances described in subdivision 2 or 4. If necessary, a peace officer or animal control authority may deliver the animal to another person to be sheltered and cared for. In all cases, the peace officer must immediately notify the owner, if known, as provided in subdivision 7. The peace officer, animal control authority, or other person assuming care of the animal shall have a lien on it for the actual cost of care and keeping of the animal. If the owner or custodian is unknown and cannot by reasonable effort be ascertained, or does not, within ten days after notice, redeem the animal by paying the expenses authorized by this subdivision, the animal may be disposed of as provided in subdivision 7.

Subd. 7. [DISPOSITION.] (a) An animal taken into custody under subdivision 6 may be humanely disposed of at the discretion of the jurisdiction having custody of the animal ten days after the animal is taken into custody, if the procedures in paragraph (c) are followed.

(b) The owner of an animal taken into custody under subdivision 6 may prevent disposition of the animal by posting security in an amount sufficient to provide for the actual costs of care and keeping of the animal. The security must be posted within ten days of the seizure inclusive of the date of the seizure.

(c)(1) The authority taking custody of an animal under subdivision 6 must give notice of this section by delivering or mailing it to the owner of the animal, posting a copy of it at the place where the animal is taken into custody, or delivering it to a person residing on the property and telephoning, if

possible. The notice must include:

(i) a description of the animal seized; the authority and purpose for the seizure; the time, place, and circumstances under which the animal was seized; and the location, address, telephone number, and contact person where the animal is kept;

(ii) a statement that the owner of the animal may post security to prevent disposition of the animal and may request a hearing concerning the seizure and impoundment and that failure to do so within ten days of the date of the notice will result in disposition of the animal; and

(iii) a statement that all actual costs of the care, keeping, and disposal of the animal are the responsibility of the owner of the animal, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law. The notice must also include a form that can be used by a person claiming an interest in the animal for requesting a hearing.

(2) The owner may request a hearing within ten days of the date of the seizure. If requested, a hearing must be held within five business days of the request to determine the validity of the impoundment. The municipality taking custody of the animal or the municipality from which the animal was seized may either (i) authorize a licensed veterinarian with no financial interest in the matter or professional association with either party, or (ii) use the services of a hearing officer to conduct the hearing. An owner may appeal the hearing officer's decision to the district court within five days of the notice of the decision.

(3) The judge or hearing officer may authorize the return of the animal if the judge or hearing officer finds that (i) the animal is physically fit; (ii) the person claiming an interest in the animal can and will provide the care required by law for the animal; and (iii) the animal has not been used for violent pitting or fighting.

(4) The person claiming an interest in the animal is liable for all actual costs of care, keeping, and disposal of the

animal, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law. The costs must be paid in full or a mutually satisfactory arrangement for payment must be made between the municipality and the person claiming an interest in the animal before the return of the animal to the person.

Subd. 8. [PHOTOGRAPHS.] (a) Photographs of animals seized during an investigation are competent evidence if the photographs are admissible into evidence under all the rules of law governing the admissibility of photographs into evidence. A satisfactorily identified photographic record is as admissible in evidence as the animal itself.

(b) A photograph must be accompanied by a written description of the animals seized, the name of the owner of the animals seized, the date of the photograph, and the signature of the photographer.

Subd. 9. [VETERINARY INVESTIGATIVE REPORT.] (a) A report completed by a Minnesota licensed veterinarian following an examination of an animal seized during an investigation is competent evidence. A satisfactorily identified veterinary investigative report is as admissible in evidence as the animal itself.

(b) The veterinary investigative report may contain a written description of the animal seized, the medical evaluation of the physical findings, the prognosis for recovery, and the date of the examination and must contain the signature of the veterinarian performing the examination.

A bill for an act

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(1) promotes ~~or~~, engages in, or is employed ~~at~~ in the activity of cockfighting, dogfighting, or violent pitting of one domestic animal against another of the same or a different kind; ~~or~~

(2) receives money for the admission of ~~any~~ a person to ~~any~~ a place used, or about to be used, for that activity; ~~or~~

(3) willfully permits ~~any~~ a person to enter or use for that activity premises of which the permitter is the owner, agent, or occupant; or

(4) uses, trains, or possesses a dog or other animal for the purpose of participating in, engaging in, or promoting that activity

is guilty of a felony. ~~Any~~ A person who purchases a ticket of admission or otherwise gains admission to that activity is guilty of a misdemeanor.

Subd. 2. [PENALTY FOR POSSESSING A FIGHTING DOG.] It is a gross misdemeanor for a person to own, possess, or have custody of a dog that has been trained or is being trained for use in dog fights. There is a rebuttable presumption that a dog has been trained or is being trained to fight if:

(1) the dog exhibits fresh wounds, scarring, or other indications that the dog has been or will be used for fighting; and

(2) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare dogs to be fought.

Subd. 3. [PENALTY FOR POSSESSING FIGHTING BIRDS.] It is a gross misdemeanor for a person to own, possess, or have custody of a cock or other type of bird that has been trained or is being trained for use in bird fights. There is a rebuttable presumption that a bird has been trained or is being trained to fight if:

(1) the bird exhibits fresh wounds, scarring, or other indications that the bird has been or will be used for fighting; and

(2) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare birds to be fought.

Subd. 4. [PEACE OFFICER DUTIES.] Animals described in subdivisions 2 and 3 are dangerous weapons and constitute an immediate danger to the safety of humans. A peace officer or animal control authority may remove, shelter, and care for an animal found in the circumstances described in subdivision 2 or 3. If necessary, a peace officer or animal control authority may deliver the animal to another person to be sheltered and cared for. In all cases, the peace officer or animal control authority must immediately notify the owner, if known, as provided in subdivision 5. The peace officer, animal control authority, or other person assuming care of the animal shall have a lien on it for the actual cost of care and keeping of the

animal. If the owner or custodian is unknown and cannot by reasonable effort be ascertained, or does not, within ten days after notice, redeem the animal by paying the expenses authorized by this subdivision, the animal may be disposed of as provided in subdivision 7.

Subd. 5. [DISPOSITION.] (a) An animal taken into custody under subdivision 4 may be humanely disposed of at the discretion of the jurisdiction having custody of the animal ten days after the animal is taken into custody, if the procedures in paragraph (c) are followed.

(b) The owner of an animal taken into custody under subdivision 4 may prevent disposition of the animal by posting security in an amount sufficient to provide for the actual costs of care and keeping of the animal. The security must be posted within ten days of the seizure inclusive of the date of the seizure. If, however, a hearing is scheduled within ten days of the seizure, the security amount must be posted prior to the hearing.

(c)(1) The authority taking custody of an animal under subdivision 4 must give notice of this section by delivering or mailing it to the owner of the animal, posting a copy of it at the place where the animal is taken into custody, or delivering it to a person residing on the property and telephoning, if possible. The notice must include:

(i) a description of the animal seized; the authority and purpose for the seizure; the time, place, and circumstances under which the animal was seized; and a contact person and telephone number;

(ii) a statement that the owner of the animal may post security to prevent disposition of the animal and may request a hearing concerning the seizure and impoundment and that failure to do so within ten days of the date of the notice will result in disposition of the animal; and

(iii) a statement that all actual costs of the care, keeping, and disposal of the animal are the responsibility of the owner of the animal, except to the extent that a court or

hearing officer finds that the seizure or impoundment was not substantially justified by law. The notice must also include a form that can be used by a person claiming an interest in the animal for requesting a hearing.

(2) The owner may request a hearing within ten days of the date of the seizure. If requested, a hearing must be held within five business days of the request to determine the validity of the impoundment. The municipality taking custody of the animal or the municipality from which the animal was seized may either (i) authorize a licensed veterinarian with no financial interest in the matter or professional association with either party, or (ii) use the services of a hearing officer to conduct the hearing. An owner may appeal the hearing officer's decision to the district court within five days of the notice of the decision.

(3) The judge or hearing officer may authorize the return of the animal if the judge or hearing officer finds that (i) the animal is physically fit; (ii) the person claiming an interest in the animal can and will provide the care required by law for the animal; and (iii) the animal has not been used for violent pitting or fighting.

(4) The person claiming an interest in the animal is liable for all actual costs of care, keeping, and disposal of the animal, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law. The costs must be paid in full or a mutually satisfactory arrangement for payment must be made between the municipality and the person claiming an interest in the animal before the return of the animal to the person.

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(b) A photograph must be accompanied by a written

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(b) The veterinary investigative report may contain a written description of the animal seized, the medical evaluation of the physical findings, the prognosis for recovery, and the date of the examination and must contain the name, address, veterinary clinic, and signature of the veterinarian performing the examination.

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Subd. 7. [VETERINARY INVESTIGATIVE REPORT.] (a) A report completed by a Minnesota licensed veterinarian following an examination of an animal seized during an investigation is competent evidence. A satisfactorily identified veterinary investigative report is as admissible in evidence as the animal itself.

(b) The veterinary investigative report may contain a written description of the animal seized, the medical evaluation of the physical findings, the prognosis for recovery, and the date of the examination and must contain the name, address, veterinary clinic, and signature of the veterinarian performing the examination.

Senator Betzold from the Committee on Judiciary, to which was re-referred

S.F. No. 2066: A bill for an act relating to animals; providing criminal penalties for activities related to cockfighting, dogfighting, and fighting of other domestic animals; creating procedures for disposition and care of the animals; providing for hearings; clarifying admissibility of certain evidence; amending Minnesota Statutes 2004, section 343.31.

Reports the same back with the recommendation that the bill be amended as follows:

Pages 4 and 5, delete subdivisions 6 and 7

And when so amended the bill do pass and be re-referred to the Committee on Crime Prevention and Public Safety. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 7, 2005.....
(Date of Committee recommendation)

Senate Counsel, Research, and Fiscal Analysis

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1416 - Class Actions Certification

Author: Senator Julieanne E. Ortman

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: April 7, 2005

S.F. No. 1416 allows immediate appeals of orders by trial judges that certify or refuse to certify classes for class actions. All other proceedings in the action are stayed while an appeal is being decided.

HW:cs

Senators Ortman, Michel and Gerlach introduced--

S.F. No. 1416: Referred to the Committee on Judiciary.

A bill for an act

relating to civil actions; providing for interlocutory appeal on the question of class certification in a civil action; specifying required damages in order to be a member of a class; proposing coding for new law in Minnesota Statutes, chapter 540.

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

Section 1. [540.19] [CLASS ACTIONS.]

Subdivision 1. [INTERLOCUTORY APPEAL.] A court's order certifying a class or refusing to certify a class action is appealable in the same manner as a final order to the Court of Appeals. An appeal must be filed within 30 days of the order certifying or refusing to certify the class. Pending appeal under this subdivision, all discovery and other proceedings in the district court are stayed during the pendency of the appeal unless the Court of Appeals finds upon the motion of a party that specific discovery is necessary to preserve evidence or prevent undue prejudice to the party.

Subd. 2. [DAMAGE REQUIREMENT TO BE CLASS MEMBER.] In order to be a member of a class, an individual must have suffered an ascertainable loss of money or property, real or personal.

Sec. 2. [EFFECTIVE DATE; APPLICATION.]

Section 1 is effective August 1, 2005, and applies to actions commenced on or after that date.

Civil Justice Coalition

Working to reform Minnesota's legal system

Class Action Reform
H.F. 1325 (Rep. Chris DeLaForest)/S.F. 1416 (Sen. Julianne Ortman)

H.F. 1325/S.F. 1416 provides for an appeal of class certification to the Court of Appeals at the time of the District Court's decision. Importantly, all discovery and other proceedings in the district court would be stayed during the appeal unless the Court of Appeals finds that specific discovery is necessary to preserve evidence. H.F. 1325/S.F. 1416 also requires class members to demonstrate they have suffered an ascertainable loss of money or property.

Q: **Why is this legislation needed?**

A: The most important moment in a class action case is the certification decision. Currently, a defendant can not appeal class certification until all of the issues in front of the district court have been decided. This system allows plaintiffs to pursue all discovery increasing expenses and costs before the defendant has the opportunity to appeal the certification decision. If questions about proper class certification can be resolved by the Minnesota Court of Appeals before the costly discovery and trial phases proceed, only appropriate class action cases will move forward and defendants will be able to focus on better settlement decisions.

Q: **Is this legislation needed since federal class action reform has become law?**

A: The federal class action reform law will take most, but not all, class action cases out of the state court system. State class action cases are still possible if the claim for damages is less than $5 million and the class consists of only Minnesota citizens. In addition, federal courts may decline jurisdiction of a class action case under certain circumstances and must decline jurisdiction under other circumstances (i.e. an action against a company in its home state in which two-thirds or more of the class member are also residents of the state). H.F. 1325/S.F. 1416 makes sure that when class action cases are in Minnesota courts, the proper procedures are used so that defendants aren't faced with the dilemma of needing to settle the case before an appellate court addresses issues regarding class certification.

Q: **Why should class members have to demonstrate that they have suffered an ascertainable loss of money or property?**

A: In certain class action cases, some class members have not suffered any damage. A requirement that all class members demonstrate that they have suffered an ascertainable loss of money or property guarantees that the courts time is being well used and that class action cases are reserved for parties that have truly suffered some loss.

Minnesota Civil Justice Coalition 400 Robert Street North, Suite 1500 St. Paul, MN 55101 651/292-4650 Fax 651/292-4656

McDonald's®
2004 Instant Prize Giveaway

You could be one of 15 lucky winners to receive $1,000,000.*

There are no game pieces and no purchase is necessary.

All you have to do is be at the right participating McDonald's at the right time from March 5-7, 2004.

If you're randomly selected as a winner, our prize officials will award you with your prize.**

This Giveaway is being offered pursuant to the Stipulation of Settlement approved by Judge Stephen Schiller and entered in the consumer class action lawsuit Boland, et al. vs. Simon Marketing, Inc., and McDonald's Corp., Case No. 01 CH 13803, in the Circuit Court of Cook County, Illinois.

*There are 15 Prizes of $1,000,000 each paid as $50,000 a year for 20 years without interest.
**Winner selection subject to verification of eligibility and compliance with the Official Rules.
NO PURCHASE NECESSARY. The Instant Prize Giveaway begins on March 5, 2004 and ends March 7, 2004 at participating McDonald's restaurants in the United States, Canada, Aruba, Guam, Bahamas, Curacao, Jamaica, Puerto Rico, St. Croix, St. Maarten, St. Thomas, Saipan, Suriname, Trinidad, and U.S. Virgin Islands. Each day of the Giveaway begins at 7 a.m. local time or upon individual restaurant opening, whichever is later, and ends each day 30 minutes prior to business close or 11:30 p.m. local time, whichever is earlier. See Official Rules at participating McDonald's or mcdonalds.com for eligibility, redemption instructions/deadlines, odds, prize descriptions/restrictions, ARVs, and other details. Void where prohibited.
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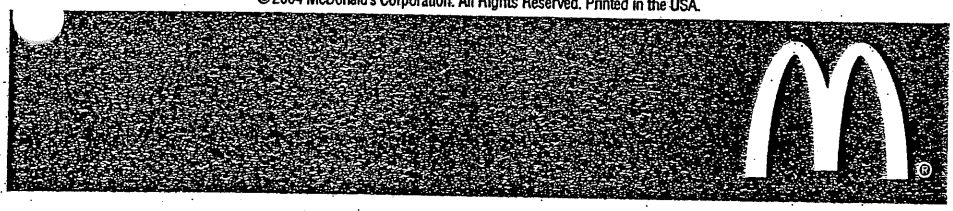
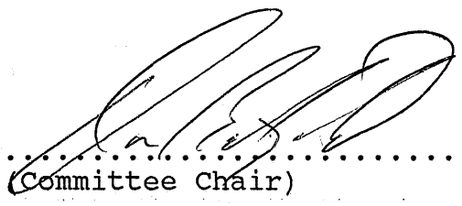


Senator Betzold from the Committee on Judiciary, to which was referred

S.F. No. 1416: A bill for an act relating to civil actions; providing for interlocutory appeal on the question of class certification in a civil action; specifying required damages in order to be a member of a class; proposing coding for new law in Minnesota Statutes, chapter 540.

Reports the same back with the recommendation that the bill do pass and be re-referred to the Committee on Finance. Report adopted.



.....
(Committee Chair)

April 7, 2005.....
(Date of Committee recommendation)

TO: Minnesota State Legislature
Senate Judiciary Committee
Don Betzold, Chairman; Wesley Skoglund, Vice Chair
Members: Satveer Chaudhary, Warren Limmer, Thomas Neuville, Ann Rest, David Hann, John Marty, Julianne Ortman

FROM: Minnesota Ski Area Operators
Leigh Nelson, President, Welch Village Resort

DATE: April 6, 2005

SUBJ: S.F. #415 Ski Safety Bill

The subject legislation, a bill defining the responsibilities of skiers and ski areas relative to safety, was authored by Senator Dallas Sams, and by Rep. Heidgerken in House File 1931. As a representative of the ski area operators in Minnesota, we wish to lend our support to passage of this bill in this legislative year.

A ski safety bill is critical to survival of our industry in the State of Minnesota for the following reasons:

1) In attached Table 1, a listing of Minnesota Ski Areas shows 15 remaining in operation while 20 have closed their doors.

2) As shown on the attached map, states with ski safety laws number 26, including the midwestern states of Michigan, Wisconsin, Ohio and North Dakota. Both Michigan and Wisconsin have more than 30 ski areas, and a lively winter tourism business.

3) A survey of nine of the 15 remaining Minnesota ski areas has revealed alarming litigation statistics in recent years:

a. Threatened lawsuits	-	225
b. Settlements out of Court	-	67
c. Summary judgments	-	15
d. Court Trials	-	2

Liability insurance rates for the industry have gone up nearly five-fold in the last 5 years.

Continued

4) The Minnesota Ski Area Business is worth saving, with an estimated 1.5 million annual winter visits, taxable revenue of over 50 million dollars, and a winter employment base of 5000 jobs. Without a ski safety bill, more losses of ski areas are anticipated within 5 years.

5) Passage of the ski safety bill could stimulate some areas, especially those in small municipalities, to once again open for business, and stimulate growth for the industry.

The ski safety bill S.F. 415 as proposed includes provisions for the American National Standards Institute B77.1 Code for ski lift operations, essential to their proper operation and maintenance. It also includes definition of inherent risk aspects of the sport, encouraging responsible behavior by skiers and snowboarders. We sincerely urge the Senate Judiciary Committee to consider the positive merits of the ski safety bill.

Sincerely yours,

Leigh Nelson for the Minnesota Ski Areas

Cc: Sen. Dallas Sams
328 Capital Building
75 Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

Rep. Bud Heidgerken
359 State Office Building
100 Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

MINNESOTA SKI INDUSTRY 2005

REMAINING

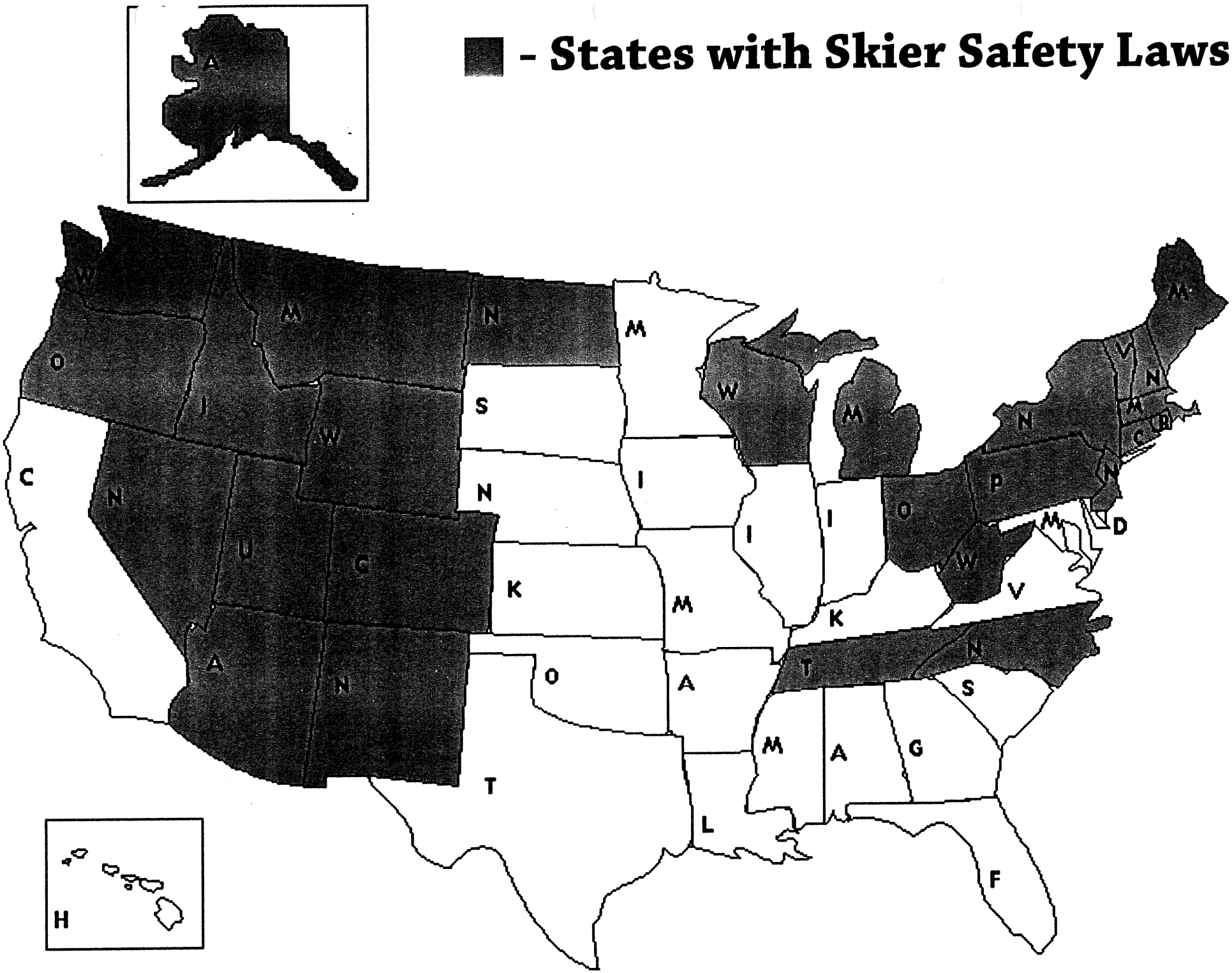
1. Afton Alps
2. Andes Tower Hills
3. Buck Hill
4. Buena Vista
5. Coffee Mill
6. Giants Ridge
7. Hyland Hills
8. Lutsen Mountains
9. Mont Du Lac
10. Mount Kato
11. Powder Ridge
12. Spirit Mountain
13. Steeplechase
14. Welch Village
15. Wild Mountain

15 Left!

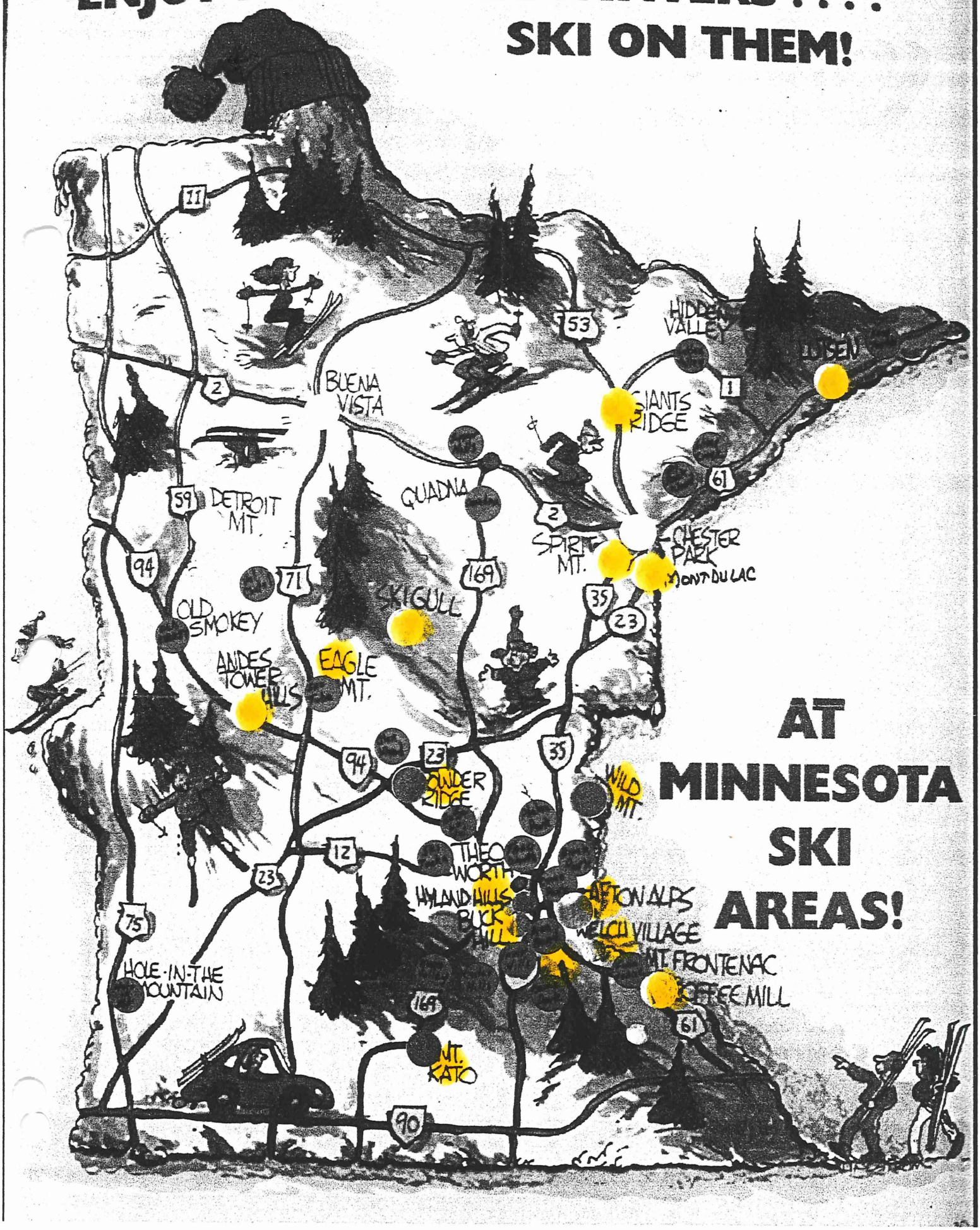
CLOSED

1. Battle Creek
2. Buffalo Valley
3. Cedar Hills
4. Como Park
5. Glenwood
6. Inver Hills
7. Lookout Mt.
8. Moon Valley
9. Mt. Rockwood
10. Mt. Frontenac
11. Nor Ski Hills
12. Phalen Park
13. Pine Bend
14. Quadna Mt.
15. Sawtooth Mt.
16. Silver Creek
17. Ski Tonka
18. Sugar Hills
19. Theodore Wirth
20. Val Chatel

20 Gone!


■ - States with Skier Safety Laws

ENJOY MINNESOTA WINTERS . . . . SKI ON THEM!



AT MINNESOTA SKI AREAS!

Senators Sams, Langseth, Koering and Johnson, D.E. introduced--
S.F. No. 415: Referred to the Committee on Judiciary.

A bill for an act

relating to civil liability; defining the responsibilities of ski area operators and skiers; defining the rights and liabilities between skiers and between a skier and a ski area operator; prohibiting actions for injuries resulting from the inherent dangers and risks of skiing; proposing coding for new law in Minnesota Statutes, chapter 604A.

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

Section 1. [LEGISLATIVE DECLARATION.]

The legislature finds that it is in the interest of the state of Minnesota to establish reasonable safety standards for the operation of ski areas and for the skiers using them. Realizing the dangers that inhere in the sport of skiing, regardless of any and all reasonable safety measures that can be employed, the purpose of this act is to further define the legal responsibilities of ski area operators and their agents and employees, to define the responsibilities of skiers using these ski areas, and to define the rights and liabilities existing between the skier and the ski area operator and between skiers.

Sec. 2. [604A.40] [DEFINITIONS.]

Subdivision 1. [TERMS.] For purposes of sections 604A.40 to 604A.48, the terms in this section have the meanings given them unless the context otherwise requires.

Subd. 2. [BASE AREA LIFT.] "Base area lift" means a passenger tramway that skiers ordinarily use without first using some other passenger tramway.

Subd. 3. [COMPETITOR.] "Competitor" means a skier actually engaged in competition or in practice for competition with or without the permission or consent of the ski area operator on a slope or trail or portion of a slope or trail designated by the ski area operator for the purpose of competition.

Subd. 4. [INHERENT DANGERS AND RISKS OF SKIING.] "Inherent dangers and risks of skiing" means those dangers or conditions that can cause personal injury or death and for which no recovery shall lie, which are an integral part of the sport of skiing, including, but not limited to:

(1) changing weather conditions;

(2) snow and trail surface conditions as they exist or may, from time-to-time, change as a result of weather changes, skier use, grooming and snow-making operations, and surface conditions, including ice, hard pack, powder, packed powder, wind packed, corn, crust, slush, cut-snow, and machine-made or groomed snow;

(3) surface or subsurface conditions such as bare ice spots, forest growth, rocks, stumps, streambeds, and trees, or other objects or conditions including injuries that are caused by or result from any of these objects or conditions referred to or reasonably included in this subdivision, and collisions with them;

(4) lift towers, signs, posts, fences or enclosures, hydrants, water pipes, and other manmade structures and their components, as well as injuries caused by or resulting from collisions with these objects or conditions; and

(5) variations in steepness or terrain, whether natural or as a result of slope design, grooming and snow-making operations including, but not limited to, roads and catwalks or other terrain modifications.

Nothing in this section limits or expands the liability of the ski area operator for injury to passengers by the use of ski lifts.

Subd. 5. [PASSENGER.] "Passenger" means a person who is lawfully using a passenger tramway.

Subd. 6. [PASSENGER TRAMWAY.] "Passenger tramway" means a device used to transport passengers uphill on skis by steel cables, chains, belts, or ropes, and usually supported by trestles or towers with one or more spans.

Subd. 7. [SKI AREA.] "Ski area" means all ski slopes or trails and other places under the control of a ski area operator and administered as a single enterprise within this state.

Subd. 8. [SKI AREA OPERATOR.] "Ski area operator" means an individual who owns, manages, or directs the operation of a passenger tramway and an individual, partnership, limited liability company, corporation, or other entity having operational responsibility for any ski areas.

Subd. 9. [SKIER.] "Skier" means a person using a ski area for the purpose of:

(1) skiing;

(2) sliding on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard ski, or any other device; or

(3) using any of the facilities of the ski area including, but not limited to, ski slopes and trails.

Subd. 10. [SKI SLOPES OR TRAILS.] "Ski slopes or trails" means those areas formally designated by the ski area operator to be used by skiers for any of the purposes in subdivision 9. The designation must be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that the areas be used by skiers for the purpose of skiing. Nothing in this subdivision or subdivision 9 implies that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in subdivision 9.

Sec. 3. [604A.41] [CIVIL ACTIONS.]

Subdivision 1. [GENERALLY.] A violation of a requirement of sections 604A.40 to 604A.48 constitutes negligence on the part of the person violating the requirement.

Subd. 2. [ACTION FOR INJURY RESULTING FROM INHERENT DANGERS AND RISKS OF SKIING.] A ski area operator is not liable for injury resulting from the inherent dangers and risks of

skiing.

Sec. 4. [604A.42] [DUTIES OF PASSENGERS.]

(a) No passenger shall board a passenger tramway if the passenger does not have sufficient physical dexterity, ability, and knowledge to use the facility safely or until the passenger has asked for and received information sufficient to enable the passenger to use the equipment safely. A passenger is required to follow any posted written or verbal instructions that are given regarding the use of the passenger tramway.

(b) No passenger shall:

(1) embark upon or disembark from a passenger tramway except at a designated area, except in the event of a stoppage of the passenger tramway and then only under the supervision of the operator, or unless reasonably necessary in the event of an emergency to prevent injury to the passenger or others;

(2) throw or expel any object from a passenger tramway while riding on the device;

(3) act, while riding on a passenger tramway, in a manner that may interfere with proper or safe operation of the passenger tramway;

(4) engage in any type of conduct that may contribute to or cause injury to a person;

(5) place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or any other surface lift any object that could cause another skier to fall;

(6) embark upon a passenger tramway marked as closed; or

(7) disobey any instructions permitted to be posted in accordance with sections 604A.40 to 604A.48 or any verbal instruction by the ski area operator regarding the proper or safe use of a passenger tramway, whether in an emergency or evacuation situation or otherwise.

Sec. 5. [604A.43] [DUTIES OF OPERATORS; SIGNS.]

Subdivision 1. [MANDATORY SIGNS.] Each ski area operator shall maintain a sign system with concise, simple, and pertinent information for the instruction of passengers. Signs must be prominently placed on each passenger tramway readable in

conditions of ordinary visibility and, where applicable, adequately lighted for nighttime passengers. Signs must be posted at or near the loading point of each passenger tramway, regardless of the type. Instructions and warnings for use of lifts shall be posted at the loading area and may include the duties and obligations of the passenger, as well as of the skier, including the skier's responsibility code, and other instructional signs. Signs must include the following:

FIXED GRIP CHAIRLIFTS

"Remove Pole Straps from Wrists - Until Unloaded" (at the loading area of lifts used primarily for skiers)

"Check for Loose Clothing and Equipment" (two signs required - one at the loading area and one in the vicinity of the "Prepare to Unload" sign)

"Load Here" (at loading point)

"Keep Ski Tips Up" (ahead of any point where skiers are carried and skis may come in contact with a platform or snow surface)

"Prepare to Unload" (not less than 50 feet ahead of the unloading area)

"Unload Here"

"Stop Gate" (if applicable)

Signs shall be visible at all points of downhill loading area.

SURFACE LIFTS

"Remove Pole Straps from Wrists - Until Unloaded" (at the loading area of lifts)

"Check for Loose Clothing and Equipment" (two signs required - one at the loading area and one in the vicinity of the "Prepare to Unload" sign)

"Load Here" (at loading point)

"Stay in Track"

"Prepare to Unload" (not less than 50 feet ahead of the unloading area)

"Unload Here"

"Stop Gate" (if applicable)

TOWS

"No Loose Scarves" (at the loading area)

"No Loose Clothing" (at the loading area)

"No Long Hair Exposed" (at the loading area)

"Stay in Track"

"Unload Here"

"Stop Gate" (if applicable)

ALL LIFT TYPES

Entrances to all machinery, operators' rooms, and attendants' rooms must be posted with a sign prohibiting the entry of unauthorized persons.

Instructions and warnings for the use of lifts must be posted at the loading area and may include the duties and obligations of the passenger, as well as the skier's responsibility code.

DETACHABLE LIFTS

Additional signs for gondola lifts (to be posted on the interior of each carrier).

The maximum capacity of each carrier in pounds and kilograms and the number of passengers (this shall also be posted at each loading area).

Instructions for procedure in emergencies.

ADDITIONAL SIGNS FOR DETACHABLE CHAIRLIFTS

"Remove Pole Straps From Wrists - Until Unloaded" (at the loading area of lifts used primarily for skiers)

"Check for Loose Clothing and Equipment" (two signs required - one at the loading area and one in the vicinity of the "Prepare to Unload" sign)

"Load Here" (at loading point)

"Keep Ski Tips Up" (ahead of any point where skiers are carried and skis may come in contact with a platform or snow surface)

"Prepare to Unload" (not less than 50 feet ahead of the unloading area)

"Unload Here"

"Stop Gate" (if applicable)

Signs must be visible at all points of downhill loading listing the downhill capacity of the lift.

Subd. 2. [OTHER SIGNS.] Other signs not specified by

subdivision 1 may be posted at the discretion of the ski area operator.

Subd. 3. [DAILY INSPECTIONS.] The ski area operator, before opening the passenger tramway to the public each day, shall inspect the passenger tramway for the presence and visibility of the signs required by subdivision 1.

Subd. 4. [EFFECT OF COMPLIANCE.] The extent of the responsibility of the ski area operator under this section is to post and maintain the signs required by subdivision 1.

Sec. 6. [604A.44] [DUTIES OF SKI AREA OPERATORS; SIGNS REQUIRED FOR SKIERS' INFORMATION.]

Subdivision 1. [GENERALLY.] Each ski area operator shall maintain a sign and marking system as set forth in this section in addition to that required by section 604A.43. All signs required by this section must be maintained so as to be readable and recognizable under conditions of ordinary visibility and where applicable, adequately lighted for nighttime visibility. Other warning or informational signs may be posted at the discretion of the ski area operator.

Subd. 2. [UPHILL LOADING POINT OF BASE AREA LIFT; REQUIRED SIGNS.] A sign must be placed in such a position as to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift depicting and explaining signs and symbols that the skier may encounter at the ski area as follows:

(1) the ski area's least difficult trails and slopes, designated by a green circle and the word "easiest";

(2) the ski area's most difficult trails and slopes, designated by a black diamond and the words "most difficult";

(3) all remaining trails and slopes must be designated by a blue square and the words "more difficult";

(4) caution areas, designated by a red exclamation point inside a yellow triangle with a red band around the triangle and the word "Caution" printed beneath the emblem. Ski area operators do not have an obligation to post caution signs at locations presenting inherent dangers or risks of skiing; and

(5) closed trails or slopes, designated by an octagonal sign with a red border around a white interior containing a black figure in the shape of a skier with a black band running diagonally across the sign from the upper right-hand side to the lower left-hand side and with the word "Closed" printed beneath the emblem.

Subd. 3. [CLOSED TRAILS OR SLOPES.] If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, the operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. Alternatively, the trail or slope or portion of it may be closed with ropes or fences.

Subd. 4. [TRAIL OR SLOPE SIGNS; DEGREE OF DIFFICULTY.] The ski area operator shall place a sign at or near the beginning of each trail or slope, that contains the appropriate symbol of the relative degree of difficulty of that particular trail or slope as set forth by subdivision 2. This requirement does not apply to a slope or trail designated "easiest" which to a skier is substantially visible in its entirety under conditions of ordinary visibility prior to the skier beginning to ski.

Subd. 5. [WARNING OF INHERENT DANGERS AND RISKS.] (a) Each ski area operator shall post and maintain signs that contain the warning notice specified in this subdivision. The signs must be placed in a clearly visible location at the ski area where the lift tickets and ski school lessons are sold and in such a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift. Each sign must be no smaller than three feet by three feet. Each sign must be white with black and red letters as specified in this subdivision. The words "WARNING" must appear on the sign in red letters. The warning notice specified in this subdivision must appear on the sign in black letters, with each letter to be a minimum of one inch in height.

(b) Every ski lift ticket sold or made available for sale to skiers by any ski area operator must contain in clearly

readable print the warning notice specified in this subdivision.

(c) The signs and the lift tickets described in this subdivision must contain the following warning notice:

"WARNING

Under Minnesota law, a skier assumes the risk of any injury to person or property resulting from any of the inherent dangers and risks of skiing and may not recover from any ski area operator for any injury resulting from any of the inherent dangers and risks of skiing. A list of these dangers and risks is available from the ski area operator."

Sec. 7. [604A.45] [SKI AREA OPERATORS; ADDITIONAL DUTIES.]

Subdivision 1. [LIGHTING ON SNOW-GROOMING VEHICLES.] Any motorized snow-grooming vehicle must be equipped with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

Subd. 2. [SNOWMOBILE AND ALL-TERRAIN VEHICLE REQUIREMENTS.] All snowmobiles and all-terrain vehicles operated on the ski slopes or trails of a ski area must be equipped with at least the following: one lighted headlamp, one lighted red taillamp, a brake system maintained in operable condition, and a fluorescent flag at least 40 square inches mounted at least four feet above the bottom of the tracks or wheels.

Subd. 3. [LIMITATIONS ON DUTY.] The ski area operator has no duty arising out of its status as a ski area operator to any skier skiing beyond the area boundaries, off of designated slopes or trails, or on closed trails.

Subd. 4. [REVOCATION OF SKIING PRIVILEGES.] The ski area operator, upon finding a person skiing in a careless or reckless manner, may revoke that person's skiing privileges. Nothing in sections 604A.40 to 604A.48 must be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness. However, ski area operators may post the skier's duties as set forth in the skier's responsibility code in locations likely to be seen by skiers.

Sec. 8. [604A.46] [DUTIES OF SKIERS.]

(a) Each skier solely has the responsibility for knowing the range of the skier's own ability to negotiate any ski slope or trail and to ski within the limits of this ability. Each skier expressly accepts and assumes the risk of and all legal responsibility for any injury to person or property resulting from any of the inherent dangers and risks of skiing, except that a skier is not precluded under sections 604A.40 to 604A.48 from suing another skier for any injury to person or property resulting from the other skier's acts or omissions. Notwithstanding any provision of law or statute to the contrary, the risk of a collision between skiers is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another.

(b) Each skier has the duty to maintain control of the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below the skier.

(c) No skier shall ski on a ski slope or trail that has been posted as "Closed" under sections 604A.44 and 604A.45.

(d) Each skier shall stay clear of snow-grooming equipment, all vehicles, lift towers, signs, and any other equipment or objects on or in the vicinity of the ski slopes and trails.

(e) Each skier has the duty to heed all posted information and other warnings including the requirements of the skier's responsibility code and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Each skier shall be presumed to have seen and understood all information posted in accordance with sections 604A.40 to 604A.48 near base area lifts, on the passenger tramways, and on the ski slopes or trails as the skier is skiing. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with sections 604A.44 and 604A.45.

(f) Each ski device used by a skier while skiing must be

further equipped with a device designed and installed to help reduce the risk of a runaway ski or device should the ski or device become detached from the skier.

(g) No skier shall cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator, nor shall a skier place any object in the uphill track.

(h) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski slope or trail.

(i) No person shall move uphill on any passenger tramway or use any ski slope or trail while the person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, or other drug or while the person is under the influence of alcohol, any controlled substance, or other drug.

(j) No skier involved in a collision with anyone shall leave the vicinity of the collision or the ski area before making a thorough inquiry for purposes of determining that no injury has occurred, and before giving the skier's name and current address to an employee of the ski area, operator, or a member of the voluntary ski patrol. However, the skier involved in a collision may leave the vicinity of the collision to secure aid for any person injured in the collision, in which event, the person so leaving the scene of the collision shall give the person's name and current address as required by this paragraph after securing such aid.

(k) No person shall knowingly enter upon public or private lands an adjoining ski area when the land has been closed by its owner and posted by the owner.

Sec. 9. [604A.47] [COMPETITION.]

The competitor shall be held to accept the risk of any and all course conditions including, but not limited to, weather and snow conditions, course construction or layout, and obstacles that a visual inspection should have revealed on or in the area

and adjoining areas of the course. No liability attaches to a ski area operator for injury to or death of any competitor proximately caused by these accepted risks or the inherent risks of the sport.

Sec. 10. [604A.48] [STATUTE OF LIMITATION.]

All actions against any ski area operator or its employees brought to recover damages for injury to person or property caused by the maintenance, supervision, or operation of a passenger tramway or a ski area shall be brought within two years after the claim for relief arises.

Senator ..... moves to amend S.F. No. 415 as follows:

Delete everything after the enacting clause and insert:

"Section 1. [LEGISLATIVE RECOGNITION AND DECLARATION.]

The legislature recognizes that skiing as a recreational sport is hazardous to skiers regardless of all feasible safety measures that can be taken. It further recognizes that a skier expressly assumes the risk of and legal responsibility for any losses or damages that result from the inherent risks of skiing, which include, but are not limited to, losses or damages caused by changing weather conditions; surface or subsurface snow or ice conditions; hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; bare spots, rocks, trees, stumps, and other forms of forest growth or debris; lift towers or other forms of towers and their components, either above or below the snow surface; variations in steepness or terrain, whether natural or as the result of snowmaking, slope design, freestyle terrain, jumps, catwalks, or other terrain modifications; any other objects and structures, including, but not limited to, passenger tramways and related structures and equipment, competition equipment, utility poles, fences, posts, ski equipment, slalom poles, ropes, out-of-bounds barriers and their supports, signs, ski racks, walls, buildings, and sheds; collisions between skiers; and plainly marked or otherwise visible snowmaking and snow-grooming equipment, snowmobiles, snow cats, and over-snow vehicles.

The legislature finds that it is in the interest of the state of Minnesota to establish reasonable safety standards for the operation of ski areas and for the skiers using them. Realizing the dangers that are inherent in the sport of skiing, regardless of any and all reasonable safety measures that can be employed, the purpose of this act is to further define the legal responsibilities of ski area operators and their agents and employees, to define the responsibilities of skiers using these ski areas, and to define the rights and liabilities existing between the skier and the ski area operator and between skiers.

Sec. 2. [604A.40] [DEFINITIONS.]

Subdivision 1. [TERMS.] For purposes of sections 604A.40 to 604A.50, the terms in this section have the meanings given them unless the context otherwise requires.

Subd. 2. [COMPETITOR.] "Competitor" means a skier actually engaged in competition or in practice for competition with or without the permission or consent of the ski area operator on a slope or trail or portion of a slope or trail designated by the ski area operator for the purpose of competition.

Subd. 3. [INHERENT DANGERS AND RISKS OF SKIING.] "Inherent dangers and risks of skiing" means those dangers or conditions that can cause personal injury or death and for which no recovery shall lie, which are an inherent part of the sport of skiing, including, but not limited to:

(1) changing weather conditions;

(2) snow and trail surface conditions as they exist or may, from time-to-time, change as a result of weather changes, skier use, grooming and snow-making operations, and surface conditions, including ice, hard pack, powder, packed powder, wind packed, corn, crust, slush, cut-snow, and machine-made or groomed snow;

(3) surface or subsurface conditions such as bare ice spots, forest growth, rocks, stumps, streambeds, and trees, or other objects or conditions including injuries that are caused by or result from any of these objects or conditions referred to or reasonably included in this subdivision, and collisions with them;

(4) lift towers, signs, posts, fences or enclosures, hydrants, water pipes, freestyle terrain, and other manmade structures and their components, as well as injuries caused by or resulting from collisions with these objects or conditions;

(5) variations in steepness or terrain, whether natural or as a result of slope design, grooming and snow-making operations including, but not limited to, roads and catwalks or other terrain modifications; and

(6) collisions between skiers.

Nothing in this section limits or expands the liability of

the ski area operator for injury to passengers by the use of ski lifts.

Subd. 4. [PASSENGER.] "Passenger" means a person who is lawfully using a passenger tramway.

Subd. 5. [PASSENGER TRAMWAY.] "Passenger tramway" means a device used to transport passengers uphill, whether on skis or other devices or without skis or other devices, or in cars on tracks or suspended in the air, by the use of steel cables, chains, or belts or by ropes, and that is usually supported by trestles or towers with one or more spans. "Passenger tramway" includes all of the following:

(1) aerial passenger tramway, a device used to transport passengers in several open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(2) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar devices;

(3) chair lift, a device on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans, or similar devices. Chair lifts need not include foot-rests or passenger restraint devices;

(4) J-bar, T-bar, or platter pull, devices that pull skiers riding on skis or other devices by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans, or similar devices;

(5) rope tow, a device with one span and no intermediate towers that pulls skiers riding skis or other devices as they grasp a rope manually, or similar devices;

(6) wire rope tow, a device with one span and no intermediate towers by which skiers are pulled on skis or other devices while manually grasping a bar attached to a wire hauling cable; and

(7) conveyor, a flexible moving element, including a belt that transports passengers on one path and returns underneath

the uphill portion.

The operation of a passenger tramway shall not constitute the operation of a common carrier.

Subd. 6. [SKI AREA.] "Ski area" means all ski slopes or trails and other places under the control of a ski area operator and administered as a single enterprise within this state.

Subd. 7. [SKI AREA OPERATOR.] "Ski area operator" means an individual who owns, manages, or directs the operation of a passenger tramway and an individual, partnership, limited liability company, corporation, or other entity having operational responsibility for any ski areas, including an agency of this state or of a political subdivision thereof.

Subd. 8. [SKIER.] "Skier" means a person using a ski area for the purpose of:

(1) skiing;

(2) sliding or jumping on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard ski, or any other device; or

(3) using any of the facilities of the ski area including, but not limited to, ski slopes and trails.

Subd. 9. [SKI SLOPES OR TRAILS.] "Ski slopes or trails" means those areas formally designated by the ski area operator to be used by skiers for any of the purposes in subdivision 8. The designation must be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that the areas be used by skiers for the purpose of skiing. Nothing in this subdivision or subdivision 8 implies that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in subdivision 8.

Subd. 10. [FREESTYLER.] "Freestyler" means a skier utilizing freestyle terrain marked with signage approved by the National Ski Areas Association.

Subd. 11. [FREESTYLE TERRAIN.] "Freestyle terrain" means, but is not limited to, terrain parks and terrain park features, such as jumps, rails, fun boxes, other constructed or natural

features, half-pipes, quarter-pipes, and freestyle-bump terrain.

Subd. 12. [TUBING PARK.] "Tubing park" means a ski slope designated and maintained for the exclusive use of skiers utilizing tubes to slide to the bottom of the course and serviced by a dedicated passenger tramway.

Sec. 3. [604A.41] [CIVIL ACTIONS.]

Subdivision 1. [GENERALLY.] A violation of a requirement of sections 604A.40 to 604A.50 constitutes negligence on the part of the person violating the requirement.

Subd. 2. [ACTION FOR INJURY RESULTING FROM INHERENT DANGERS AND RISKS OF SKIING.] (a) If a ski area operator complies with section 604A.42, clause (4), no liability attaches to the ski area operator for injury or death to any competitor or freestyler using a freestyle terrain, which injury or death is caused by course, venue, or area conditions that visual inspection should have revealed or by collision with a spectator, competition official, ski area personnel, or another competitor or freestyler.

(b) If a ski area operator complies with section 604A.42, clause (5), no liability attaches to a ski area operator for injury or death to any skier using a tubing park, which injury or death is caused by course design or maintenance or conditions that visual inspection should have revealed or by collision with another skier.

A ski area operator, a tramway passenger, freestyler, competitor, or skier is liable for losses or damages caused by the operator's, passenger's, freestyler's, competitor's, or skier's failure to fulfill any of the responsibilities required by sections 604A.40 to 604A.50. A ski area operator, a tramway passenger, freestyler, competitor, or skier is not liable for any losses or damages caused by another's failure to fulfill any of the responsibilities required of another by sections 604A.40 to 604A.50. A ski area operator, a tramway passenger, freestyler, competitor, or skier is not entitled to recover for any losses or damages caused by the operator's, passenger's, freestyler's, competitor's, or skier's failure to fulfill any of

the responsibilities required by sections 604A.40 to 604A.50.

Sec. 4. [640A.42] [DUTIES OF SKI AREA OPERATORS.]

The duties of a ski area operator to a skier with respect to any injury or death resulting in any way from an inherent risk of the sport are not those of the common law duty of premises owners to business invitees. A ski area operator has, however, the following responsibilities:

(1) to mark all trail maintenance vehicles and to furnish such vehicles with lights that must be in operation whenever the vehicles are working or are moving at or near ski slopes or trails, and must be furnished with an orange flag at least 40 square inches mounted at least four feet above the bottom of the track or wheels;

(2) to mark with a visible sign or other warning implement the location of any hydrant or similar equipment that is used in snowmaking operations and located at or near ski slopes or trails;

(3) to mark, at the base of a slope or hill where skiers embark on a passenger tramway serving the slope or hill or at the top of a trail or slope, such slopes, trails, and hills with signs indicating their relative degree of difficulty. The signs must be the type that are in current use by the industry;

(4) before the use of any portion of a freestyle terrain area made available by the ski area operator, to allow each freestyle skier or competitor an opportunity to reasonably inspect the course, venue, or area of the freestyle terrain; and

(5) to allow skiers using a tubing park visible access to the course.

Sec. 5. [604A.43] [DUTIES OF SKIERS.]

A skier has the following duties:

(1) to know the range of the skier's ability to negotiate any slope or trail or to use any passenger tramway that is associated with a slope or trail, to ski within the limits of the skier's ability, to ski only on designated slopes and trails, to maintain control of speed and course at all times while skiing, to heed all posted warnings, and to not cross the

track of a passenger tramway except at a designated area;

(2) to refrain from acting in a manner that may cause or contribute to the injury of another person, to refrain from causing a collision with any person or object while skiing, and to not place any object in a ski area that may cause another skier or a passenger to fall;

(3) when involved in a skiing accident in which another person is involved who needs medical or other assistance, to obtain assistance for the person, to notify the proper authorities, and to not depart from the scene of the accident without leaving personal identification;

(4) if the skier is a competitor, freestyler, or user of freestyle terrain, to assume the risk of all course, venue, or area conditions, including, but not limited to, weather and snow conditions; obstacles; course or feature location, construction, or layout; freestyle terrain configuration and conditions; and other courses, layouts, or configurations of the area to be used; and

(5) if the skier is using a tubing park, to assume the risk of collision with others on the course.

Sec. 6. [604A.44] [DUTIES OF PASSENGERS.]

(a) No passenger shall board a passenger tramway if the passenger does not have sufficient physical dexterity, ability, and knowledge to use the facility safely or until the passenger has asked for and received information sufficient to enable the passenger to use the equipment safely. A passenger is required to follow any posted written or verbal instructions that are given regarding the use of the passenger tramway.

(b) No passenger shall:

(1) embark upon or disembark from a passenger tramway except at a designated area, except in the event of a stoppage of the passenger tramway and then only under the supervision of the operator, or unless reasonably necessary in the event of an emergency to prevent injury to the passenger or others;

(2) throw or expel any object from a passenger tramway while riding on the device;

(3) act, while riding on a passenger tramway, in a manner that may interfere with proper or safe operation of the passenger tramway;

(4) engage in any type of conduct that may contribute to or cause injury to a person;

(5) place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or any other surface lift any object that could cause another skier to fall;

(6) embark upon a passenger tramway marked as closed; or

(7) disobey any instructions permitted to be posted in accordance with sections 604A.40 to 604A.50 or any verbal instruction by the ski area operator regarding the proper or safe use of a passenger tramway, whether in an emergency or evacuation situation or otherwise.

Sec. 7. [604A.45] [DUTIES OF OPERATORS.]

Subdivision 1. [ANS B77.1 STANDARD.] Passenger tramways in the state of Minnesota shall comply with the provisions of the 1999 edition of the American National Standard B77.1 for Passenger Ropeways or the current edition, if updated by the American National Standards Institute. Because of the diverse nature of the industries and installations using the ANS B77.1, compliance with future editions shall commence one year after the approval date of the revised standard.

This standard describes in detail signage recommended for all types of tramway systems. Each ski area operator shall maintain a sign system with concise, simple, and pertinent information for the instruction of passengers. Signs must be prominently placed on each passenger tramway readable in conditions of ordinary visibility and, where applicable, adequately lighted for nighttime passengers. Signs must be posted at or near the loading point of each passenger tramway, regardless of the type. Instructions and warnings for use of lifts shall be posted at the loading area and may include the duties and obligations of the passenger, as well as the skier, including the skier's responsibility code, and other instructional signs.

Subd. 2. [OTHER SIGNS.] Other signs not specified by subdivision 1 may be posted at the discretion of the ski area operator.

Subd. 3. [EFFECT OF COMPLIANCE.] The extent of the responsibility of the ski area operator under this section is to post and maintain the signs required by subdivision 1.

Sec. 8. [604A.46] [SKIERS' INFORMATION SIGNAGE.]

Subdivision 1. [GENERALLY.] Each ski area operator shall maintain a sign and marking system as set forth in this section in addition to that required by section 604A.45. All signs required by this section must be maintained so as to be readable and recognizable under conditions of ordinary visibility and where applicable, adequately lighted for nighttime visibility. Other warning or information signs may be posted at the discretion of the ski area operator.

Subd. 2. [UPHILL LOADING POINT OF BASE AREA LIFT; REQUIRED SIGNS.] A sign must be placed in such a position as to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift depicting and explaining signs and symbols that the skier may encounter at the ski area as follows:

(1) the ski area's least difficult trails and slopes, designated by a green circle and the word "easiest";

(2) the ski area's most difficult trails and slopes, designated by a black diamond and the words "most difficult";

(3) all remaining trails and slopes must be designated by a blue square and the words "more difficult";

(4) caution areas, designated by a red exclamation point inside a yellow triangle with a red band around the triangle and the word "Caution" printed beneath the emblem. Ski area operators do not have an obligation to post caution signs at locations presenting inherent dangers or risks of skiing; and

(5) closed trails or slopes, designated by an octagonal sign with a red border around a white interior containing a black figure in the shape of a skier with a black band running diagonally across the sign from the upper right-hand side to the

lower left-hand side and with the word "Closed" printed beneath the emblem.

Subd. 3. [CLOSED TRAILS OR SLOPES.] If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, the operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. Alternatively, the trail or slope or portion of it may be closed with ropes or fences.

Subd. 4. [TRAIL OR SLOPE SIGNS; DEGREE OF DIFFICULTY.] The ski area operator shall place a sign at or near the beginning of each trail or slope, that contains the appropriate symbol of the relative degree of difficulty of that particular trail or slope as set forth by subdivision 2. This requirement does not apply to a slope or trail designated "easiest" which to a skier is substantially visible in its entirety under conditions of ordinary visibility prior to the skier beginning to ski.

Subd. 5. [WARNING OF INHERENT DANGERS AND RISKS.] (a) Each ski area operator shall post and maintain signs that contain the warning notice specified in this subdivision. The signs must be placed in a clearly visible location at the ski area where the lift tickets and ski school lessons are sold and in such a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift.

(b) Every ski lift ticket sold or made available for sale to skiers by any ski area operator must contain in clearly readable print the warning notice specified in this subdivision.

(c) The signs and the lift tickets described in this subdivision must contain the following warning notice:

"WARNING

Under Minnesota law, a skier assumes the risk of any injury to person or property resulting from any of the inherent dangers and risks of skiing and may not recover from any ski area operator for any injury resulting from any of the inherent dangers and risks of skiing. A list of these dangers and risks is available from the ski area operator."

Sec. 9. [604A.47] [SKI AREA OPERATORS; DUTIES.]

Subdivision 1. [LIGHTING ON SNOW-GROOMING VEHICLES.] Any motorized snow-grooming vehicle must be equipped with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

Subd. 2. [SNOWMOBILE AND ALL-TERRAIN VEHICLE REQUIREMENTS.] All snowmobiles and all-terrain vehicles operated on the ski slopes or trails of a ski area must be equipped with at least the following: one lighted headlamp, one lighted red taillamp, a brake system maintained in operable condition, and an orange flag at least 40 square inches mounted at least four feet above the bottom of the tracks or wheels.

Subd. 3. [LIMITATIONS ON DUTY.] The ski area operator has no duty arising out of its status as a ski area operator to any skier skiing beyond the area boundaries, off of designated slopes or trails, or on closed trails.

Subd. 4. [REVOCATION OF SKIING PRIVILEGES.] The ski area operator, upon finding a person skiing in a careless or reckless manner, may revoke that person's skiing privileges. Nothing in sections 604A.40 to 604A.50 creates an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness. However, ski area operators may post the skier's duties as set forth in the skier's responsibility code in locations likely to be seen by skiers.

Sec. 10. [604A.48] [DUTIES OF SKIERS.]

(a) Each skier solely has the responsibility for knowing the range of the skier's own ability to negotiate any ski slope or trail and to ski within the limits of this ability. Each skier expressly accepts and assumes the risk of and all legal responsibility for any injury to person or property resulting from any of the inherent dangers and risks of skiing, except that a skier is not precluded under sections 604A.40 to 604A.50 from suing another skier for any injury to person or property resulting from the other skier's acts or omissions. Notwithstanding any provision of law or statute to the contrary,

the risk of a collision between skiers is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another.

(b) Each skier has the duty to maintain control of the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below the skier.

(c) No skier shall ski on a ski slope or trail that has been posted as "Closed" under sections 604A.46 and 604A.47.

(d) Each skier shall stay clear of snow-grooming equipment, all vehicles, lift towers, signs, and any other equipment or objects on or in the vicinity of the ski slopes and trails.

(e) Each skier has the duty to heed all posted information and other warnings including the requirements of the skier's responsibility code and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Each skier shall be presumed to have seen and understood all information posted in accordance with sections 604A.40 to 604A.50 near base area lifts, on the passenger tramways, and on the ski slopes or trails as the skier is skiing. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with sections 604A.45 and 604A.46.

(f) Each ski device used by a skier while skiing must be further equipped with a device designed and installed to help reduce the risk of a runaway ski or device should the ski or device become detached from the skier.

(g) No skier shall cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator, nor shall a skier place any object in the uphill track.

(h) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski

slope or trail.

(i) No person shall move uphill on any passenger tramway or use any ski slope or trail while the person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, or other drug or while the person is under the influence of alcohol, any controlled substance, or other drug.

(j) No skier involved in a collision with anyone shall leave the vicinity of the collision or the ski area before making a thorough inquiry for purposes of determining that no injury has occurred, and before giving the skier's name and current address to an employee of the ski area, operator, or a member of the voluntary ski patrol. However, the skier involved in a collision may leave the vicinity of the collision to secure aid for any person injured in the collision, in which event, the person so leaving the scene of the collision shall give the person's name and current address as required by this paragraph after securing such aid.

(k) No person shall knowingly enter upon public or private lands an adjoining ski area when the land has been closed by its owner and posted by the owner.

Sec. 11. [604A.49] [COMPETITION.]

The competitor shall be held to accept the risk of any and all course conditions including, but not limited to, weather and snow conditions, course construction or layout, and obstacles that a visual inspection should have revealed on or in the area and adjoining areas of the course. No liability attaches to a ski area operator for injury to or death of any competitor proximately caused by these accepted risks or the inherent risks of the sport.

Sec. 12. [604A.50] [STATUTE OF LIMITATION.]

All actions against any ski area operator or its employees brought to recover damages for injury to person or property caused by the maintenance, supervision, or operation of a passenger tramway or a ski area shall be brought within two years after the claim for relief arises."

Delete the title and insert:

"A bill for an act relating to civil liability; defining the responsibilities of ski area operators and skiers; defining the rights and liabilities between skiers and between a skier and a ski area operator; prohibiting actions for injuries resulting from the inherent dangers and risks of skiing; proposing coding for new law in Minnesota Statutes, chapter 604A."

A bill for an act

relating to public safety; expanding the protection against employer retaliation for crime victims; amending Minnesota Statutes 2004, sections 518B.01, by adding a subdivision; 609.748, by adding a subdivision; 611A.036.

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

Section 1. Minnesota Statutes 2004, section 518B.01, is amended by adding a subdivision to read:

Subd. 23. [PROHIBITION AGAINST EMPLOYER RETALIATION.] (a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this chapter. Except in cases of imminent danger to the health or safety of the employee or the employee's child, an employee who is absent from the workplace shall give reasonable advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages

and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court. Total damages recoverable under this subdivision shall not exceed lost wages for six weeks.

[EFFECTIVE DATE.] This section is effective August 1, 2005, and applies to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2004, section 609.748, is amended by adding a subdivision to read:

Subd. 10. [PROHIBITION AGAINST EMPLOYER RETALIATION.] (a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this section. Except in cases of imminent danger to the health or safety of the employee or the employee's child, an employee who is absent from the workplace shall give reasonable advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and

disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court. Total damages recoverable under this subdivision shall not exceed lost wages for six weeks.

[EFFECTIVE DATE.] This section is effective August 1, 2005, and applies to crimes committed on or after that date.

Sec. 3. Minnesota Statutes 2004, section 611A.036, is amended to read:

611A.036 [PROHIBITION AGAINST EMPLOYER RETALIATION.]

Subdivision 1. [VICTIM OR WITNESS.] An employer ~~or employer's agent who threatens to discharge or discipline~~ must allow a victim or witness, ~~or who discharges, disciplines, or causes a victim or witness to be discharged from employment or disciplined because the victim or the witness~~ who is subpoenaed or requested by the prosecutor to attend court for the purpose of giving testimony, ~~is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to offer job reinstatement to any victim or witness discharged from employment in violation of this section, and to pay the victim or witness back wages as appropriate~~ reasonable time off from work to attend criminal proceedings related to the victim's case.

Subd. 2. [VICTIM'S SPOUSE OR NEXT OF KIN.] An employer must allow a victim of a heinous crime, as well as the victim's spouse or next of kin, reasonable time off from work to attend criminal proceedings related to the victim's case.

Subd. 3. [PROHIBITED ACTS.] An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to attend a criminal proceeding pursuant to this section.

Subd. 4. [VERIFICATION; CONFIDENTIALITY.] An employee who is absent from the workplace shall give reasonable advance notice to the employer, unless an emergency prevents the

employee from doing so. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

Subd. 5. [PENALTY.] An employer who violates this section is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to offer job reinstatement to any employee discharged from employment in violation of this section, and to pay the employee back wages as appropriate.

Subd. 6. [CIVIL ACTION.] In addition to any remedies otherwise provided by law, an employee injured by a violation of this section may bring a civil action for recovery for damages, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court. Total damages recoverable under this section shall not exceed lost wages for six weeks.

Subd. 7. [DEFINITION.] As used in this section, "heinous crime" means:

(1) a violation or attempted violation of section 609.185 or 609.19;

(2) a violation of section 609.195 or 609.221; or

(3) a violation of section 609.342, 609.343, or 609.344, if the offense was committed with force or violence or if the complainant was a minor at the time of the offense.

[EFFECTIVE DATE.] This section is effective August 1, 2005, and applies to crimes committed on or after that date.

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State Laws Can Help Survivors At Work

TIME OFF FROM WORK FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

In recent years, several states have enacted laws that provide domestic violence victims (and in some states, victims of sexual assault and stalking) time off from work to address the violence in their lives. *The details of each state's laws vary significantly.* In most cases leave is unpaid. Some laws provide leave only for court appearances; others provide leave to obtain support services, medical or legal assistance, or safe housing as well. Some states that have not passed domestic violence leave laws have victim protection laws that prohibit an employer from firing crime victims who take time off from work to appear in criminal court. Additionally, in certain circumstances, victims of domestic violence, stalking, or sexual assault may be able to take leave under the federal Family and Medical Leave Act (FMLA) or under comparable state or local laws. For more on FMLA protections, see Legal Momentum's Employment Rights for Survivors of Abuse fact sheets: "Taking Leave from Work for Your Own Serious Medical Condition" and "Taking Leave from Work for a Family Member's Serious Health Condition."

This fact sheet is divided into two main sections. The first section outlines existing state and county laws. The second section outlines proposed state legislation on this topic. Each of these sections is further divided into those laws or bills specific to domestic (and, where applicable, sexual) violence and those laws or bills that relate to crime victims more generally.

STATE AND COUNTY LAWS

Domestic and Sexual Violence Employment Leave Laws

CALIFORNIA: Cal. Lab. Code §§ 230 & 230.1.
An employer may not discharge or discriminate or retaliate against an employee who is a victim of domestic violence or sexual assault for taking time off to obtain or attempt to obtain a restraining order or any other judicial relief to help ensure his or her health, safety, or welfare or that of his or her child. The employee must give the employer reasonable notice unless advance notice is not feasible. The employer may require that the employee provide documents or other certification verifying that the employee was a victim of domestic violence or sexual assault. The employer is also required, to the extent allowed by law, to maintain the confidentiality of an employee requesting such leave. In addition, employers with 25 or more employees may not discharge or discriminate or retaliate against an employee who is a victim of domestic violence or sexual assault for taking time off to seek medical attention, obtain services from a domestic violence shelter or program or rape crisis center, obtain psychological counseling, participate in safety planning, or relocate. An employee who is discriminated against or discharged for exercising his or her rights under this law may be entitled to reinstatement and reimbursement for lost wages and benefits. The provisions applying to larger employers do not create a right for employees to take unpaid leave that exceeds the amount of leave allowed under, or is in addition to leave permitted by, the federal FMLA (which permits up to 12 weeks of leave).

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COLORADO: Colo. Rev. Stat. § 24-34-402.7.
Employers who employ 50 or more employees must permit an employee of twelve months or more who is a victim of domestic abuse, sexual assault, stalking, or other domestic violence-related crimes to take up to three days of leave to seek a restraining order, obtain medical care or counseling, locate safe housing or make her home secure, or seek legal assistance and prepare for or attend court-related proceedings. Prior to taking this leave, the employee must exhaust annual, vacation, personal leave, and sick leave, unless the employer waives this requirement. The employee shall provide appropriate advance notice "except in cases of imminent danger to the health or safety of the employee" and may be required to provide documentation.

FLORIDA, Miami-Dade County: Miami-Dade Cty., Fla. Code. § 11A-61.
This county law entitles domestic violence victims to up to 30 days of unpaid leave for medical or dental care, legal assistance, court appearances, counseling or supportive services, or any other arrangements needed because of domestic violence. This law includes leave to obtain orders of protection and for divorce, child custody and child support proceedings. The employee is required to exhaust all paid vacation and personal leave prior to taking leave under this provision. The employer may request certification from a health care provider, attorney of record, counselor, law enforcement agency, clergy, or domestic violence service provider that "the employee is being subjected to domestic or repeat violence and needs time off" for one of the permitted reasons.

HAWAII: Haw. Rev. Stat. § 378-72.
An employee may take unpaid leave for a "reasonable period of time"—up to 30 days per calendar year if the employer has 50 or more employees, and up to 5 days for smaller employers—if the employee or the employee's minor child is a victim of domestic abuse, sexual assault, or stalking, provided the leave is to seek medical attention, obtain victim services, obtain counseling, temporarily or permanently relocate, or take legal action. When the leave is sought for medical attention, the employer may request a doctor's certificate (including an estimate of the number of days of leave needed). When the leave is for non-medical reasons and is not more than five days, the employer may require a signed statement from the employee regarding the violence and establishing that the leave is for one of the enumerated purposes. If non-medical leave exceeds five days, the employer may require (1) a signed written statement from "a victim services organization, from the employee's attorney or advocate, from a minor child's attorney or advocate, or a medical or other professional from whom the employee or the employee's minor child has sought assistance related to the domestic or sexual violence; or (2) a police or court record related to the domestic or sexual violence." The employee shall provide reasonable notice of intention to take leave unless "not practicable due to imminent danger." The employee must exhaust all other paid and unpaid leave before these provisions apply. All information provided to the employer is confidential unless the employee consents or disclosure is required by law.

ILLINOIS: 820 Ill. Comp. Stat. 180/1-180/45.
An employee who is a victim of domestic or sexual violence or has a family or household member who is a victim of such violence and is employed by a private employer with over 50 employees—or by a state or local government or school district—may take up to 12 weeks unpaid leave during any 12 month period to address the violence. This leave may be used to seek medical attention or counseling, obtain services from a victim services organization, participate in safety planning or relocation, or seek legal assistance. An employee may use paid leave that is otherwise available for time taken off pursuant to this provision. Unless impracticable, the employee shall provide 48-hour notice of the leave. The employer may require the employee to provide certification of the violence and that the leave is for an enumerated purpose. The

certification requirement may be satisfied by the employee's sworn statement and by documentation from a service provider who has assisted the employee or his or her family member in addressing the violence, by police or court records, or by other corroborating evidence. Upon return from leave, the employee shall be entitled to restoration to the original job or to an equivalent position. Employers cannot discriminate or retaliate against persons who exercise their rights under this law or against persons simply because they are victims. Additionally, a covered employer must make "reasonable accommodation to the known limitations" resulting from the violence. (These provisions are described in greater detail on the "Discrimination Against Victims of Domestic or Sexual Violence" fact sheet.) Absent written consent by the employee or statutory requirements, all information provided to the employer pursuant to this Section shall be held in the strictest confidence by the employer. An employee whose rights have been violated may bring an administrative complaint in the state Department of Labor.

MAINE: 26 Me. Rev. Stat. § 850.
Employers must grant "reasonable and necessary" leave when an employee, or a child, parent or spouse of the employee, is a victim of domestic violence, stalking, sexual assault, violence, or assault. The leave may be used to: prepare for and attend court proceedings, receive medical treatment, or obtain other necessary services to remedy a crisis caused by the violence. Employers are prohibited from sanctioning employees for exercising their rights under this section. There is a $200 civil penalty for violation. The employer is not required to grant leave if the employer would sustain "undue hardship," if the leave request was not made "within a reasonable time under the circumstances," or if the "requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer."

NEW YORK: N.Y. Penal Law § 215.14.
Employers may not discharge or penalize a victim of a crime who takes time off to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection. The employee must give prior-day notice and the employer may withhold wages and require verification.

NEW YORK CITY: Local Law 75 of 2003. (Codified at N.Y.C. Admin. Code § 8-107.1)
This New York City law requires employers to provide "reasonable accommodations" to victims of domestic violence, sex offenses, and stalking to permit them to perform the "essential requisites" of their job, unless providing such an accommodation would be an "undue hardship" on the employer. The legislative history of the law makes clear that the Council intended that reasonable accommodations under this provision could include providing victims with time off or a modified schedule.

NORTH CAROLINA: 2004 N.C. Sess. Law 186 § 18.1 (to be codified at N.C. Gen. Stat. chap. 50-B-5.5); 2004 N.C. Sess. Law 165 § 1 (to be codifed at N.C. Gen. Stat. 95-270a).
An employer is prohibited from discharging, demoting, disciplining, or denying a promotion to an employee who takes "reasonable time off" from work to obtain or attempt to obtain a protective order or other relief under the state's domestic violence law. An employee who is absent to such seek relief must follow the employer's usual time off policy or practices; if the employer generally requires advance notice of absences, an employee must provide advance notice "unless an emergency prevents the employee from doing so." An employer may require the employee to provide documentation showing the reason for the employee's absence. **Signed by the governor Aug. 12, 2004; effective Oct. 1, 2004.**

Crime Victim Employment Leave Laws

Many state laws require employers to permit an employee who is a victim of a crime leave to attend court, at least under certain circumstances, such as responding to a subpoena, responding to a request from the prosecutor; or serving as a witness. Several states have exceptions if granting leave would create a hardship for the employer. In many states, the leave is either unpaid or the employer can require the employee to use accrued sick time, vacation time, or personal time. Some specifically provide that the victim may ask for assistance in explaining to her employer that she needs to attend court ("employer intercession services"). Below is a list of the states that have such laws and some important features of the laws.

ALABAMA: Ala. Code § 15-23-81 (allows victim to respond to subpoena to testify in criminal proceeding or participate in reasonable preparation for a criminal proceeding)

ALASKA: Alaska Stat. § 12.61-017 (allows victim to respond to subpoena and to attend court proceedings to give testimony; leave is unpaid)

ARIZONA: Ariz. Rev. Stat. § 13-4439 (for criminal offenses) & Ariz. Rev. Stat. § 8-420 (2004) (specifically for juvenile offenses) (leave may be unpaid or employer may require victim to use accrued paid leave; exception for undue hardship to employer)

ARKANSAS: Ark. Code Ann. § 16-90-1105 [If browser says unable to display page, press refresh button.]

COLORADO: Colo. Rev. Stat. § 24-4.1-303(8) (allows victim to respond to a subpoena or participate in trial preparation)

CONNECTICUT: Conn. Gen. Stat. § 54-85b (allows employee to attend court or participate in police investigation for crime against employee or employee's minor child) (§54-85d gives a similar protection to a family member or designee of a homicide victim.)

DELAWARE: Del. Code Ann. Tit. 11 § 9409 (allows victim to respond to a subpoena, participate in trial preparation, or attend trial proceedings as reasonably necessary to protect the victim's interests)

FLORIDA: Fla. Stat. § 92.57 (allows victim to respond to a subpoena only)

GEORGIA: Ga. Code Ann. § 34-1-3 (allows victim to respond to court order such as a subpoena or jury duty; employer may require "reasonable notification" by the employee)

HAWAII: Haw. Rev. Stat. § 621.10.5 (allows victim to respond to subpoena, testify, attend court as a prospective witness; allows reasonable attorneys fees if an employee sues for violation of this law and prevails)

INDIANA: Ind. Code 35-44-3-11.1 (allows victim to respond to a subpoena only)

IOWA: Iowa Code § 915.23 (allows victim to serve as witness in criminal case; allows reasonable attorneys fees and court costs if an employee sues for violation of this law and prevails)

MARYLAND: Md. Code Ann. Crim. Proc. § 11-102 [Under Article, click on "Criminal Procedure"; under selection, enter "11-102"] or Md. Code Ann. Cts. & Jud. Proc. § 9-205 [Under Article, click on "Courts and Judicial Procedure"; under selection, enter "9-205"] (allows victim to respond to a subpoena or attend proceedings the employee has a right to attend, as defined by Maryland law)

MASSACHUSETTS: Mass Gen. Laws Ch. 258B, § 3(l) and Mass Gen. Laws § 268-14(b) (allows leave to respond to subpoena)

MICHIGAN: Mich. Comp. Laws § 780.762 and Mich Comp. Laws § 780.790 (allows victim leave to give testimony in court)

MINNESOTA: Minn. Stat. Ann. § 611A.036 (allows employee to give testimony in court as victim or witness)

MISSISSIPPI: Miss. Code Ann. § 99-43-45 (allows victim to respond to subpoena or participate in reasonable preparation for court proceedings)

MISSOURI: Rev. Stat. Mo. § 595.209(1)(14) (allows a witness, victim, or victim's immediate family to respond to a subpoena or to participate in preparation for a criminal proceeding)

MONTANA: Mont. Code Ann., § 46-24-205(3) (2003) (allows victim or a member of the victim's family to participate in preparation for or attendance at a criminal justice proceeding; also provides for employer intercession services)

NEVADA: Nev. Rev. Stat. § 50.070 (2003) (allows witness or person summoned to appear as a witness to testify; allows reasonable attorneys fees if an employee sues for violation of this law and prevails)

NORTH DAKOTA: N.D. Cent. Code § 27-09.1-17 (allows employee to serve as witness or juror without adverse job outcome)

OHIO: Ohio Rev. Code Ann. § 2930.18 [On left of screen, click on Title XXIX Crimes-Procedure] (general crime) & Ohio Rev. Code Ann. § 2151.121.1 [On left of screen, click on XXI Juvenile Court] (extends protection to juvenile court and delinquency hearings) (allows victim, victim's family members, and/or victim's representative to participate in trial preparation and attend trial proceedings; such protected leave is generally unpaid)

PENNSYLVANIA: 18 Pa. Code § 4957 (allows employee to testify as witness or victim of a crime; such leave is unpaid)

RHODE ISLAND: R.I. Gen. Laws § 12-28-10 (specific to employment protection for victims who seek protective orders) & R.I. Gen. Laws § 12-28-13 (employment protection for victims of crimes to attend court proceedings)

SOUTH CAROLINA: S.C. Code Ann. § 16-3-1550 (allows victim and witness to respond to subpoena)

TENNESSEE: Tenn. Code Ann. §4-4-122 (only applies to state agencies as employers; employers are not allowed to undertake an adverse employment decision because the employee/victim of a criminal offense takes any lawful action to cause or assist in causing the arrest, prosecution and conviction of the perpetrator of such offense)

UTAH: Utah Code § 78-11-26 (allows employee to respond to a subpoena; if employee prevails in civil suit for violation, reasonable attorneys fees are allowed)

VERMONT: 13 Vt. Stat. Ann. § 5313 (allows victim, victim's family member, and victim's representative to respond to a subpoena)

VIRGIN ISLANDS: 34 V.I.C. § 203(e) (allows victim or witness to respond to subpoena without fear of retaliation or loss of wages from employer)

VIRGINIA: Va. Code Ann. § 18.2-465.1 (allows employee to respond to summons or subpoena and attend future proceedings as required by court in writing; allows employee to serve on a jury)

WYOMING: Wyo. Stat. Ann. § 1-40-209(a) (allows victim or witness to respond to a subpoena; allows employee to request employer intercession services)

WISCONSIN: Wis. Stat. § 103.87 (only prevents an employee from being discharged for missing work to respond to a subpoena; employee must notify employer of need to miss work to testify on or before the first business day after receipt of the subpoena)

Additional states have laws that encourage employers not to take adverse actions against victims for missing work to testify or provide that the victim may ask for assistance in explaining to her employer that she needs to attend court ("employer intercession services"). These laws are suggestive, rather than mandatory.

COLORADO: Colo. Rev. Stat. 24-4.1-302.5(n)
FLORIDA: Fla. Stat. Ann. § 960.001(i)
ILLINOIS: 725 Ill. Comp. Stat. 120/5(a)(2)
KENTUCKY: Ky. Rev. Stat. Ann. § 421.500(8)
LOUSIANA: La. Rev. Stat. Ann. § 46:1844(E)
NEBRASKA: Neb. Rev. Stat. § 81-1848(2)(h)
NEVADA: Nev. Rev. Stat. § 178.5694(1)(2004)
NEW JERSEY: N.J. Stat. Ann. § 52:4B-44(b)(13)
NEW MEXICO: N.M. Stat. Ann. § 31-26-4(J) [If browser says unable to display page, press refresh button.] & N.M. Const. Art. II, Sec. 24(A)(1) [for victims of specific crimes only]
NORTH CAROLINA: N.C. Gen. Stat. § 15A-825(4)
NORTH DAKOTA: N.D. Cent. Code § 12.1-34-02(6)
OKLAHOMA: 19 Okla. Stat. § 215.33(8)
RHODE ISLAND: R.I. Gen. Laws § 12-28-3(a)(7)
TEXAS: Tex. Code Crim. Proc. Art. 56.02(a)(10)
UTAH: Utah Code Ann. § 77-37-3(1)(g)
VIRGINIA: Va. Code Ann. § 19.2-11.01(A)(3)(a)
WASHINGTON: Wash. Rev. Code § 7.69.030(8)
WEST VIRGINIA: W. Va. Code § 61-11A-6(a)(8)
WISCONSIN: Wis. Stat. § 950.04(1v)(bm)

RECENT LEGISLATIVE PROPOSALS

The following legislation has been introduced in the current or prior legislative sessions. The contents of the bills vary and the status of a particular bill may change very quickly. For more information about each bill, you may contact Legal Momentum or the legislative information service at your state or city legislature, or consult your legislature's web page.

Domestic and Sexual Violence Employment Leave

LOUISIANA: H.B. 242, 2004 Reg. Sess. (La. 2004).
An employee who is a victim of domestic or sexual violence or has a family or household member who is a victim of such violence and is employed by a private employer with over 50 employees—or by a state or local government or school district—may take up to 6 weeks unpaid leave during any 12 month period to address the violence. This leave may be used to seek medical attention or counseling, obtain services from a victim services organization, participate in safety planning or relocation, or seek legal assistance. Unless impracticable, the employee shall provide 48-hour notice of the leave. The employer may require the employee to provide certification of the violence and that the leave is for an enumerated purpose. The certification requirement may be satisfied by the employee's sworn statement and by documentation from a service provider who has assisted the employee or his or her family member in addressing the violence, by police or court records, or by other corroborating evidence. Upon return from leave, the employee shall be entitled to restoration to the original job or to an equivalent position. Employers cannot discriminate or retaliate against persons who exercise their rights under this law. Absent written consent by the employee or statutory requirements, all information provided to the employer pursuant to this Section shall be held in the strictest confidence by the employer. An employee whose rights have been violated may bring an administrative complaint in the state Department of Labor. Additional provisions of this bill would address discrimination against victims more generally; these are described in greater detail on the "Discrimination Against Victims of Domestic or Sexual Violence" fact sheet.

KENTUCKY: H.B. 403, 2004 Reg. Sess. (Ky. 2004).
An employer is prohibited from discharging, or discriminating or retaliating against, an employee who is a victim of domestic violence and abuse, stalking, or sexual assault for taking time off to obtain or attempt to obtain judicial relief addressing the violence. The employee must give the employer reasonable notice unless advance notice is not feasible. When an unscheduled absence occurs, the employer may require certification of the violence. The certification requirement may be satisfied by a police report, a court order or other evidence from the court or prosecuting attorney that the employee has appeared in court, or documentation from a relevant service provider. The employer is also required, to the extent allowed by law, to maintain the confidentiality of an employee requesting such leave. In addition, employers with 25 or more employees may not discharge, or in any manner discriminate or retaliate against, an employee who is a victim of domestic violence and abuse, stalking, or sexual assault for taking time off from work to seek medical attention; obtain services from a domestic violence shelter, program, or rape crisis center; obtain psychological counseling; participate in safety planning; or relocate. The bill also prohibits an employer from discharging, or discriminating or retaliating against, an employee, "including but not limited to ... a victim of crime," for taking time off to appear in court to comply with a subpoena or other court orders as a witness in any judicial proceeding. This bill was introduced in 2003 as H.B. 171, which passed the House.

MISSISSIPPI: H.B. 739, 2002 Reg. Sess. (Miss. 2002).
An employer must grant "reasonable and necessary leave from work, with or without pay," for an employee who is a victim of domestic abuse, sexual assault, or stalking to: (1) prepare for and attend court proceedings; (2) receive medical treatment; or (3) obtain necessary services to remedy a crisis. The employee must request leave within a "reasonable time under the circumstances." The employer has the discretion to deny the leave request if the employer would sustain undue hardship from the victim's absence or the requested leave is impractical, unreasonable, or unnecessary based on the facts made known to the employer. The section applies to all public and private employers.

NEW YORK: A.B. 31 & S.B. 4646, 225th Ann. Leg. Sess. (N.Y. 2004).
A victim of domestic violence is permitted up to 90 days of unpaid leave during any 12-month period to address "ongoing domestic violence." "Ongoing domestic violence" is defined as (a) an inability to perform or attend work due to recent domestic violence or the threat of domestic violence; (b) seeking legal assistance; (c) seeking services from a program for victims of domestic violence; (d) seeking medical attention for the victim or the victim's child; (e) attending counseling; or (f) engaging in safety planning, including relocation. The leave may be taken on an intermittent basis. The employee must provide the employer with "reasonable" notice. The employer may require certification of the need for leave.

PENNSYLVANIA: H.B. 375 & S.B. 235, 186th Gen. Assemb. (Pa. 2003).
As amended, H.B. 375 permits an "eligible employee," defined as in the federal Family and Medical Leave Act, who is a victim of domestic violence or the parent of a minor child who is the victim of domestic violence up to 30 days leave during any 12-month period for medical treatment, legal proceedings, relocation, or to obtain counseling or advocacy services related to the violence. The employee must give 5 days advance notice unless it is not possible do so due to a risk to safety of the employee or his or her minor child, scheduling of a legal proceeding, or availability of counseling services. The employee must make a reasonable effort to schedule absences so as not to unduly disrupt the operations of the employer. An employer may request certification of the reason for the request for leave. The certification requirements may be satisfied by a police report, court order, signed statement from relevant professional service provider, or a signed statement from a victim and a witness advocate or court personnel. The employer must continue to pay health benefits during the leave and restore the employee to the same or equivalent position at the end of the leave. If the employee does not return to work, the employer may charge the employee for the cost of the health benefits during the leave. **H.B. 375 passed the Pennsylvania House on June 16, 2004 and was referred to the Senate.**

TENNESSEE: H.B. 713, 102d Gen. Assemb. (Tenn. 2001).
A full-time employee who has been employed by the same employer for at least twelve consecutive months may be absent from employment for up to four months to address domestic violence if it is impacting the employee's ability to perform the functions of her position or to care for a child or parent of the employee who is addressing domestic violence. An employer may require documentation of the domestic violence, but such documentation is broad and may include: a written statement describing the domestic violence; court records; statements by professionals who the victim consulted as a result of the domestic violence (e.g., shelter workers, attorneys, clergymen, or medical professionals); statements by witnesses of the domestic violence; or physical evidence of the violence (a photograph, torn or bloody clothes, or damaged property). Such documentation must be kept confidential by the employer. Additionally, employees who are entitled to take paid or unpaid leave may use such leave to address domestic violence in their lives or to care for a child

or parent who is a victim of domestic violence. This bill was withdrawn from committee on March 15, 2001 and was not reintroduced in the Tennessee 103rd General Assembly.

TENNESSEE: H.B. 315, 102d Gen. Assemb. (Tenn. 2001).
An employer must grant reasonable and necessary leave from work with or without pay for an eligible employee to: (1) prepare for and attend court proceedings; (2) receive medical treatment; or (3) obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. This leave must be needed because the employee is a victim of violence, assault, sexual assault, stalking, or any act that would support an order of protection. Such leave need not be granted if the employer would sustain undue hardship from the victim's absence or did not receive the request for leave within a reasonable time under the circumstances, or where the requested leave is "impractical, unreasonable or unnecessary" based on the facts made known to the employer. This bill was withdrawn from committee on March 15, 2001 and was not reintroduced in the Tennessee 103rd General Assembly.

WASHINGTON: S.B. 5329, 57th Leg. (Wash. 2001).
An employer must grant "reasonable and necessary leave from work" of up to 6 weeks during any 12-month period for an eligible employee to: (a) prepare for and attend court proceedings; (b) receive medical treatment; or (c) obtain necessary services to address a crisis caused by the violence. To be eligible, an employee must be a victim of a criminal act, harassed or followed by a stalker, a survivor of a homicide victim who was an immediate family member, or the parent of a child who has been subject to sexual abuse. The employer is not required to grant leave if the employer would sustain "undue hardship," if "requested leave is impractical, unreasonable or unnecessary based upon the facts known to the employer;" or if the criminal act has not been reported to local law enforcement. Additionally, the employer is not required to pay for such leave.

Crime Victim Employment Leave

ALASKA: H.B. 391, 23rd Leg., 2d Sess. (Alaska 2003) (would broaden Alaska's existing victim leave statute, Alaska Stat. § 12.61.017, to provide leave for any proceeding where the victim has a right to be present)

DELAWARE: H.B. 276, 141st Gen. Assemb. (Del. 2001) (would allow eligible employees who are victims of violent crime up to 30 days leave for medical treatment, legal proceedings, relocating, or therapy)

GEORGIA: H.B. 508, 147th Gen. Assemb. (Ga. 2003) (would allow an employee who is a victim of a crime to be absent from employment to attend judicial proceedings when such presence is not required by subpoena, summons, or other court order)

NEW HAMPSHIRE: H.B. 747, 158th Sess. (N.H. 2003-04) (would allow an employee who is a victim of a crime leave to attend court or investigative proceedings associated with the prosecution of the crime, or to attend "counseling sessions necessitated by the crime")

SOUTH CAROLINA: H.B. 4651, 115th Sess. (S.C. 2004) (would require the State to grant paid leave for a state employee who was a victim of a violent crime or whose immediate family member was a victim of a violent crime to attend the court proceedings related to that crime). This bill passed the House on Feb. 20, 2004.

WISCONSIN: A.B. 269, 96th Leg. (Wisc. 2003) (would allow an employee who is the victim of a crime leave to attend proceedings related to the crime that the victim "has a right to attend" and up to 12 hours counseling)

This fact sheet, with links to cited laws and bills, is available on the Legal Momentum web site at http://www.legalmomentum.org/issues/vio/FactsheetPage.shtml.

For more information, contact Staff Attorneys Deborah Widiss, dwidiss@legalmomentum.org, or Maya Raghu, mraghu@legalmomentum.org, at (212) 925-6635.

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January 19, 2005 RSS Feed

Safety

More States Give Abuse Victims Right to Time Off

Run Date: 01/16/05

By Marie Tessier
WeNews correspondent

Maine and California were the first states to give victims of domestic violence the right to take time off from work to put their lives on a better track. A growing number of states are following their lead.

Robert J. Grey Jr

(WOMENSENEWS)--Sophia Apessos was a newspaper reporter in Plymouth, Mass., when her husband assaulted her one weekend in July 2000.

At first, the legal and justice system seemed to work.

She phoned the police, he was arrested and charged. Apessos obtained a temporary protection order requiring her husband to have no contact. Over the weekend, he violated the court order by phoning her from jail.

Meanwhile, as she looked ahead, she knew that it would be hard to get to work on Monday. That day she was required to appear at her husband's arraignment, to testify his initial assault, about his violation of the protection order, and seek an extension of the temporary protection order. She also needed to have police photos taken of her injuries for evidence. In between, she needed to get the locks changed on her home, as the police suggested.

So over the weekend, Apessos phoned her supervisor at work. She left a message saying she would not be in on Monday morning because she had been assaulted and needed to attend proceedings in civil and criminal court. On Monday, she phoned again to say that the procedures were going to take all day.

Nasty and Common Surprise

When she came to work Tuesday, Apessos was in for a nasty, but remarkably common, surprise. The human resources director called her into her office and fired her, according to court filings.

Like about 1-in-3 victims of domestic violence, Apessos lost her job because of

the violence and harassment of an abuser and because she took the steps necessary to make it stop.

Later, Apessos filed a lawsuit for wrongful termination that was backed by the NOW Legal Defense and Education Fund, a New York-based group now known as Legal Momentum. Contacted through Legal Momentum, Apessos declined comment. Information on her case was gathered from Legal Momentum and public court records.

Versions of Apessos' story are played out on domestic-violence hotlines around the nation, day in and day out, by many of the one-in-four women who will experience abuse in her lifetime. To stay safe, a woman may need to appear at a hearing during regular office hours. Another might need to meet with prosecutors or detectives. Another might need to meet a landlord to sign a lease on a new apartment so she and her children can start a new life.

And yet many women may not be allowed to take time off work. Many fear reprisal if they even ask, advocates say.

State-by-state, however, that has begun to change as a growing number of legislatures are giving victims of domestic violence the right to take time off from work in order to address the violence in their lives.

First Domestic-Violence Leave Law in 1999

Maine and California passed the first domestic violence leave laws in 1999. Colorado, Hawaii, Illinois, and New York followed, along with some municipalities, such as Miami-Dade County, Fla. The latest is North Carolina's law, which took effect in October 2004, according to Legal Momentum. In recent years, seven other states have considered proposed legislation focused on domestic and sexual violence. Others considered protections for crime victims in general.

Many more states have specific protections for victims who need time off work to attend or testify at criminal proceedings, but these do not extend to civil matters such as seeking a protection order.

Domestic violence-leave laws are a critical piece of protection for battered women, making it possible for them to make use of the court system, lawyers and other advocates for battered women say.

"A lot of people lose their jobs because of domestic violence, and we need to make sure that the full array of legal options is available to victims," says Robert J. Grey Jr., president of the American Bar Association, which has promoted employment rights for victims of domestic and sexual violence in recent years.

Being able to hold on to jobs is also fundamental to helping women change their violent circumstances, advocates say.

Help Separating From Abuser

"Economic security is one of the most important factors in determining

whether a victim of domestic violence will be able to separate effectively from her abuser," says Deborah Widiss, a staff attorney who specializes in domestic-violence law at Legal Momentum. "There's still a lot of stigma around domestic violence and sexual violence, so it's a difficult conversation to have with your employer. Having the legal right to take the time helps victims take the necessary steps to be safe."

For Sophia Apessos, taking steps to stay safe cost her a job, and several years' involvement with a lawsuit against her employer, Memorial Press Group, an independent newspaper group based in Plymouth, Mass. The group did not return a call seeking comment.

Along the way to a settlement in the Apessos case, the Massachusetts Superior Court had to decide whether to allow the suit to proceed--in essence whether she had a legitimate claim under the law. Its decision in Apessos' favor was succinct: "[A] victim should not have to seek physical safety at the cost of her employment," the court wrote.

That decision was the first such case to establish an employer's obligation to accommodate victims of domestic violence, Widiss says.

Filing a lawsuit is a step that is theoretically available to everyone, but is highly impractical--not to say far-fetched--given how strapped victims are for time, money, emotion or energy, advocates say.

Trend in Employment Law, Business Practice

Guaranteeing the legal right to take domestic-violence leave is part of a broader trend in employment law and business practices that assist victims in solving problems, rather than making them worse, attorneys and advocates say.

Leave laws are one approach, but other pieces help, too. Many states offer unemployment compensation for victims whose jobs are affected. Written personnel policies build a climate of support rather than workplace punishment for a victim and they are good for business, too, Widiss says.

"Workplace policies are a good way for an employer to indicate that they want to help correct a problem by providing time off or by making simple changes to keep someone safe," Widiss says. "Things as easy as changing someone's phone extension, adjusting work hours, or transferring to another work site can make a big difference and many are very low cost."

Educating employers on the signs of abuse and on the cost to their businesses is an important step in improving the climate for victims, the Bar Association's Grey and others say.

"Domestic violence is an issue that's difficult for employers to get their arms around, because it's rarely obvious what's going on," Grey says. "A measured response can help victims get to the solution while keeping their personal dignity and their workplace productivity intact."

Pervasive Impact on Women at Work

During training sessions, employers often express surprise at the extent to which abusers' behavior targeted at one of their employees makes its way into their workplace, says Robin Runge, the Washington, D.C., based director of the American Bar Association's Commission on Domestic Violence.

As many as 19 out of every 20 victims say that they experience problems at work related to domestic violence, Runge says. Among the most common forms of workplace disruption are repeated phone calls from batterers who are monitoring or threatening a woman or just harassing her.

Batterers sabotage women's careers in other ways. They might make them late for work, wreck child care arrangements, try to damage their professional reputations or interfere with their jobs to make them look unproductive, advocates say.

The result is that someone who is being victimized can look as if she is the problem, instead of the abuser, Runge says. That ends up endangering a woman's job and makes it even more difficult for her to seek remedies. Often, the employer doesn't even know what is going on. In turn, victims may be compelled to face a Hobson's choice between their jobs and their safety.

"Too often, victims are being forced to choose between staying safe and keeping their jobs secure," Runge says. "The services available in the courts and in our communities won't work unless victims can access them, and that means time off."

Marie Tessier is a frequent contributor to Women's eNews who writes about violence against women and other national affairs.

For more information:

Legal Momentum:
http://www.legalmomentum.org/issues/vio/laws-leave.shtml

American Bar Association Commission on Domestic Violence:
http://www.abanet.org/domviol/home.html

National Domestic Violence Hotline:
1-800-799-SAFE 1-800-787-3224 (TTY)

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Women's eNews is a nonprofit independent news service covering issues of concern to women ar

I have been a women's advocate for 7 years in Duluth, at the Domestic Abuse Intervention Project.
I have heard many stories of women having their jobs in jeopardy or being penalized for attending Order for Protection court hearings.
Here are a few stories:

Amy:
Amy managed a restaurant in a hotel. She missed work to get an order for protection and she was simply fired.

Toni:
Toni worked for a Law office for many years. She had several hearings to attend for her OFP. She was put on probation for 6 months and could not miss one single day. Toni is a mother of 4 children.

April:
April worked at McDonald's she is mother of two small children. She is married but separated from her husband. She missed work to get an order for protection. Lisa was fired also. When she worked she was able to support her children and stay safe. Lisa ended up going back to her husband and the next assault he broke her wrist.

Kami:
Kami worked at Trillium an assisted living center. Kami's OFP court hearing was scheduled on her day off. The hearing was continued for the following week, which is not uncommon. She asked for the time off. Her employer penalized her by cutting her hours from 37 to 17

Senator Betzold from the Committee on Judiciary, to which was re-referred

S.F. No. 1438: A bill for an act relating to public safety; expanding the protection against employer retaliation for crime victims; amending Minnesota Statutes 2004, sections 518B.01, by adding a subdivision; 609.748, by adding a subdivision; 611A.036.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 17, after the comma, insert "or unless impracticable,"

Page 1, line 18, delete "reasonable" and insert "48 hours'"

Page 2, line 8, delete "Total damages"

Page 2, delete lines 9 and 10

Page 2, line 22, after the comma, insert "or unless impracticable,"

Page 2, line 23, delete "reasonable" and insert "48 hours'"

Page 3, line 3, delete "Total damages"

Page 3, delete lines 4 and 5

Page 3, line 35, delete "reasonable" and insert "48 hours'"

Page 3, line 36, after "unless" insert "impracticable or"

Page 4, line 18, delete "Total damages recoverable under this section shall not"

Page 4, delete line 19

And when so amended the bill do pass and be re-referred to the Committee on Jobs, Energy and Community Development. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 7, 2005.....
(Date of Committee recommendation)

Senate Counsel, Research, and Fiscal Analysis

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 917 - Positive Alternatives Act

Author: Senator Dallas C. Sams

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: April 7, 2005

S.F. No. 917 provides grants to encourage women to carry pregnancies to term.

Subdivision 1 defines "abortion" and "unborn child."

Subdivision 2, paragraph (a), provides for grants to assist with listed services, including medical care, nutrition, housing, adoption, education, employment, child care, and parenting services.

Paragraph (b) provides that programs may provide more than one service and refer and cooperate with other programs.

Paragraph (c) provides qualifications for program providers. They must be private, nonprofit, properly supervised, free, provide accurate information, assist women to carry pregnancies to term, and not use funds to encourage abortions.

Paragraph (d) makes all the provisions of paragraph (c) nonseverable.

Paragraph (e) makes organizations that provide, promote, or encourage abortion ineligible for participation in the program.

Paragraph (f) requires proper records.

Subdivision 3 provides privacy rules.

Subdivision 4 describes the duties of the Commissioner of Health.

Subdivision 5 makes the provisions of the act severable subject to paragraph (d) of subdivision 2.

Section 2 is an appropriation.

HW:cs

A bill for an act

relating to health; providing for grants related to positive abortion alternatives; appropriating money; proposing coding for new law in Minnesota Statutes, chapter 145.

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

Section 1. [145.4231] [POSITIVE ABORTION ALTERNATIVES.]

Subdivision 1. [DEFINITIONS.] For purposes of this section, the following terms have the meaning given:

(1) "abortion" means the use of any means to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the unborn child. For purposes of this section, abortion does not include an abortion necessary to prevent the death of the mother; and

(2) "unborn child" means an individual organism of the species Homo sapiens from fertilization until birth.

Subd. 2. [ELIGIBILITY FOR GRANTS.] (a) The commissioner of health shall award grants to eligible applicants under paragraph (c) for the reasonable expenses of alternatives to abortion programs to support, encourage, and assist women in carrying their pregnancies to term by providing information on, referral to, and assistance with securing necessary services that enable women to carry their pregnancies to term. Necessary services include, but are not limited to:

(1) medical care;

(2) nutritional services;

(3) housing assistance;

(4) adoption services;

(5) education and employment assistance;

(6) child care assistance; and

(7) parenting education and support services, including services that support the continuation and completion of high school.

(b) In addition to providing information and referral under paragraph (a), an eligible program may provide one or more of the necessary services under paragraph (a) that assists women in carrying their pregnancies to term. To avoid duplication of efforts, grantees may refer to other public or private programs, rather than provide the care directly, if a woman meets eligibility criteria for the other programs.

(c) To be eligible for a grant, an agency or organization must:

(1) be a private, nonprofit organization;

(2) demonstrate that the program is conducted under appropriate supervision;

(3) not charge women for services provided under the program;

(4) provide each pregnant woman counseled with accurate information on the developmental characteristics of unborn children, including offering the printed information described in section 145.4243;

(5) ensure that its alternatives to abortion program's purpose is to assist and encourage women in carrying their pregnancies to term and to maximize their potentials thereafter; and

(6) ensure that none of the funds provided is used to encourage a woman to have an abortion not necessary to prevent her death or to provide her an abortion.

(d) The provisions, words, phrases, and clauses of paragraph (c) are inseverable from this subdivision, and if any

provision, word, phrase, or clause of paragraph (c) or the application thereof to any person or circumstance is held invalid, such invalidity shall apply to all of this subdivision.

(e) An organization that provides abortions, promotes abortions, or encourages or arranges for abortions is ineligible to receive a grant under this program. An affiliate of an organization that provides abortions, promotes abortions, or encourages or arranges for abortions is ineligible to receive a grant under this section unless the organizations are separately incorporated and independent from each other. To be independent, the organizations may not share any of the following:

(1) the same or a similar name;

(2) medical facilities or nonmedical facilities, including but not limited to, business offices, treatment rooms, consultation rooms, examination rooms, and waiting rooms;

(3) expenses;

(4) employee wages or salaries; or

(5) equipment or supplies, including but not limited to, computers, telephone systems, telecommunications equipment, and office supplies.

(f) An organization that receives a grant under this section and that is affiliated with an organization that provides abortion services must maintain financial records that demonstrate strict compliance with this subdivision and that demonstrate that its independent affiliate that provides abortion services receives no direct or indirect economic or marketing benefit from the grant under this section.

Subd. 3. [PRIVACY PROTECTION.] Any program receiving a grant under this section must have a privacy policy and procedures in place that ensure that the name, address, telephone number, or any other information that might identify any woman seeking the services of the program shall not be made public or shared with any other agency or organization without the written consent of the woman and all communications between the program and the woman must remain confidential. For

purposes of any medical care provided by the program, including, but not limited to, pregnancy tests or ultrasonic scanning, the program must adhere to the requirements in section 144.335 that apply to providers before releasing any information relating to the medical care provided.

Subd. 4. [DUTIES OF COMMISSIONER.] The commissioner of health shall make grants under subdivision 2 beginning no later than July 1, 2006. In awarding grants, the commissioner shall consider the program's demonstrated capacity in providing services to assist a pregnant woman in carrying her pregnancy to term. The commissioner shall monitor and review the programs of each grantee to ensure that the grantee carefully adheres to the purposes and requirements of subdivision 2 and shall cease funding a grantee that fails to do so.

Subd. 5. [SEVERABILITY.] Except as provided in subdivision 2, paragraph (d), if any provision, word, phrase, or clause of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or applications of this section that can be given effect without the invalid provision, word, phrase, clause, or application and to this end, the provisions, words, phrases, and clauses of this section are declared to be severable.

Sec. 2. [APPROPRIATIONS; COMMUNITY HEALTH AND FAMILY PROMOTION.]

Of the general fund appropriation in fiscal year 2007, $2,500,000 is for positive abortion alternatives under Minnesota Statutes, section 145.4231. Of this amount, $100,000 may be used for administrative costs of implementing the grant program. An additional $50,000 is appropriated from the general fund to the commissioner of health in fiscal year 2006 for administrative costs of program implementation.

Senator .... moves to amend S.F. No. 917 as follows:

Page 2, line 4, after "services" insert "from an accredited adoption agency"

Page 2, after line 9, insert

An applicant may not provide or assist a woman to obtain adoption services from a provider of adoption services that is not accredited

AMERICAN CIVIL LIBERTIES UNION of MINNESOTA

Lawrence J. Field
President

Charles E. Samuelson
Executive Director

Teresa J. Nelson
Legal Counsel

April 7, 2005

STATEMENT OF CHARLES SAMUELSON RE: SF 917

The ACLU of Minnesota is the statewide affiliate of the ACLU and our mission is to protect the constitutional rights of all Minnesotans, including the rights to free speech and reproductive freedom. The ACLU-MN opposes SF 917 the "Positive Alternatives Act" because of the negative impact that it will have on those rights.

- This bill imposes unconstitutional conditions on the receipt of state funds by requiring organizations to give up their right to free speech and association. Section 1, subdivision 2(e) prohibits funds to be paid to an organization that provides, promotes, encourages or arranges for abortion services. The bill does not define "promotes" or "encourages" This broad scope will place too great a burden on women and organizations.

    - While the U.S. Supreme Court, in Rust v. Sullivan, has upheld gag rules in the context of Title X "Funded Projects", this bill goes much further by requiring an organization not have any other projects that carry out the prohibited activities, which was not even contemplated by the Court. The imposition of a demand to slash all other abortion-related activities to acquire funding violates the organization's right to free speech and association.

    - According to the Court in an Eighth Circuit decision Planned Parenthood v. Dempsey, this funding restriction could cross the line established in Rust and, therefore, would be an unconstitutional condition. The statute may be interpreted to prohibit grantees from using their own private funds to advocate in favor of abortion outside the scope of the funded project. In Dempsey, the 8th Circuit narrowly construed restrictions on the receipt of family planning funds to only require that the grantee provide "nondirective counseling relating to the pregnancy", and expressly noted that grantees maintained the right to "advocate in faor of abortion outside of any patient relationship so long as that speech occurs with private funds and outside the scope of the program." In contrast, SF917 does not allow grantees to exercise their constitutionally protected rights by prohibiting all abortion advocacy – even if that advocacy occurs outside the funded project.

    - Restrictions must differentiate between the grantee and the funded project. While the funded project may be restricted, the grantee must remain free to use its own funds to engage in activities prohibited for the funded project. Speech that occurs outside the context of the government-funded

450 N. Syndicate Suite 230 • Saint Paul, Minnesota 55104
Tel: 651.645.4097 • Fax: 651.647.5948 • Email: support@aclu-mn.org • Web: www.aclu-mn.org

program must be unrestricted. This provision does just the opposite. It would prevent a program from receiving funding simply because of other activities the organization engages in.

- The remainder of Section 1, subdivision 2(e) does not save the provision from being unconstitutional. The provision allows funds to be paid to an affiliate of a prohibited organization but only if its affiliate is separate and independent.

    - While the U.S. Supreme Court, in Rust v. Sullivan, has upheld gag rules in the context of Title X "Funded Projects", this attempt goes much further by requiring a level of separation between an organization and the funded project that was never contemplated by the Court. The imposition of such a level of separation, including a prohibition on sharing the same or similar name, sharing business offices, or sharing equipment and supplies, violates the organization's right to free speech and association. The Eighth Circuit in Dempsey noted that it was sufficient if the affiliate is separately incorporated, has separate facilities and maintains adequate financial records to demonstrate that it receives no government funds.

    - The requirement that the organization and affiliate cannot share the same or similar name bears no relation as to whether funds are used impermissibly. This requirement violates the right to freedom of association.

    - The remainder of the factors work to effectuate a complete and total separation of the two organizations. Such a requirement would serve to unconstitutionally limit the organization along with the funded program.

- SF 917 may run afoul of the Minnesota Constitutional requirement that the state not use funds in a manner that interferes with a woman's reproductive decisions.

    - In Doe v. Gomez, the Minnesota Supreme Court held that the state cannot use funds to support childbirth while denying them for abortions because it constitutes an unconstitutional interference with a woman's decision about whether to have an abortion. SF 917 establishes a funding mechanism similar to the Medical Assistance program at issue in Gomez by providing funds to promote childbirth while prohibiting funds for abortion-related services.

- SF 917 also runs the risk of organizations using these funds to proselytize and promote religion or a religious agenda. Government funds may not be used to

advance religion nor result in a government endorsement of religion. During legislative hearings on the companion bill to SF 917, House Committees heard testimony from an individual who researched various agencies that will qualify for funding under this legislation. It appears from that testimony that religious counseling is likely to be an integral part of some funded programs. While SF 917 takes great pains to ensure that no government funds go toward abortion advocacy or services, it ignores the Constitutional requirement that government funds may not be used to promote religion. Given the very real threat that funds could be used for religious-based counseling, SF 917 should be amended to expressly prohibit the use of funds for religious proselytizing and counseling.

Senator Betzold from the Committee on Judiciary, to which was re-referred

S.F. No. 917: A bill for an act relating to health; providing for grants related to positive abortion alternatives; appropriating money; proposing coding for new law in Minnesota Statutes, chapter 145.

Reports the same back with the recommendation that the bill be amended as follows:

Page 2, after line 9, insert:

"An applicant may not provide or assist a woman to obtain adoption services from a provider of adoption services that is not accredited."

And when so amended the bill do pass and be re-referred to the Committee on Finance. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 7, 2005.....
(Date of Committee recommendation)

Senators Hann and LeClair introduced--

S.F. No. 631: Referred to the Committee on Judiciary.

A bill for an act

relating to civil actions; prohibiting actions against certain persons for weight gain as a result of consuming certain foods; proposing coding for new law in Minnesota Statutes, chapter 604.

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

Section 1. [604.17] [ACTIONS ALLEGING WEIGHT GAIN OR OBESITY FROM FOOD CONSUMPTION.]

Subdivision 1. [ACTIONS PROHIBITED.] An action may not be brought against a manufacturer or seller of a food or a trade association for a food to recover damages or obtain injunctive relief for alleged injury resulting from consumption of food and weight gain, obesity, or any health condition associated with weight gain or obesity.

Subd. 2. [ACTIONS PERMITTED.] Subdivision 1 does not prohibit an action:

(1) against a manufacturer or seller of a food that knowingly and willfully violated a state law applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the food, and the violation was a proximate cause of injury related to a person's weight gain, obesity, or any health condition associated with a person's weight gain or obesity; or

(2) an action for breach of express contract or express warranty in connection with the purchase of food.

Subd. 3. [PLEADINGS.] In an action described in

subdivision 2, the complaint must state with particularity each and every state statute that was violated and the facts that caused the alleged injuries.

Subd. 4. [DISCOVERY IN CERTAIN ACTIONS.] (a) In an action described in subdivision 2, discovery and other proceedings must be stayed during the pendency of a motion to dismiss unless the court finds on motion of a party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

(b) During the pendency of a stay of discovery under this subdivision, unless otherwise ordered by the court, a party to the action with actual notice of the allegations contained in the complaint shall treat every tangible object or document in that party's control or custody that is relevant to the allegations as if the object or document was the subject of a continuing request for production of documents from any opposing party under the Rules of Civil Procedure. "Document" includes any written or electronically recorded or stored compilation of data.

(c) A party aggrieved by the failure of another party to comply with this subdivision may apply to the court for an order awarding appropriate sanctions.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective August 1, 2005, and applies to actions commenced on or after that date.

Senator ..... moves to amend S.F. No. 631 as follows:

Delete everything after the enacting clause and insert:

"Section 1. [604.17] [PERSONAL RESPONSIBILITY IN FOOD CONSUMPTION ACT.]

Subdivision 1. [TITLE.] This act may be cited as the Personal Responsibility in Food Consumption Act.

Subd. 2. [DEFINITIONS.] (a) For purposes of this section the following terms have the meanings given.

(b) "Long-term consumption" means the cumulative effect of the consumption of food or nonalcoholic beverages, and not the effect of a single instance of consumption.

(c) "Party" means an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

Subd. 3. [IMMUNITY FROM CIVIL LIABILITY.] A producer, grower, manufacturer, packer, distributor, carrier, holder, marketer, or seller of a food or nonalcoholic beverage intended for human consumption, or an association of one or more of such entities, shall not be subject to civil liability based on any individual's or group of individuals' purchase or consumption of food or nonalcoholic beverages in cases where liability arises from weight gain, obesity, or a health condition associated with weight gain or obesity and resulting from the individual's or group of individuals' long-term purchase or consumption of a food or nonalcoholic beverage.

Subd. 4. [ACTIONS PERMITTED.] Subdivision 3 does not apply to a claim of weight gain or obesity that is based on:

(1) a material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, or regulation and the claimed injury was proximately caused by the violation; or

(2) any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, if the violation is knowing and willful, and the claimed injury was proximately caused by the violation.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment and applies to any action brought by any party on or after the effective date."

Delete the title and insert:

"A bill for an act relating to civil actions; prohibiting actions against certain persons for weight gain as a result of consuming certain foods; proposing coding for new law in Minnesota Statutes, chapter 604."

HANDOUT #7

MN Retailers ASSOCIATION

"The voice of retailing in Minnesota"

March 2, 2005

The Honorable Member of the House Civil Law and Elections Committee
State Office Building
St. Paul, MN 55155

Dear Representatives,

On behalf of the Minnesota Retailers Association, I write in support of H.F. 118, the Personal Responsibility in Food Consumption Act. Our association strongly supports initiatives that help the passage of laws that encourage individual responsibility while at the same time lessoning the overburdened judicial system with frivolous lawsuits.

Further, our association opposes any amendments that would weaken this common sense measure. Food sellers provide the public with a wide variety of food products which give consumers numerous choices that will supply them with a well-balanced and nutritional diet.

The Minnesota Retailers Association urges your strong support House File 118.

Sincerely,

Bruce W. "Buzz" Anderson
President

MN Retailers ASSOCIATION
"The voice of retailing in Minnesota"

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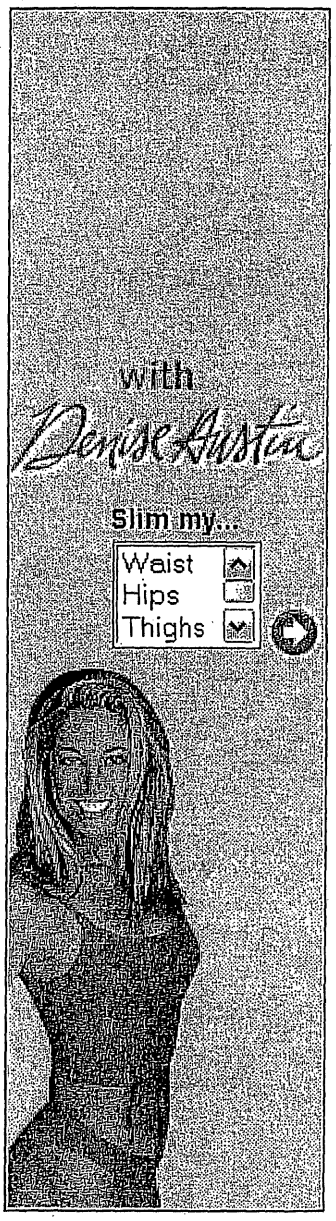

washingtonpost.com

McDonald's Must Face Claim That Its Food Caused Obesity, Panel Rules

By Tom Becker and David Glovin
Bloomberg News
Wednesday, January 26, 2005; Page E10

McDonald's Corp. must face a suit by New York teenagers who claim the company hid the health risks of Chicken McNuggets and other foods and made them obese, an appeals court ruled.

A three-judge panel overruled U.S. District Judge Robert W. Sweet's decision to dismiss the suit, which seeks billions of dollars in damages. The New York-based panel vacated Sweet's decision and said the children and their lawyers should be allowed to collect evidence in support of their case.

The ruling is a victory for the teenagers, Ashley Pelman and Jazlen Bradley, who claimed food from McDonald's made them obese and led to health problems such as diabetes and heart disease. The suit is the first complaint accusing a fast-food chain of hiding the health risks of its food to be considered by a judge.

The teenagers said they ate at McDonald's restaurants three to five times a week over a 15-year period. The suit claimed the company hid the health risks of Big Macs, Chicken McNuggets and other foods high in fat and cholesterol in 1987 advertisements in the United States and brochures circulated in Britain.

McDonald's said there was no evidence that the teenage plaintiffs, one of whom was born in 1988, saw the ads. The company also defended the accuracy of its ads.

"As we have consistently said, common sense tells you this particular case makes no sense," McDonald's spokesman Walt Riker said. "We are confident this frivolous suit will once again be dismissed. The key issue remains personal responsibility and making informed choices."

Samuel Hirsch, a lawyer representing the teenagers, didn't immediately return a call seeking comment.

Sweet twice dismissed the suit, most recently in September 2003. The appeal was heard in October.

The decision came the same day that the movie "Super Size Me," a documentary in which director Morgan Spurlock eats only at McDonald's Corp. restaurants for 30 days and gains 25 pounds, was nominated for an Academy Award.

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e Frivolous Lawsuit / Personal Responsibility

(as of February 8, 2005)

OVERVIEW: *2005:* **19** BILLS INTRODUCED | *2004:* **26** BILLS INTRODUCED | **14** ENACTED

IACTED:

ZONA
OLORADO
FLORIDA
GEORGIA
IDAHO
ILLINOIS
LOUISIANA
MICHIGAN
MISSOURI
OHIO
SOUTH DAKOTA
TENNESSEE
UTAH
WASHINGTON

DEAD FOR '04:

CALIFORNIA
IOWA
KENTUCKY
MINNESOTA
MISSISSIPPI
NEBRASKA
NEW HAMPSHIRE
NEW YORK
PENNSYLVANIA
RHODE ISLAND
VIRGINIA
WISCONSIN *(Gov. veto)*

ACTIVE:

CALIFORNIA
CONNECTICUT
GEORGIA *(reintroduced)*
KANSAS
KENTUCKY
MAINE
MARYLAND
MINNESOTA
MISSISSIPPI
MONTANA *(prefiled '05)*
NEBRASKA
NEVADA *(prefiled '05)*
NEW JERSEY *(carry over)*
NEW MEXICO
NORTH DAKOTA
OKLAHOMA *(prefiled '05)*
SOUTH CAROLINA
TEXAS
VIRGINIA
WYOMING

STATUS OF ACTIVE BILLS:

CONNECTICUT: Joint Committee on Judiciary

KANSAS: Senate Judiciary Committee

MAINE: Referred to Judiciary Committee

MARYLAND: House Judiciary/Senate Committee on Judicial Proceedings

MINNESOTA: Referred to Committee on Agriculture and Rural Development

MISSISSIPPI: Referred to the House Judiciary A Committee

MONTANA: Bill still in drafting process

NEBRASKA: Awaits committee referral

NEVADA: Awaits committee referral

NEW JERSEY: Currently before the Judiciary Committee

NEW MEXICO: Senate Public Affairs Committee

NORTH DAKOTA: Passes House moves to Senate

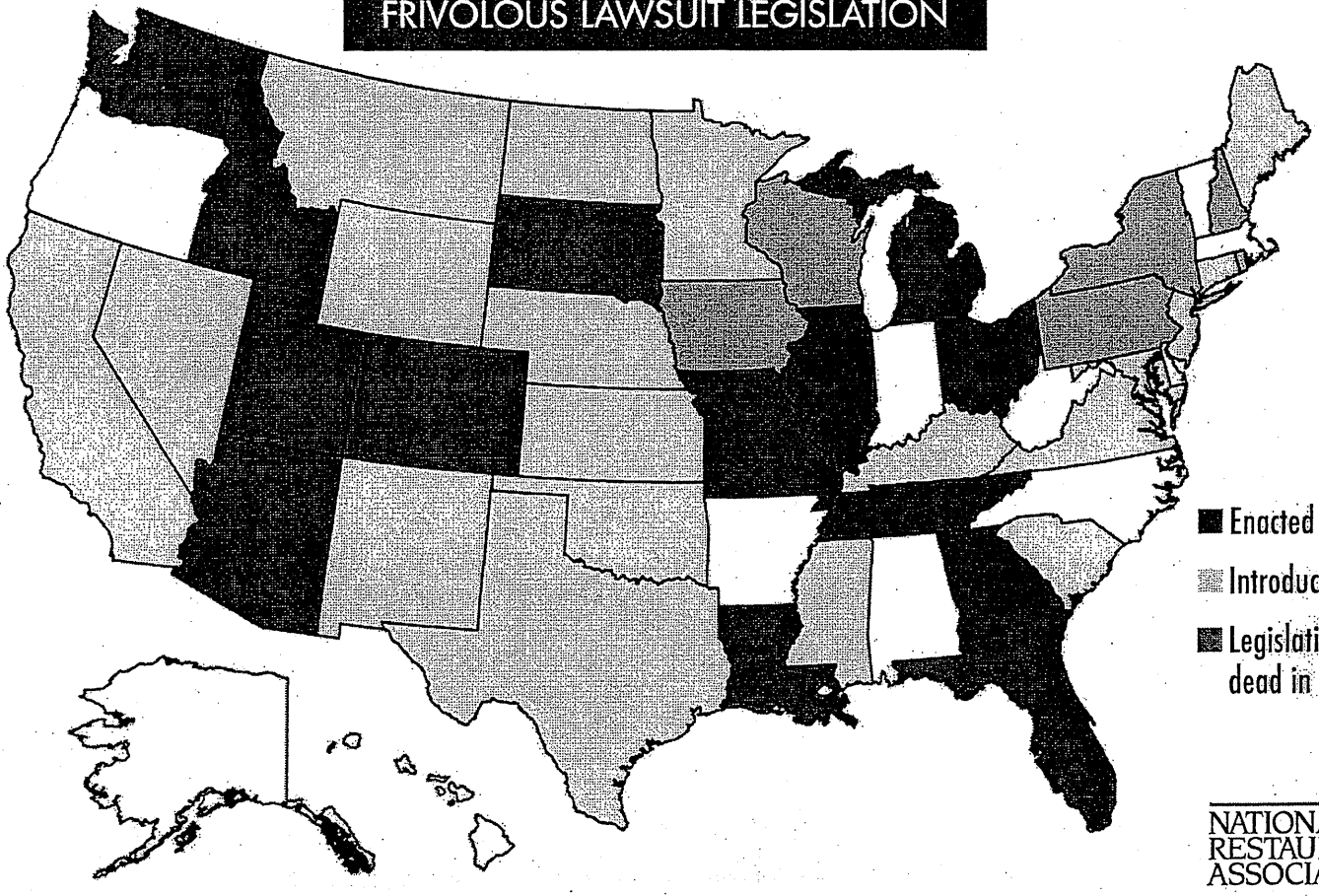
SOUTH CAROLINA: Referred to Judiciary Committee

TEXAS: Awaits committee referral

VIRGINIA: Passes House moves to Senate

WYOMING: Passes House moves to Senate

FRIVOLOUS LAWSUIT LEGISLATION



NATIONAL RESTAURANT ASSOCIATION

February 15, 2005

Minnesota House Agriculture and Rural Development Committee
St. Paul, MN

Dear House Agriculture and Rural Development Committee Members:

The Midwest Food Processors Association, Inc. (MWFPA), representing approximately 18 processor members in the region which operate around 15 processing facilities in Minnesota, firmly supports H.F. 118, the Responsible Food Consumption Act. I want to assure you that this is a bill which needs to be passed. H.F. 118 will allow for food processors to be protected from frivolous lawsuits related to weight gain or obesity, while allowing legitimate concerns to move forward in the legal system. Food processors are among the most regulated industries, with oversight from FDA, USDA, EPA, Minnesota Department of Agriculture, Pollution Control Agency, and many other agencies. Labeling and nutritional claims are subject to regulatory scrutiny and make the US food supply one of the safest in the world. Lawsuits targeted against food processors based on consumption of food go against the regulatory system already in place to provide consumers the knowledge, choice and freedom they desire in their food purchases.

The recent publicity surrounding obesity and weight gain is stimulating a healthy dialogue about our lifestyles, eating habits and food manufacturing and preparation. However, lawsuits attached to the publicity do not help solve the problem of obesity in the general public. Resources diverted away from food processing to battle frivolous lawsuits diminish our ability to feed the world. Minnesota is one of the leading food manufacturing states and H.F. 118 will help maintain this status for processors and farmers.

MWFPA respectfully urges your support for H.F. 118. Lawsuits will not solve the problem of obesity. Consumers will ultimately solve the problem through purchasing decisions and lifestyle choices. Restricting food processors by allowing dubious claims in lawsuits diminishes the ability to meet the demands of the consumer in the marketplace. If you have any questions or concerns, please feel free to contact me. The MWFPA looks forward to working with you as H.F. 118 moves forward.

Sincerely,

John D. Exner

John D. Exner, CAE
MWFPA President/Legal Counsel

P.O. Box 1297 Madison, WI 53701-1297 (608) 255-9946 (608) 255-9838 Fax www.mwfpa.org

A bill for an act

relating to human services; implementing child protection, child care, and child and family support provisions; amending Minnesota Statutes 2004, sections 119A.43, subdivision 2; 119B.025, subdivision 1; 119B.03, subdivision 6; 119B.09, subdivisions 4, 9; 144D.025; 256.978, subdivision 2; 256D.02, subdivision 17; 256D.051, subdivision 6c; 256I.04, subdivision 2a; 256I.05, by adding a subdivision; 256J.626, subdivisions 6, 7, 8; 256J.751, subdivisions 2, 5; 257.85, subdivisions 2, 3; 259.23, subdivisions 1, 2; 259.41, subdivision 3; 259.75, subdivision 1; 259.79, subdivision 1; 259.85, subdivision 1; 260.012; 260C.001, subdivision 3; 260C.007, subdivision 8; 260C.151, subdivision 6; 260C.178; 260C.201, subdivisions 1, 10, 11; 260C.312; 260C.317, subdivision 3; 518.551, subdivision 5; 518.68, subdivision 2; 548.091, subdivision 1a; 626.556, subdivisions 1, 2, 3, 10, 10b, 10e, 10f, 10i, 11, 11c, by adding subdivisions; repealing Minnesota Statutes 2004, sections 626.5551, subdivisions 1, 2, 3, 4, 5; Minnesota Rules, parts 9500.1206, subparts 20, 26d, 27; 9560.0220, subpart 6, item B; 9560.0230, subpart 2.

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

ARTICLE 1

CHILD WELFARE: ALTERNATIVE RESPONSE

Section 1. Minnesota Statutes 2004, section 626.556, subdivision 1, is amended to read:

Subdivision 1. [PUBLIC POLICY.] The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. <u>While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their</u>

ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children.

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require ~~the~~ a family assessment ~~and~~, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation ~~of the reports~~ when the report alleges substantial child endangerment; and to provide protective ~~and counseling~~, family support, and family preservation services when needed in appropriate cases.

Sec. 2. Minnesota Statutes 2004, section 626.556, subdivision 2, is amended to read:

Subd. 2. [DEFINITIONS.] As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred

and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in paragraph (d);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct

under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

~~(b)~~ (e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

~~(c)~~ (f) "Neglect" means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health,

medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that

medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

~~(d)~~ (g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

(6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

~~(e)~~ (h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

~~(f)~~ (i) "Facility" means a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B; or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

~~(g)~~ (j) "Operator" means an operator or agency as defined in section 245A.02.

~~(h)~~ (k) "Commissioner" means the commissioner of human services.

~~(i) "Assessment" includes authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing the risk to the child, and formulating a plan.~~

~~(j)~~ (l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

~~(k)~~ (m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

~~(l)~~ (n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph ~~(b)~~ (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

~~(m)~~ (o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

Sec. 3. Minnesota Statutes 2004, section 626.556, subdivision 3, is amended to read:

Subd. 3. [PERSONS MANDATED TO REPORT.] (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, probation and correctional services, or law enforcement; or

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c).

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person

knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of <u>a family assessment or investigation related to</u> any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this subdivision, "immediately" means

as soon as possible but in no event longer than 24 hours.

Sec. 4. Minnesota Statutes 2004, section 626.556, is amended by adding a subdivision to read:

Subd. 3d. [AUTHORITY TO INTERVIEW.] The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing safety and risk to the child, and formulating a plan.

Sec. 5. Minnesota Statutes 2004, section 626.556, subdivision 10, is amended to read:

Subd. 10. [DUTIES OF LOCAL WELFARE AGENCY AND LOCAL LAW ENFORCEMENT AGENCY UPON RECEIPT OF A REPORT.] (a) Upon receipt of a report, the local welfare agency shall determine whether to conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for child maltreatment. The local welfare agency:

(1) shall conduct an investigation on reports involving substantial child endangerment;

(2) shall begin an immediate investigation if, at any time when it is using a family assessment response, it determines that there is reason to believe that substantial child endangerment or a serious threat to the child's safety exists;

(3) may conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the local welfare agency may consider issues of child safety, parental cooperation, and the need for an immediate response; and

(4) may conduct a family assessment on a report that was initially screened and assigned for an investigation. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and notify the local law enforcement agency if the local law enforcement agency is conducting a joint investigation.

If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct ~~an~~ a family assessment ~~including gathering~~ or investigation as identified in clauses (1) to (4). In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer ~~protective social~~ services for purposes of preventing ~~further abuses~~ future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615. The local welfare agency shall report the determination of the chemical use assessment, and the recommendations and referrals for alcohol and other drug treatment services to the state authority on

alcohol and drug abuse.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections 245.91 to 245.97. The commissioner of education shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

(c) Authority of the local welfare agency responsible for assessing <u>or investigating</u> the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. <u>For family assessments, it is the preferred practice to request a parent or guardian's permission to interview the child prior to conducting the child interview, unless doing so would compromise the safety assessment.</u> Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding

rule 49.02 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

(d) When the local welfare, local law enforcement agency, or the agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chair of the local social services agency or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until that time, the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosures

regarding the nature of the assessment or investigation.

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(e) Where the alleged offender or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the alleged offender or any person responsible for the child's care at reasonable places and times as specified by court order.

(f) Before making an order under paragraph (e), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If appointed, the guardian ad litem shall be present at the hearing on the order to show cause.

(g) The commissioner of human services, the ombudsman for mental health and mental retardation, the local welfare agencies responsible for investigating reports, the commissioner of education, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

(h) The local welfare agency ~~or the agency~~ responsible for ~~assessing or~~ conducting a family assessment shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for assessing or investigating the report may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation.

Information relevant to the assessment or investigation must be asked for, and may include:

(1) the child's sex and age, prior reports of maltreatment,

information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;

(2) the alleged offender's age, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency or the agency responsible for assessing or investigating the report must provide the alleged offender with an opportunity to make a statement. The alleged offender may submit supporting documentation relevant to the assessment or investigation;

(3) collateral source information regarding the alleged maltreatment and care of the child. Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or the care of the child maintained by any facility, clinic, or health care professional and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child; and

(4) information on the existence of domestic abuse and violence in the home of the child, and substance abuse.

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding section 13.384 or 144.335, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals

and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph ~~(f)~~ (i), the commissioner of education shall collect investigative reports and data that are relevant to a report of maltreatment and are from local law enforcement and the school facility.

(i) ~~In the initial stages of an assessment or investigation~~ Upon receipt of a report, the local welfare agency shall conduct a face-to-face ~~observation of~~ contact with the child reported to be maltreated ~~and a face-to-face interview of the alleged offender~~ and with the child's primary caregiver sufficient to complete a safety assessment and ensure the immediate safety of the child. The face-to-face contact with the child and primary caregiver shall occur immediately if substantial child endangerment is alleged and within five calendar days for all other reports. If the alleged offender was not already interviewed as the primary caregiver, the local welfare agency shall also conduct a face-to-face interview with the alleged offender in the early stages of the assessment or investigation. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

(j) When conducting an investigation, the local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. For investigations only, the following interviewing

methods and procedures must be used whenever possible when collecting information:

(1) audio recordings of all interviews with witnesses and collateral sources; and

(2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph ~~(f)~~ (i), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs ~~(h)~~ (i), (k), and ~~(j)~~ subdivision 3d, except that the requirement for face-to-face observation of the child and face-to-face interview of the alleged offender is to occur in the initial stages of the assessment or investigation provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs ~~(h)~~ (i) and (k), and ~~(j)~~ subdivision 3d.

Sec. 6. Minnesota Statutes 2004, section 626.556, subdivision 10b, is amended to read:

Subd. 10b. [DUTIES OF COMMISSIONER; NEGLECT OR ABUSE IN FACILITY.] (a) This section applies to the commissioners of human services, health, and education. The commissioner of the agency responsible for assessing or investigating the report shall immediately assess or investigate if the report alleges that:

(1) a child who is in the care of a facility as defined in subdivision 2 is neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in that facility, or has been so neglected or abused, or been the victim of maltreatment in a facility by an individual in that facility within the three years preceding the report; or

(2) a child was neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an

individual in a facility defined in subdivision 2, while in the care of that facility within the three years preceding the report.

The commissioner of the agency responsible for assessing or investigating the report shall arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section. The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.

(b) Prior to any interview, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall notify the parent, guardian, or legal custodian of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a). If reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner of the agency responsible for assessing or investigating the report or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

(c) In conducting investigations under this subdivision the commissioner or local welfare agency shall obtain access to information consistent with subdivision 10, paragraphs (h), (i), and (j). In conducting assessments or investigations under this

subdivision, the commissioner of education shall obtain access to reports and investigative data that are relevant to a report of maltreatment and are in the possession of a school facility as defined in subdivision 2, paragraph ~~(f)~~ (i), notwithstanding the classification of the data as educational or personnel data under chapter 13. This includes, but is not limited to, school investigative reports, information concerning the conduct of school personnel alleged to have committed maltreatment of students, information about witnesses, and any protective or corrective action taken by the school facility regarding the school personnel alleged to have committed maltreatment.

(d) The commissioner may request assistance from the local social services agency.

Sec. 7. Minnesota Statutes 2004, section 626.556, subdivision 10e, is amended to read:

Subd. 10e. [DETERMINATIONS.] ~~Upon the conclusion of every assessment or investigation it conducts,~~ (a) The local welfare agency shall conclude the family assessment or the investigation within 45 days of the receipt of a report. The conclusion of the assessment or investigation may be extended to permit the completion of a criminal investigation or the receipt of expert information requested within 45 days of the receipt of the report.

(b) After conducting a family assessment, the local welfare agency shall determine whether services are needed to address the safety of the child and other family members and the risk of subsequent maltreatment.

(c) After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed. ~~Upon the conclusion of~~

(d) If the commissioner of education conducts an assessment or investigation ~~by the commissioner of education~~, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has

occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph ~~(a)~~ (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

(e) When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using the mitigating factors in paragraph ~~(d)~~ (i). Determinations under this subdivision must be made based on a preponderance of the evidence and are private data on individuals or nonpublic data as maintained by the commissioner of education.

~~(a)~~ (f) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions:

(1) physical abuse as defined in subdivision 2, paragraph ~~(d)~~ (g);

(2) neglect as defined in subdivision 2, paragraph ~~(c)~~ (f);

(3) sexual abuse as defined in subdivision 2, paragraph ~~(a)~~ (d);

(4) mental injury as defined in subdivision 2, paragraph ~~(k)~~ (m); or

(5) maltreatment of a child in a facility as defined in subdivision 2, paragraph ~~(f)~~ (i).

~~(b)~~ (g) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment

if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

~~(c)~~ (h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

~~(d)~~ (i) When determining whether the facility or individual is the responsible party for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(j) Individual counties may implement more detailed

definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Sec. 8. Minnesota Statutes 2004, section 626.556, subdivision 10f, is amended to read:

Subd. 10f. [NOTICE OF DETERMINATIONS.] Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an ~~assessment~~ investigation, the local welfare agency or agency responsible for assessing or investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section 256.022.

Sec. 9. Minnesota Statutes 2004, section 626.556, subdivision 10i, is amended to read:

Subd. 10i. [ADMINISTRATIVE RECONSIDERATION OF FINAL DETERMINATION OF MALTREATMENT AND DISQUALIFICATION BASED ON SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.]

(a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 calendar days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also

governs hearings requested to contest a final determination of the commissioner of education. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under section 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

(e) Effective January 1, 2002, if an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be

consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or the disqualification is not set aside under sections 245C.21 to 245C.27, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) Effective January 1, 2002, if a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination shall not be conducted under paragraph (b). If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, "interested person acting on behalf of the child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the maltreatment.

Sec. 10. Minnesota Statutes 2004, section 626.556, is amended by adding a subdivision to read:

Subd. 101. [DOCUMENTATION.] When a case is closed that has been open for services, the local welfare agency shall document the outcome of the family assessment or investigation, including

a description of services provided and the removal or reduction of risk to the child, if it existed.

Sec. 11. Minnesota Statutes 2004, section 626.556, is amended by adding a subdivision to read:

Subd. 10m. [PROVISION OF CHILD PROTECTIVE SERVICES.] The local welfare agency shall create a written plan, in collaboration with the family whenever possible, within 30 days of the determination that protective services are needed or upon joint agreement of the local welfare agency and the family that family support and preservation services are needed.

Sec. 12. Minnesota Statutes 2004, section 626.556, subdivision 11, is amended to read:

Subd. 11. [RECORDS.] (a) Except as provided in paragraph (b) or (d) and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the Department of Education, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14, apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to a specific incident of neglect or abuse which is

under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of education must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph ~~(f)~~ (i), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of education makes a determination of maltreatment involving an individual performing

work within a school facility who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties. Notwithstanding section 13.03, subdivision 4, data received by a licensing entity under this paragraph are governed by section 13.41 or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

(d) The investigating agency shall exchange not public data with the Child Maltreatment Review Panel under section 256.022 if the data are pertinent and necessary for a review requested under section 256.022. Upon completion of the review, the not public data received by the review panel must be returned to the investigating agency.

Sec. 13. Minnesota Statutes 2004, section 626.556, subdivision 11c, is amended to read:

Subd. 11c. [WELFARE, COURT SERVICES AGENCY, AND SCHOOL RECORDS MAINTAINED.] Notwithstanding sections 138.163 and 138.17, records maintained or records derived from reports of abuse by local welfare agencies, agencies responsible for assessing or investigating the report, court services agencies, or schools under this section shall be destroyed as provided in paragraphs (a) to (d) by the responsible authority.

(a) ~~If upon~~ For family assessment ~~or~~ cases and cases where an investigation ~~there is~~ results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of four years. Records under this paragraph may not be used for employment, background checks, or purposes other than to assist in future risk and safety assessments.

(b) All records relating to reports which, upon ~~assessment or~~ investigation, indicate either maltreatment or a need for child protective services shall be maintained for at least ten years after the date of the final entry in the case record.

(c) All records regarding a report of maltreatment,

including any notification of intent to interview which was received by a school under subdivision 10, paragraph (d), shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed under this subdivision.

(d) Private or confidential data released to a court services agency under subdivision 10h must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency or agency responsible for assessing or investigating the report shall order destruction of the data when other records relating to the assessment or investigation are destroyed under this subdivision.

Sec. 14. [REPEALER.]

(a) Minnesota Statutes 2004, section 626.5551, subdivisions 1, 2, 3, 4, and 5, are repealed.

(b) Minnesota Rules, parts 9560.0220, subpart 6, item B; and 9560.0230, subpart 2, are repealed.

ARTICLE 2

CHILD WELFARE: PERMANENCY

Section 1. Minnesota Statutes 2004, section 257.85, subdivision 2, is amended to read:

Subd. 2. [SCOPE.] The provisions of this section apply to those situations in which the legal and physical custody of a child is established with a relative or important friend with whom the child has resided or had significant contact according to section 260C.201, subdivision 11, by a district court order issued on or after July 1, 1997, or a tribal court order issued on or after July 1, 2005, when the child has been removed from the care of the parent by previous district or tribal court order.

Sec. 2. Minnesota Statutes 2004, section 257.85, subdivision 3, is amended to read:

Subd. 3. [DEFINITIONS.] For purposes of this section, the

terms defined in this subdivision have the meanings given them.

(a) "MFIP standard" means the transitional standard used to calculate assistance under the MFIP program, or, if permanent legal and physical custody of the child is given to a relative custodian residing outside of Minnesota, the analogous transitional standard or standard of need used to calculate assistance under the TANF program of the state where the relative custodian lives.

(b) "Local agency" means the ~~local~~ county social services agency or tribal social services agency with legal custody of a child prior to the transfer of permanent legal and physical custody.

(c) "Permanent legal and physical custody" means permanent legal and physical custody ordered by a Minnesota Juvenile Court under section 260C.201, subdivision ~~27~~ 11.

(d) "Relative" has the meaning given in section 260C.007, subdivision 27.

(e) "Relative custodian" means a person who has permanent legal and physical custody of a child. When siblings, including half-siblings and stepsiblings, are placed together in permanent legal and physical custody, the person receiving permanent legal and physical custody of the siblings is considered a relative custodian of all of the siblings for purposes of this section.

(f) "Relative custody assistance agreement" means an agreement entered into between a local agency and a person who has been or will be awarded permanent legal and physical custody of a child.

(g) "Relative custody assistance payment" means a monthly cash grant made to a relative custodian pursuant to a relative custody assistance agreement and in an amount calculated under subdivision 7.

(h) "Remains in the physical custody of the relative custodian" means that the relative custodian is providing day-to-day care for the child and that the child lives with the relative custodian; absence from the relative custodian's home for a period of more than 120 days raises a presumption that the

child no longer remains in the physical custody of the relative custodian.

Sec. 3. Minnesota Statutes 2004, section 259.23, subdivision 1, is amended to read:

Subdivision 1. [VENUE.] (a) Except as provided in section 260C.101, subdivision 2, the juvenile court shall have original jurisdiction in all adoption proceedings. The proper venue for an adoption proceeding shall be the county of the petitioner's residence, except as provided in paragraph (b). ~~However,~~

(b) Venue for the adoption of a child committed to the guardianship of the commissioner of human services shall be the county with jurisdiction in the matter according to section 260C.317, subdivision 3.

(c) Upon request of the petitioner, the court having jurisdiction over the matter under section 260C.317, subdivision 3, may transfer venue of an adoption proceeding involving a child under the guardianship of the commissioner to the county of the petitioner's residence upon determining that:

(1) the commissioner has given consent to the petitioner's adoption of the child or that consent is unreasonably withheld;

(2) there is no other adoption petition for the child that has been filed or is reasonably anticipated by the commissioner or the commissioner's delegate to be filed; and

(3) transfer of venue is in the best interests of the child. Transfer of venue under this paragraph shall be according to the rules of adoption court procedure.

(d) In all other adoptions, if the petitioner has acquired a new residence in another county and requests a transfer of the adoption proceeding, the court in which an adoption is initiated may transfer the proceeding to the appropriate court in the new county of residence if the transfer is in the best interests of the person to be adopted. The court transfers the proceeding by ordering a continuance and by forwarding to the court administrator of the appropriate court a certified copy of all papers filed, together with an order of transfer. The transferring court also shall forward copies of the order of

transfer to the commissioner of human services and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case; provided, however, the receiving court may in its discretion require the filing of a new petition prior to the hearing.

Sec. 4. Minnesota Statutes 2004, section 259.23, subdivision 2, is amended to read:

Subd. 2. [CONTENTS OF PETITION.] The petition shall be signed by the petitioner and, if married, by the spouse. It shall be verified, and filed in duplicate. The petition shall allege:

(a) The full name, age and place of residence of petitioner, and if married, the date and place of marriage;

(b) The date petitioner acquired physical custody of the child and from what person or agency;

(c) The date of birth of the child, if known, and the state and county where born;

(d) The name of the child's parents, if known, and the guardian if there be one;

(e) The actual name of the child, if known, and any known aliases;

(f) The name to be given the child if a change of name is desired;

(g) The description and value of any real or personal property owned by the child;

(h) That the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is to the best interests of the child for the child to be adopted by the petitioner.

In agency placements, the information required in clauses (d) and (e) ~~above~~ shall not be required to be alleged in the petition but shall be transmitted to the court by the commissioner of human services or the agency.

Sec. 5. Minnesota Statutes 2004, section 259.41, subdivision 3, is amended to read:

Subd. 3. [BACKGROUND CHECK; AFFIDAVIT OF HISTORY.] (a) At the time an adoption study is commenced, each prospective adoptive parent must:

(1) authorize access by the agency to any private data needed to complete the study;

(2) provide all addresses at which the prospective adoptive parent and anyone in the household over the age of 13 has resided in the previous ~~ten~~ five years; and

(3) disclose any names used previously other than the name used at the time of the study~~;-and~~

~~(4)-provide-a-set-of-fingerprints,-which-shall-be-forwarded to-the-Bureau-of-Criminal-Apprehension-to-facilitate-the criminal-conviction-background-check-required-under-paragraph (b)~~.

(b) When the requirements of paragraph (a) have been met, the agency shall immediately begin a background check, on each person over the age of 13 living in the home, consisting, at a minimum, of the following:

(1) a check of criminal conviction data with the Bureau of Criminal Apprehension and local law enforcement authorities;

(2) a check for data on substantiated maltreatment of a child or vulnerable adult and domestic violence data with local law enforcement and social services agencies and district courts; and

(3) for those persons under the age of 25, a check of juvenile court records.

Notwithstanding the provisions of section 260B.171 or 260C.171, the Bureau of Criminal Apprehension, local law enforcement and social services agencies, district courts, and juvenile courts shall release the requested information to the agency completing the adoption study.

(c) When paragraph (b) requires checking the data or records of local law enforcement and social services agencies and district and juvenile courts, the agency shall check with the law enforcement and social services agencies and courts whose jurisdictions cover the addresses under paragraph (a),

clause (2). In the event that the agency is unable to complete any of the record checks required by paragraph (b), the agency shall document the fact and the agency's efforts to obtain the information.

(d) For a study completed under this section, when the agency has reasonable cause to believe that further information may exist on the prospective adoptive parent or household member over the age of 13 that may relate to the health, safety, or welfare of the child, the prospective adoptive parent or household member over the age of 13 shall provide the agency with a set of classifiable fingerprints obtained from an authorized law enforcement agency and the agency may obtain criminal history data from the National Criminal Records Repository by submitting fingerprints to the Bureau of Criminal Apprehension. The agency has reasonable cause when, but not limited to, the:

(1) information from the Bureau of Criminal Apprehension indicates that the prospective adoptive parent or household member over the age of 13 is a multistate offender;

(2) information from the Bureau of Criminal Apprehension indicates that multistate offender status is undetermined;

(3) the agency has received a report from the prospective adoptive parent or household member over the age of 13 or a third party indicating that the prospective adoptive parent or household member over the age of 13 has a criminal history in a jurisdiction other than Minnesota; or

(4) the prospective adoptive parent or household member over the age of 13 is or has been a resident of a state other than Minnesota in the prior five years.

~~(c)~~ (e) At any time prior to completion of the background check required under paragraph (b), a prospective adoptive parent may submit to the agency conducting the study a sworn affidavit stating whether they or any person residing in the household have been convicted of a crime. The affidavit shall also state whether the adoptive parent or any other person residing in the household is the subject of an open

investigation of, or have been the subject of a substantiated allegation of, child or vulnerable-adult maltreatment within the past ten years. A complete description of the crime, open investigation, or substantiated abuse, and a complete description of any sentence, treatment, or disposition must be included. The affidavit must contain an acknowledgment that if, at any time before the adoption is final, a court receives evidence leading to a conclusion that a prospective adoptive parent knowingly gave false information in the affidavit, it shall be determined that the adoption of the child by the prospective adoptive parent is not in the best interests of the child.

~~(d)~~ (f) For the purposes of subdivision 1 and section 259.47, subdivisions 3 and 6, an adoption study is complete for placement, even though the background checks required by paragraph (b) have not been completed, if each prospective adoptive parent has completed the affidavit allowed by paragraph ~~(c)~~ (e) and the other requirements of this section have been met. The background checks required by paragraph (b) must be completed before an adoption petition is filed. If an adoption study has been submitted to the court under section 259.47, subdivision 3 or 6, before the background checks required by paragraph (b) were complete, an updated adoption study report which includes the results of the background check must be filed with the adoption petition. In the event that an agency is unable to complete any of the records checks required by paragraph (b), the agency shall submit with the petition to adopt an affidavit documenting the agency's efforts to complete the checks.

Sec. 6. Minnesota Statutes 2004, section 259.75, subdivision 1, is amended to read:

Subdivision 1. [ESTABLISHMENT; CONTENTS; AVAILABILITY.] The commissioner of human services shall establish an adoption exchange~~, which shall include but not be limited to a book, updated monthly,~~ that contains a photograph and description of each child who has been legally freed for adoption. The

exchange service shall be available to all local social service agencies and licensed child-placing agencies whose purpose is to assist in the adoptive placement of children~~,-and-the-exchange book-shall-be-distributed-to-all-such-agencies~~.

Sec. 7. Minnesota Statutes 2004, section 259.79, subdivision 1, is amended to read:

Subdivision 1. [CONTENT.] (a) The adoption records of ~~the commissioner,~~ the commissioner's agents and licensed child-placing agencies shall contain copies of all relevant legal documents, responsibly collected genetic, medical and social history of the child and the child's birth parents, the child's placement record, copies of all pertinent agreements, contracts, and correspondence relevant to the adoption, and copies of all reports and recommendations made to the court.

(b) The commissioner of human services shall maintain a permanent record of all adoptions granted in district court in Minnesota regarding children who are:

(1) under guardianship of the commissioner or a licensed child-placing agency according to section 260C.201, subdivision 11, or 260C.317;

(2) placed by the commissioner, commissioner's agent, or licensed child-placing agency after a consent to adopt according to section 259.24 or under an agreement conferring authority to place for adoption according to section 259.25; or

(3) adopted after a direct adoptive placement approved by the district court under section 259.47.

Each record shall contain identifying information about the child, the birth or legal parents, and adoptive parents. The record must also contain: (1) the date the child was legally freed for adoption; (2) the date of the adoptive placement; (3) the name of the placing agency; (4) the county where the adoptive placement occurred; (5) the date that the petition to adopt was filed; (6) the county where the petition to adopt was filed; and (7) the date and county where the adoption decree was granted.

(c) Identifying information contained in the adoption

record shall be confidential and shall be disclosed only pursuant to section 259.61.

Sec. 8. Minnesota Statutes 2004, section 259.85, subdivision 1, is amended to read:

Subdivision 1. [PURPOSE.] The commissioner of human services shall establish and supervise a postadoption service grants program to be administered by local social service agencies for the purpose of preserving and strengthening adoptive families. The program will provide financial assistance to adoptive parents who are not receiving adoption assistance under section 259.67 to meet the special needs of an adopted child that cannot be met by other resources available to the family.

Sec. 9. Minnesota Statutes 2004, section 260.012, is amended to read:

260.012 [DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION; REASONABLE EFFORTS.]

(a) Once a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts including culturally appropriate services by the social services agency are made to prevent placement ~~or~~ and to finalize a permanent plan for the child, as appropriate. "Reasonable efforts to finalize the permanent plan for the child" include the agency's efforts to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time, ~~consistent with the best interests, safety, and protection of the child~~ or to place the child with a family that will be the legally permanent home for the child in the event the child cannot be reunited with the parent or guardian from whom the child was removed. In determining reasonable efforts to be made with respect to a child and in making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern. Reasonable efforts to prevent placement or for rehabilitation and reunification are not required upon a determination by the court that:

~~(i)~~ a ~~termination-of-parental-rights~~ petition has been filed stating a prima facie case that:

~~(i)~~ (1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;

~~(ii)~~ (2) the parental rights of the parent to another child have been terminated involuntarily;

~~(iii)~~ (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2); ~~or~~

~~(iv)~~ (4) the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction; or

~~(2) the county attorney has filed a determination not to proceed with a termination of parental rights petition on these grounds was made under section 260C.301, subdivision 3, paragraph (b), and a permanency hearing is held within 30 days of the determination; or~~

~~(3) a termination of parental rights petition or other petition according to section 260C.201, subdivision 11, has been filed alleging a prima facie case that~~

(5) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.

(b) When the court makes one of the prima facie determinations under paragraph (a), either permanency pleadings under section 260C.201, subdivision 11, or a termination of parental rights petition under sections 260C.141 and 260C.301 must be filed. A permanency hearing under section 260C.201, subdivision 11, must be held within 30 days of this determination.

(c) In the case of an Indian child, in proceedings under sections 260B.178 or 260C.178, 260C.201, and 260C.301 the juvenile court must make findings and conclusions consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901 et seq., as to the provision of active efforts. If a child is under the court's delinquency

jurisdiction, it shall be the duty of the court to ensure that reasonable efforts are made to reunite the child with the child's family at the earliest possible time, consistent with the best interests of the child and the safety of the public.

~~(b)~~ (d) "Reasonable efforts to prevent placement" means:

(1) the agency has made reasonable efforts to prevent the placement of the child; or

(2) given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available which could allow the child to safely remain in the home.

(e) As appropriate under the particular circumstances and stage of the case, "reasonable efforts to finalize a permanent plan for the child" means reasonable efforts by the responsible social services agency to:

(1) reunify the child with the parent or guardian from whom the child was removed;

(2) assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care; and

(3) finalize a safe and legally permanent home for the child, preferably through adoption or transfer of permanent legal and physical custody of the child, when the child cannot return to the parent or guardian from whom the child was removed.

(f) Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child and the child's family ~~in-order-to-prevent-removal-of-the child-from-the-child's-family;-or-upon-removal,-services-to eliminate-the-need-for-removal-and-reunite-the-family.~~ ~~(1)~~ Services may include those provided by the responsible social services agency and other appropriate services available in the community. ~~(2)~~ At each stage of the proceedings where the court is required to review the appropriateness of the responsible social services agency's reasonable efforts, the social services

agency has the burden of demonstrating that:

(1) it has made reasonable efforts~~, or that provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances or that reasonable efforts aimed at reunification are not required under this section~~ to prevent placement;

(2) it has made reasonable efforts to finalize the permanent plan for the child; or

(3) reasonable efforts to prevent placement and to reunify the child with the parent or guardian are not required. The agency may meet this burden by stating facts in a sworn petition filed under section 260C.141, ~~or~~ by filing an affidavit summarizing the agency's reasonable efforts or facts the agency believes demonstrate there is no need for reasonable efforts to reunify the parent and child, or through testimony or a certified report required under juvenile court rules.

~~(3) No~~ (g) Once the court determines that reasonable efforts for reunification are not required ~~when the court makes a determination~~ because the court has made one of the prima facie determinations under paragraph (a) ~~unless~~, the court may only require reasonable efforts for reunification after a hearing according to section 260C.163, where the court finds there is not clear and convincing evidence of the facts upon which the court based its prima facie determination. In this case, the court may proceed under section 260C.312. Reunification of a surviving child with a parent is not required if the parent has been convicted of:

~~(i)~~ (1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;

~~(ii)~~ (2) a violation of section 609.222, subdivision 2; or 609.223, in regard to the surviving child; or

~~(iii)~~ (3) a violation of, or an attempt or conspiracy to commit a violation of, United States Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent.

~~(c)~~ (h) The juvenile court, in proceedings under sections 260B.178 or 260C.178, 260C.201, and 260C.301 shall make findings and conclusions as to the provision of reasonable efforts. When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:

(1) relevant to the safety and protection of the child;

(2) adequate to meet the needs of the child and family;

(3) culturally appropriate;

(4) available and accessible;

(5) consistent and timely; and

(6) realistic under the circumstances.

In the alternative, the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances or that reasonable efforts are not required as provided in paragraph (a).

~~(d)~~ (i) This section does not prevent out-of-home placement for treatment of a child with a mental disability when the child's diagnostic assessment or individual treatment plan indicates that appropriate and necessary treatment cannot be effectively provided outside of a residential or inpatient treatment program.

~~(e)~~ (j) If continuation of reasonable efforts ~~described in paragraph (b)~~ to prevent placement or reunify the child with the parent or guardian from whom the child was removed is determined by the court to be inconsistent with the permanent plan for the child~~, or upon a determination~~ or the court making one of the prima facie determinations under paragraph (a), reasonable efforts must be made to place the child in a timely manner in ~~accordance with the permanent plan ordered by the court~~ a safe and permanent home and to complete whatever steps are necessary to legally finalize the permanent ~~plan for~~ placement of the child.

~~(f)~~ (k) Reasonable efforts to place a child for adoption or in another permanent placement may be made concurrently with reasonable efforts ~~as described in paragraphs (a) and (b)~~ to

prevent placement or to reunify the child with the parent or guardian from whom the child was removed. When the responsible social services agency decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent under ~~paragraphs~~ paragraph (a) ~~and (b)~~, the agency shall disclose its decision and both plans for concurrent reasonable efforts to all parties and the court. When the agency discloses its decision to proceed on both plans for reunification and permanent placement away from the parent, the court's review of the agency's reasonable efforts shall include the agency's efforts under ~~paragraphs (a) and (b)~~ both plans.

Sec. 10. Minnesota Statutes 2004, section 260C.001, subdivision 3, is amended to read:

Subd. 3. [PERMANENCY AND TERMINATION OF PARENTAL RIGHTS.] The purpose of the laws relating to permanency and termination of parental rights is to ensure that:

(1) when required and appropriate, reasonable efforts have been made by the social services agency to reunite the child with the child's parents in a home that is safe and permanent; and

(2) if placement with the parents is not reasonably foreseeable, to secure for the child a safe and permanent placement, preferably with adoptive parents or a fit and willing relative through transfer of permanent legal and physical custody to that relative.

Nothing in this section requires reasonable efforts to prevent placement or to reunify the child with the parent or guardian to be made in circumstances where the court has determined that the child has been subjected to egregious harm ~~or~~, when the child is an abandoned infant, the parent has involuntarily lost custody of another child through a proceeding under section 260C.201, subdivision 11, or similar law of another state, the parental rights of the parent to a sibling have been involuntarily terminated, or the court has determined that reasonable efforts or further reasonable efforts to reunify the child with the parent or guardian would be futile.

The paramount consideration in all proceedings for permanent placement of the child under section 260C.201, subdivision 11, or the termination of parental rights is the best interests of the child. In proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, et seq.

Sec. 11. Minnesota Statutes 2004, section 260C.007, subdivision 8, is amended to read:

Subd. 8. [COMPELLING REASONS.] "Compelling reasons" means an individualized determination by the responsible social services agency, which is approved by the court, related to a request by the agency not to initiate proceedings to terminate parental rights or transfer permanent legal and physical custody of a child to the child's relative or former noncustodial parent under section 260C.301, subdivision 3.

Sec. 12. Minnesota Statutes 2004, section 260C.151, subdivision 6, is amended to read:

Subd. 6. [IMMEDIATE CUSTODY.] If the court makes individualized, explicit findings, based on the notarized petition or sworn affidavit, that there are reasonable grounds to believe the child is in surroundings or conditions which endanger the child's health, safety, or welfare that require that responsibility for the child's care and custody be immediately assumed by the ~~court~~ responsible social services agency and that continuation of the child in the custody of the parent or guardian is contrary to the child's welfare, the court may order that the officer serving the summons take the child into immediate custody for placement of the child in foster care. In ordering that responsibility for the care, custody, and control of the child be assumed by the responsible social services agency, the court is ordering emergency protective care as that term is defined in the juvenile court rules.

Sec. 13. Minnesota Statutes 2004, section 260C.178, is amended to read:

260C.178 [~~DETENTION~~ EMERGENCY REMOVAL HEARING.]

Subdivision 1. [HEARING AND RELEASE REQUIREMENTS.] (a) If a child was taken into custody under section 260C.175, subdivision 1, clause (a) or (b)(2), the court shall hold a hearing within 72 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, to determine whether the child should continue in custody.

(b) Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in section 260C.157, subdivision 1. If the court determines there is reason to believe that the child would endanger self or others; not return for a court hearing; run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released; or that the child's health or welfare would be immediately endangered, the court shall order the child into foster care under the responsibility of the responsible social services agency or responsible probation or corrections agency for the purposes of protective care as that term is used in the juvenile court rules. In determining whether the child's health or welfare would be immediately endangered, the court shall consider whether the child would reside with a perpetrator of domestic child abuse.

(c) The court, before determining whether a child should be placed in or continue in ~~custody~~ foster care under the protective care of the responsible agency, shall also make a determination, consistent with section 260.012 as to whether reasonable efforts~~, or~~ were made to prevent placement or whether

reasonable efforts to prevent placement are not required. In the case of an Indian child, the court shall determine whether active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement. The court shall ~~also determine whether there are available services that would prevent the need for further detention. In the alternative,~~ enter a finding that the responsible social services agency has made reasonable efforts to prevent placement when the agency establishes either:

(1) that it has actually provided services or made efforts in an attempt to prevent the child's removal but that such services or efforts have not proven sufficient to permit the child to safely remain in the home; or

(2) that there are no services or other efforts that could be made at the time of the hearing that could safely permit the child to remain home or to return home. When reasonable efforts to prevent placement are required and there are services or other efforts that could be ordered which would permit the child to safely return home, the court shall order the child returned to the care of the parent or guardian and the services or efforts put in place to ensure the child's safety. When the court makes a prima facie determination that one of the circumstances under paragraph (e) exists, the court shall determine that reasonable efforts to prevent placement and to return the child to the care of the parent or guardian are not required ~~if the court makes a prima facie determination that one of the circumstances under paragraph (e) exists~~.

If the court finds the social services agency's preventive or reunification efforts have not been reasonable but further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

(d) The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that continued custody of the child by the parent or guardian would be contrary to the welfare of the

child.

(e) At the ~~detention~~ emergency removal hearing, or at any time during the course of the proceeding, and upon notice and request of the county attorney, the court shall ~~make-the following-determinations:~~

~~(1)~~ determine whether a ~~termination-of-parental-rights~~ petition has been filed stating a prima facie case that:

~~(i)~~ (1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;

~~(ii)~~ (2) the parental rights of the parent to another child have been involuntarily terminated; ~~or~~

~~(iii)~~ (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2);

~~(2) that~~ (4) the parents' custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction; or

(5) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable.

(f) When a petition to terminate parental rights is required under section 260C.301, subdivision 3 or 4, but the county attorney has determined not to proceed with a termination of parental rights petition ~~under-section-260C.307,-or~~

~~(3)-whether-a-termination-of-parental-rights-petition-or other-petition-according-to-section-260C.201,-subdivision-11, has-been-filed-alleging-a-prima-facie-case-that-the-provision-of services-or-further-services-for-the-purpose-of-rehabilitation and-reunification-is-futile-and-therefore-unreasonable-under-the circumstances.~~

~~If-the-court-determines-that-the-county-attorney-is-not proceeding-with-a-termination-of-parental-rights-petition-under section-260C.307,-but-is-proceeding-with-a-petition-under section-260C.201,-subdivision-11,-the-court-shall-schedule-a permanency-hearing-within-30-days.~~, and has instead filed a petition to transfer permanent legal and physical custody to a relative under section 260C.201, subdivision 11, the court shall

schedule a permanency hearing within 30 days of the filing of the petition.

(g) If the county attorney has filed a petition under section 260C.307, the court shall schedule a trial under section 260C.163 within 90 days of the filing of the petition except when the county attorney determines that the criminal case shall proceed to trial first under section 260C.201, subdivision 3.

~~(f)~~ (h) If the court determines the child should be ordered into ~~out-of-home placement~~ foster care and the child's parent refuses to give information to the responsible social services agency regarding the child's father or relatives of the child, the court may order the parent to disclose the names, addresses, telephone numbers, and other identifying information to the responsible social services agency for the purpose of complying with the requirements of sections 260C.151, 260C.212, and 260C.215.

~~(g)~~ (i) If a child ordered into ~~out-of-home placement~~ foster care has siblings, whether full, half, or step, who are also ordered into ~~placement~~ foster care, the court shall inquire of the responsible social services agency of the efforts to place the children together as required by section 260C.212, subdivision 2, paragraph (d), if placement together is in each child's best interests, unless a child is in placement due solely to the child's own behavior or a child is placed with a previously noncustodial parent who is not parent to all siblings. If the children are not placed together at the time of the hearing, the court shall inquire at each subsequent hearing of the agency's efforts to place the siblings together. If any sibling is not placed with another sibling or siblings, the agency must develop a plan for visitation among the siblings as required under section 260C.212, subdivision 1.

~~Subd. 2. [DURATION.] If the court determines that the child should continue in detention, it may order detention continued for eight days, excluding Saturdays, Sundays and holidays, from and including the date of the order. The court shall include in its order the reasons for continued detention~~

~~and-the-findings-of-fact-which-support-these-reasons.~~

Subd. 3. [PARENTAL VISITATION.] If a child has been taken into custody under section 260C.151, subdivision 5, or 260C.175, subdivision 1, clause (b)(2), and the court determines that the child should continue in ~~detention~~ foster care, the court shall include in its order reasonable rules for supervised or unsupervised parental visitation of the child in the ~~shelter~~ foster care facility unless it finds that visitation would endanger the child's physical or emotional well-being.

Subd. 4. [MENTAL HEALTH TREATMENT.] (a) Except as provided in paragraph (b), a child who is ~~held~~ ordered placed in ~~detention~~ foster care as an alleged victim of child abuse as defined in section 630.36, subdivision 2, may not be given mental health treatment specifically for the effects of the alleged abuse until the court finds that there is ~~probable-cause~~ a prima facie basis to believe the abuse has occurred.

(b) A child described in paragraph (a) may be given mental health treatment prior to a ~~probable-cause~~ prima facie finding of child abuse if the treatment is either agreed to by the child's parent or guardian in writing, or ordered by the court according to the standard contained in section 260C.201, subdivision 1.

Subd. 5. [COPIES OF ORDER.] Copies of the court's order shall be served upon the parties, including the ~~supervisor-of-the-detention~~ placement facility, ~~who~~ which shall release the child or continue to hold the child as the court orders.

When the court's order is served upon these parties, notice shall also be given to the parties of the subsequent reviews provided by subdivision 6. ~~The-notice-shall-also-inform-each-party-of-the-right-to-submit-to-the-court-for-informal-review-any-new-evidence-regarding-whether-the-child-should-be-continued-in-detention-and-to-request-a-hearing-to-present-the-evidence-to-the-court.~~

Subd. 6. [REVIEW.] ~~If-a-child-held-in-detention-under-a-court-order-issued-under-subdivision-2-has-not-been-released-prior-to-expiration-of-the-order,-the-court-or-referee-shall~~

~~informally review the child's case file to determine, under the standards provided by subdivision 1, whether detention should be continued. If detention is continued thereafter, informal reviews such as these shall be held within every eight days, excluding Saturdays, Sundays, and holidays, of the child's detention.~~ When a child is placed in foster care, the child's placement shall be periodically reviewed as required under the juvenile court rules including notice to the parties required to be served with a copy of the order under subdivision 4.

A hearing~~, rather than an informal review of the child's case file,~~ shall be held at the request of any one of the parties notified pursuant to subdivision 5, if that party notifies the court of a wish to present to the court new evidence concerning whether the child should be continued in detention or notifies the court of a wish to present an alternate placement arrangement to provide for the safety and protection of the child.

In addition, if a child was taken into ~~detention~~ custody under section 260C.151, subdivision 5, or 260C.175, subdivision 1, clause (c)(2), and is ~~held~~ placed in ~~detention~~ foster care or placed in another facility under a court order issued under subdivision 2, the court shall schedule and hold an adjudicatory hearing on the petition within 60 days of the ~~detention~~ emergency removal hearing upon the request of any party to the proceeding. However, if good cause is shown by a party to the proceeding why the hearing should not be held within that time period, the hearing shall be held within 90 days, unless the parties agree otherwise and the court so orders.

Subd. 7. [OUT-OF-HOME PLACEMENT PLAN.] (a) An out-of-home placement plan required under section 260C.212 shall be filed with the court within 30 days of the filing of a petition alleging the child to be in need of protection or services under section 260C.141, subdivision 1, or filed with the petition if the petition is a review of a voluntary placement under section 260C.141, subdivision 2.

(b) Upon the filing of the out-of-home placement plan which

has been developed jointly with the parent and in consultation with others as required under section 260C.212, subdivision 1, the court may approve implementation of the plan by the responsible social services agency based on the allegations contained in the petition. The court shall send written notice of the approval of the out-of-home placement plan to all parties and the county attorney or may state such approval on the record at a hearing. A parent may agree to comply with the terms of the plan filed with the court.

~~(c) Upon notice and motion by a parent who agrees to comply with the terms of an out-of-home placement plan, the court may modify the plan and order the responsible social services agency to provide other or additional services for reunification, if reunification efforts are required, and the court determines the agency's plan inadequate under section 260.012.~~ If, after reasonable attempts by the responsible social services agency to engage a parent in case planning, the parent refuses to cooperate in the development of the out-of-home placement plan or disagrees with the services recommended by the responsible social service agency, the agency shall note such refusal or disagreement for the court in the out-of-home placement plan filed with the court. The agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services, and the court may approve the plan based on the content of the petition.

(d) Unless the parent agrees to comply with the terms of the out-of-home placement plan, the court may not order a parent to comply with the provisions of the plan until the court ~~makes a determination~~ finds the child is in need of protection or services and orders disposition under section 260C.201, subdivision 1. However, the court may find that the responsible social services agency has made reasonable efforts for reunification if the agency makes efforts to implement the terms of an out-of-home placement plan approved under this section.

Sec. 14. Minnesota Statutes 2004, section 260C.201,

subdivision 1, is amended to read:

Subdivision 1. [DISPOSITIONS.] (a) If the court finds that the child is in need of protection or services or neglected and in foster care, it shall enter an order making any of the following dispositions of the case:

(1) place the child under the protective supervision of the responsible social services agency or child-placing agency in the home of a parent of the child under conditions prescribed by the court directed to the correction of the child's need for protection or services:

(i) the court may order the child into the home of a parent who does not otherwise have legal custody of the child, however, an order under this section does not confer legal custody on that parent;

(ii) if the court orders the child into the home of a father who is not adjudicated, he must cooperate with paternity establishment proceedings regarding the child in the appropriate jurisdiction as one of the conditions prescribed by the court for the child to continue in his home; and

(iii) the court may order the child into the home of a noncustodial parent with conditions and may also order both the noncustodial and the custodial parent to comply with the requirements of a case plan under subdivision 2; or

(2) transfer legal custody to one of the following:

(i) a child-placing agency; or

(ii) the responsible social services agency. In ~~placing~~ making a foster care placement for a child whose custody has been transferred under this ~~paragraph~~ subdivision, the ~~agencies~~ agency shall make an individualized determination of how the placement is in the child's best interests using the consideration for relatives and the best interest factors in section 260C.212, subdivision 2, paragraph (b); or

(3) order a trial home visit without modifying the transfer of legal custody to the responsible social services agency under clause (2). Trial home visit means the child is returned to the care of the parent or guardian from whom the child was removed

for a period not to exceed six months. During the period of the trial home visit, the responsible social services agency:

(i) shall continue to have legal custody of the child, which means the agency may see the child in the parent's home, at school, in a child care facility, or other setting as the agency deems necessary and appropriate;

(ii) shall continue to have the ability to access information under section 260C.208;

(iii) shall continue to provide appropriate services to both the parent and the child during the period of the trial home visit;

(iv) without previous court order or authorization, may terminate the trial home visit and remove the child to foster care;

(v) shall advise the court and parties within three days of the termination of the trial home visit when a visit is terminated by the responsible social services agency without a court order; and

(vi) shall prepare a report for the court when the trial home visit is terminated whether by the agency or court order which describes the child's circumstances during the trial home visit and recommends appropriate orders, if any, for the court to enter to provide for the child's safety and stability. In the event a trial home visit is terminated by the agency by removing the child to foster care without prior court order or authorization, the court shall conduct a hearing within ten days of receiving notice of the termination of the trial home visit by the agency and shall order disposition under this subdivision or conduct a permanency hearing under subdivision 11 or 11a. The time period for the hearing may be extended by the court for good cause shown and if it is in the best interests of the child as long as the total time the child spends in foster care without a permanency hearing does not exceed 12 months.

(4) If the child has been adjudicated as a child in need of protection or services because the child is in need of special services or care to treat or ameliorate a physical or mental

disability, the court may order the child's parent, guardian, or custodian to provide it. The court may order the child's health plan company to provide mental health services to the child. Section 62Q.535 applies to an order for mental health services directed to the child's health plan company. If the health plan, parent, guardian, or custodian fails or is unable to provide this treatment or care, the court may order it provided. Absent specific written findings by the court that the child's disability is the result of abuse or neglect by the child's parent or guardian, the court shall not transfer legal custody of the child for the purpose of obtaining special treatment or care solely because the parent is unable to provide the treatment or care. If the court's order for mental health treatment is based on a diagnosis made by a treatment professional, the court may order that the diagnosing professional not provide the treatment to the child if it finds that such an order is in the child's best interests; or

~~(4)~~ (5) If the court believes that the child has sufficient maturity and judgment and that it is in the best interests of the child, the court may order a child 16 years old or older to be allowed to live independently, either alone or with others as approved by the court under supervision the court considers appropriate, if the county board, after consultation with the court, has specifically authorized this dispositional alternative for a child.

(b) If the child was adjudicated in need of protection or services because the child is a runaway or habitual truant, the court may order any of the following dispositions in addition to or as alternatives to the dispositions authorized under paragraph (a):

(1) counsel the child or the child's parents, guardian, or custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parents,

guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child; or with the consent of the commissioner of corrections, place the child in a group foster care facility which is under the commissioner's management and supervision;

(3) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character. No person may receive custody of two or more unrelated children unless licensed to operate a residential program under sections 245A.01 to 245A.16; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to section 241.021;

(4) require the child to pay a fine of up to $100. The court shall order payment of the fine in a manner that will not impose undue financial hardship upon the child;

(5) require the child to participate in a community service project;

(6) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(7) if the court believes that it is in the best interests of the child and of public safety that the child's driver's license or instruction permit be canceled, the court may order the commissioner of public safety to cancel the child's license or permit for any period up to the child's 18th birthday. If the child does not have a driver's license or permit, the court may order a denial of driving privileges for any period up to the child's 18th birthday. The court shall forward an order issued under this clause to the commissioner, who shall cancel the license or permit or deny driving privileges without a hearing for the period specified by the court. At any time before the expiration of the period of cancellation or denial, the court may, for good cause, order the commissioner of public

safety to allow the child to apply for a license or permit, and the commissioner shall so authorize;

(8) order that the child's parent or legal guardian deliver the child to school at the beginning of each school day for a period of time specified by the court; or

(9) require the child to perform any other activities or participate in any other treatment programs deemed appropriate by the court.

To the extent practicable, the court shall enter a disposition order the same day it makes a finding that a child is in need of protection or services or neglected and in foster care, but in no event more than 15 days after the finding unless the court finds that the best interests of the child will be served by granting a delay. If the child was under eight years of age at the time the petition was filed, the disposition order must be entered within ten days of the finding and the court may not grant a delay unless good cause is shown and the court finds the best interests of the child will be served by the delay.

(c) If a child who is 14 years of age or older is adjudicated in need of protection or services because the child is a habitual truant and truancy procedures involving the child were previously dealt with by a school attendance review board or county attorney mediation program under section 260A.06 or 260A.07, the court shall order a cancellation or denial of driving privileges under paragraph (b), clause (7), for any period up to the child's 18th birthday.

(d) In the case of a child adjudicated in need of protection or services because the child has committed domestic abuse and been ordered excluded from the child's parent's home, the court shall dismiss jurisdiction if the court, at any time, finds the parent is able or willing to provide an alternative safe living arrangement for the child, as defined in Laws 1997, chapter 239, article 10, section 2.

(e) When a parent has complied with a case plan ordered under subdivision 6 and the child is in the care of the parent, the court may order the responsible social services agency to

monitor the parent's continued ability to maintain the child safely in the home under such terms and conditions as the court determines appropriate under the circumstances.

Sec. 15. Minnesota Statutes 2004, section 260C.201, subdivision 10, is amended to read:

Subd. 10. [COURT REVIEW OF ~~OUT-OF-HOME PLACEMENTS~~ FOSTER CARE.] (a) If the court ~~places~~ orders a child placed in ~~a residential facility, as defined in section 260C.212, subdivision 1~~ foster care, the court shall review the out-of-home placement at least every 90 days as required in juvenile court rules to determine whether continued out-of-home placement is necessary and appropriate or whether the child should be returned home. This review is not required if the court has returned the child home, ordered the child permanently placed away from the parent under subdivision 11, or terminated rights under section 260C.301. Court review for a child permanently placed away from a parent, including where the child is under guardianship and legal custody of the commissioner, shall be governed by subdivision 11 or section 260C.317, subdivision 3, whichever is applicable.

(b) No later than six months after the child's ~~out-of-home~~ placement in foster care, the court shall review agency efforts pursuant to section 260C.212, subdivision 2, and order that the efforts continue if the agency has failed to perform the duties under that section.

(c) The court shall review the out-of-home placement plan and may modify the plan as provided under subdivisions 6 and 7.

(d) When the court orders ~~out-of-home placement~~ transfer of custody to a responsible social services agency resulting in foster care or protective supervision with a noncustodial parent under subdivision 1, the court shall notify the parents of the provisions of subdivisions 11 and 11a as required under juvenile court rules.

Sec. 16. Minnesota Statutes 2004, section 260C.201, subdivision 11, is amended to read:

Subd. 11. [REVIEW OF COURT-ORDERED PLACEMENTS; PERMANENT

PLACEMENT DETERMINATION.] (a) This subdivision and subdivision 11a do not apply in cases where the child is in placement due solely to the child's developmental disability or emotional disturbance, where legal custody has not been transferred to the responsible social services agency, and where the court finds compelling reasons under section 260C.007, subdivision 8, to continue the child in foster care past the time periods specified in this subdivision. Foster care placements of children due solely to their disability are governed by section 260C.141, subdivision 2b. In all other cases where the child is in foster care or in the care of a noncustodial parent under subdivision 1, the court shall ~~conduct a hearing~~ commence proceedings to determine the permanent status of a child not later than 12 months after the child is placed in foster care or in the care of a noncustodial parent. At the admit-deny hearing commencing such proceedings, the court shall determine whether there is a prima facie basis for finding that the agency made reasonable efforts, or in the case of an Indian child active efforts, required under section 260.012 and proceed according to the rules of juvenile court.

For purposes of this subdivision, the date of the child's placement in foster care is the earlier of the first court-ordered placement or 60 days after the date on which the child has been voluntarily placed in foster care by the child's parent or guardian. For purposes of this subdivision, time spent by a child under the protective supervision of the responsible social services agency in the home of a noncustodial parent pursuant to an order under subdivision 1 counts towards the requirement of a permanency hearing under this subdivision or subdivision 11a. Time spent on a trial home visit does not count towards the requirement of a permanency hearing under this subdivision or subdivision 11a.

For purposes of this subdivision, 12 months is calculated as follows:

(1) during the pendency of a petition alleging that a child is in need of protection or services, all time periods when a

child is placed in foster care or in the home of a noncustodial parent are cumulated;

(2) if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed in foster care within the previous five years are cumulated. If a child under this clause has been in foster care for 12 months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six months before making a permanency determination.

(b) Unless the responsible social services agency recommends return of the child to the custodial parent or parents, not later than 30 days prior to ~~this~~ the admit-deny hearing required under paragraph (a) and the rules of juvenile court, the responsible social services agency shall file pleadings in juvenile court to establish the basis for the juvenile court to order permanent placement of the child, including a termination of parental rights petition, according to paragraph (d). Notice of the hearing and copies of the pleadings must be provided pursuant to section 260C.152. ~~If a termination of parental rights petition is filed before the date required for the permanency planning determination and there is a trial under section 260C.163 scheduled on that petition within 90 days of the filing of the petition, no hearing need be conducted under this subdivision.~~

(c) The permanency proceedings shall be conducted in a timely fashion including that any trial required under section 260C.163 shall be commenced within 60 days of the admit-deny hearing required under paragraph (a). At the conclusion of the ~~hearing~~ permanency proceedings, the court shall:

(1) order the child returned to the care of the parent or guardian from whom the child was removed; or

(2) order a permanent placement or termination of parental rights if permanent placement or termination of parental rights is in the child's best interests. The "best interests of the

child" means all relevant factors to be considered and evaluated. Transfer of permanent legal and physical custody, termination of parental rights, or guardianship and legal custody to the commissioner through a consent to adopt are preferred permanency options for a child who cannot return home.

(d) If the child is not returned to the home, the court must order one of the following dispositions:

(1) permanent legal and physical custody to a relative in the best interests of the child according to the following conditions:

(i) an order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian;

(ii) in transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards applicable under this chapter and chapter 260, and the procedures set out in the juvenile court rules;

(iii) an order establishing permanent legal and physical custody under this subdivision must be filed with the family court;

(iv) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision making on behalf of the child;

(v) the social services agency may bring a petition or motion naming a fit and willing relative as a proposed permanent legal and physical custodian. The commissioner of human services shall annually prepare for counties information that must be given to proposed custodians about their legal rights and obligations as custodians together with information on financial and medical benefits for which the child is eligible; and

(vi) the juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are

delivered to the child and permanent legal custodian or for the purpose of ensuring conditions ordered by the court related to the care and custody of the child are met;

(2) termination of parental rights when the requirements of sections 260C.301 to 260C.328 are met or according to the following conditions:

(i) ~~unless~~ order the social services agency ~~has already filed~~ to file a petition for termination of parental rights ~~under section 260C.307, the court may order such a petition filed and~~ in which case all the requirements of sections 260C.301 to 260C.328 remain applicable; and

(ii) an adoption completed subsequent to a determination under this subdivision may include an agreement for communication or contact under section 259.58;

(3) long-term foster care according to the following conditions:

(i) the court may order a child into long-term foster care only if it ~~finds~~ approves the responsible social service agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests; ~~and~~

(ii) further, the court may only order long-term foster care for the child under this section if it finds the following:

(A) the child has reached age 12 and ~~reasonable efforts by~~ the responsible social services agency ~~have failed~~ has made reasonable efforts to locate and place the child with an adoptive family ~~for the child~~ or with a fit and willing relative who will agree to a transfer of permanent legal and physical custody of the child, but such efforts have not proven successful; or

(B) the child is a sibling of a child described in subitem (A) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home; and

(iii) at least annually, the responsible social services agency reconsiders its provision of services to the child and the child's placement in long-term foster care to ensure that:

(A) long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability, including whether there is another permanent placement option under this chapter that would better serve the child's needs and best interests;

(B) whenever possible, there is an identified long-term foster care family that is committed to being the foster family for the child as long as the child is a minor or under the jurisdiction of the court;

(C) the child is receiving appropriate services or assistance to maintain or build connections with the child's family and community;

(D) the child's physical and mental health needs are being appropriately provided for; and

(E) the child's educational needs are being met;

(4) foster care for a specified period of time according to the following conditions:

(i) foster care for a specified period of time may be ordered only if:

(A) the sole basis for an adjudication that the child is in need of protection or services is the child's behavior;

(B) the court finds that foster care for a specified period of time is in the best interests of the child; and

(C) the court ~~finds~~ approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child's best interests;

(ii) the order does not specify that the child continue in foster care for any period exceeding one year; or

(5) guardianship and legal custody to the commissioner of human services under the following procedures and conditions:

(i) there is an identified prospective adoptive home agreed to by the responsible social services agency that has agreed to adopt the child and the court accepts the parent's voluntary consent to adopt under section 259.24, except that such consent executed by a parent under this item shall be irrevocable unless

fraud is established and an order issues permitting revocation as stated in item (vii);

(ii) if the court accepts a consent to adopt in lieu of ordering one of the other enumerated permanency dispositions, the court must review the matter at least every 90 days. The review will address the reasonable efforts of the agency to achieve a finalized adoption;

(iii) a consent to adopt under this clause vests all legal authority regarding the child, including guardianship and legal custody of the child, with the commissioner of human services as if the child were a state ward after termination of parental rights;

(iv) the court must forward a copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the commissioner, to the commissioner; ~~and~~

(v) if an adoption is not finalized by the identified prospective adoptive parent within 12 months of the execution of the consent to adopt under this clause, the commissioner of human services or the commissioner's delegate shall pursue adoptive placement in another home unless the commissioner certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent;

(vi) notwithstanding item (v), as soon as the commissioner or commissioner's delegate determines that finalization of the adoption with the identified prospective adoptive parent is not possible, that the prospective adoptive parent is not cooperative in completing the steps necessary to finalize the adoption, or upon the commissioner's determination to withhold consent to the adoption under chapter 259, the commissioner or commissioner's delegate shall pursue adoptive placement in another home; and

(vii) unless otherwise required by the Indian Child Welfare Act, United States Code, title 25, section 1913, a consent to adopt executed under this section shall be irrevocable upon acceptance by the court except upon order permitting revocation

issued by the same court after written findings that consent was obtained by fraud.

(e) In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.

(f) Once a permanent placement determination has been made and permanent placement has been established, further court reviews are necessary if:

(1) the placement is long-term foster care or foster care for a specified period of time;

(2) the court orders further hearings because it has retained jurisdiction of a transfer of permanent legal and physical custody matter;

(3) an adoption has not yet been finalized; or

(4) there is a disruption of the permanent or long-term placement.

(g) Court reviews of an order for long-term foster care, whether under this section or section 260C.317, subdivision 3, paragraph (d), ~~or foster care for a specified period of time~~ must be conducted at least yearly and must review the child's out-of-home placement plan and the reasonable efforts of the agency to finalize the permanent plan for the child including the agency's efforts to:

(1) ensure that long-term foster care continues to be the most appropriate legal arrangement for meeting the child's need for permanency and stability or, if not, to identify and attempt to finalize another permanent placement option under this chapter that would better serve the child's needs and best interests;

(2) identify a specific long-term foster home for the child ~~or a specific foster home for the time the child is specified to be out of the care of the parent~~, if one has not already been identified;

~~(2)~~ (3) support continued placement of the child in the

identified home, if one has been identified;

~~(3)~~ (4) ensure appropriate services are provided to address the physical health, mental health, and educational needs of the child during the period of long-term foster care ~~or foster care for a specified period of time~~ and also ensure appropriate services or assistance to maintain relationships with appropriate family members and the child's community; and

~~(4)~~ (5) plan for the child's independence upon the child's leaving long-term foster care living as required under section 260C.212, subdivision 1~~, and~~

~~(5) where placement is for a specified period of time, a plan for the safe return of the child to the care of the parent.~~

(h) In the event it is necessary for a child that has been ordered into foster care for a specified period of time to be in foster care longer than one year after the permanency hearing held under this section, not later than 12 months after the time the child was ordered into foster care for a specified period of time, the matter must be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child; if it is in the child's best interests to continue the order for foster care for a specified period of time past a total of 12 months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

(i) An order ~~under this subdivision~~ permanently placing a child out of the home of the parent or guardian must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or ~~parents~~ guardian where reasonable efforts are required;

(3) the parent's or parents' efforts and ability to use

services to correct the conditions which led to the out-of-home placement; and

(4) ~~whether~~ that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

~~(i)~~ (j) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice. A parent may only seek modification of an order for long-term foster care upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child. The responsible social services agency may ask the court to vacate an order for long-term foster care upon a prima facie showing that there is a factual basis for the court to order another permanency option under this chapter and that such an option is in the child's best interests. Upon a hearing where the court determines that there is a factual basis for vacating the order for long-term foster care and that another permanent order regarding the placement of the child is in the child's best interests, the court may vacate the order for long-term foster care and enter a different order for permanent placement that is in the child's best interests. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for long-term foster care and ordering a different permanent placement in the child's best interests. The county attorney must file pleadings and give notice as required under the rules of juvenile court in order to modify an order for long-term foster care under this paragraph.

~~(j)~~ (k) The court shall issue an order required under this section within 15 days of the close of the proceedings. The court may extend issuing the order an additional 15 days when necessary in the interests of justice and the best interests of

the child.

Sec. 17. Minnesota Statutes 2004, section 260C.312, is amended to read:

260C.312 [DISPOSITION; PARENTAL RIGHTS NOT TERMINATED.]

(a) If, after a hearing, the court does not terminate parental rights but determines that the child is in need of protection or services, or that the child is neglected and in foster care, the court may find the child is in need of protection or services or neglected and in foster care and may enter an order in accordance with the provisions of section 260C.201.

(b) When a child has been in placement 15 of the last 22 months after a trial on a termination of parental rights petition, if the court finds that the petition is not proven or that termination of parental rights is not in the child's best interests, the court must order the child returned to the care of the parent unless the court ~~finds~~ approves the responsible social services agency's determination of compelling reasons why the child should remain out of the care of the parent. If the court orders the child returned to the care of the parent, the court may order a trial home visit, protective supervision, or monitoring under section 260C.201.

Sec. 18. Minnesota Statutes 2004, section 260C.317, subdivision 3, is amended to read:

Subd. 3. [ORDER; RETENTION OF JURISDICTION.] (a) A certified copy of the findings and the order terminating parental rights, and a summary of the court's information concerning the child shall be furnished by the court to the commissioner or the agency to which guardianship is transferred. The orders shall be on a document separate from the findings. The court shall furnish the individual to whom guardianship is transferred a copy of the order terminating parental rights.

(b) The court shall retain jurisdiction in a case where adoption is the intended permanent placement disposition until the child's adoption is finalized, the child is 18 years of age,

or the child is otherwise ordered discharged from the jurisdiction of the court. The guardian ad litem and counsel for the child shall continue on the case until an adoption decree is entered. A hearing must be held every 90 days following termination of parental rights for the court to review progress toward an adoptive placement and the specific recruitment efforts the agency has taken to find an adoptive family or other placement living arrangement for the child and to finalize the adoption or other permanency plan.

(c) ~~When adoption is not the intended disposition~~ The responsible social services agency may make a determination of compelling reasons for a child to be in long-term foster care when the agency has made exhaustive efforts to recruit, identify, and place the child in an adoptive home, and ~~if~~ the child continues in ~~out-of-home placement~~ foster care for ~~12~~ at least 24 months after the court has issued the order terminating parental rights ~~and~~. Upon approving the agency's determination of compelling reasons, the court may order the child placed in long-term foster care. At least every 12 months thereafter as long as the child continues in out-of-home placement, the court shall conduct a permanency review hearing to determine the future status of the child~~, including, but not limited to, whether the child should be continued in out-of-home placement, should be placed for adoption, or should, because of the child's special needs and for compelling reasons, be ordered into long-term out-of-home placement~~ using the review requirements of section 260C.201, subdivision 11, paragraph (g).

(d) The court shall retain jurisdiction through the child's minority in a case where long-term foster care is the permanent disposition whether under paragraph (c) or section 260C.201, subdivision 11. ~~All of the review requirements under section 260C.201, subdivision 11, paragraph (g), apply.~~

ARTICLE 3

CHILD CARE

Section 1. Minnesota Statutes 2004, section 119B.025, subdivision 1, is amended to read:

Subdivision 1. [FACTORS WHICH MUST BE VERIFIED.] (a) The county shall verify the following at all initial child care applications using the universal application:

(1) identity of adults;

(2) presence of the minor child in the home, if questionable;

(3) relationship of minor child to the parent, stepparent, legal guardian, eligible relative caretaker, or the spouses of any of the foregoing;

(4) age;

(5) immigration status, if related to eligibility;

(6) Social Security number, if given;

(7) income;

(8) spousal support and child support payments made to persons outside the household;

(9) residence; and

(10) inconsistent information, if related to eligibility.

(b) If a family did not use the universal application or child care addendum to apply for child care assistance, the family must complete the universal application or child care addendum at its next eligibility redetermination and the county must verify the factors listed in paragraph (a) as part of that redetermination. Once a family has completed a universal application or child care addendum, the county shall use the redetermination form described in paragraph (c) for that family's subsequent redeterminations. Eligibility must be redetermined at least every six months. If a family reports a change in an eligibility factor before the family's next regularly scheduled redetermination, the county must recalculate eligibility without requiring verification of any eligibility factor that did not change.

(c) The commissioner shall develop a ~~recertification~~ redetermination form to redetermine eligibility and a change report form to report changes that ~~minimizes~~ minimize paperwork for the county and the participant.

Sec. 2. Minnesota Statutes 2004, section 119B.03,

subdivision 6, is amended to read:

Subd. 6. [ALLOCATION FORMULA.] The basic sliding fee state and federal funds shall be allocated on a calendar year basis. Funds shall be allocated first in amounts equal to each county's guaranteed floor according to subdivision 8, with any remaining available funds allocated according to the following formula:

(a) One-fourth of the funds shall be allocated in proportion to each county's total expenditures for the basic sliding fee child care program reported during the most recent fiscal year completed at the time of the notice of allocation.

(b) One-fourth of the funds shall be allocated based on the number of families participating in the transition year child care program as reported during the most recent quarter completed at the time of the notice of allocation.

(c) One-fourth of the funds shall be allocated in proportion to each county's most recently reported first, second, and third priority waiting list as defined in subdivision 2 and the reinstatement list of those families whose assistance was terminated with the approval of the commissioner under Minnesota Rules, part 3400.0183, subpart 1.

(d) One-fourth of the funds must be allocated in proportion to each county's most recently reported waiting list as defined in subdivision 2 and the reinstatement list of those families whose assistance was terminated with the approval of the commissioner under Minnesota Rules, part 3400.0183, subpart 1.

Sec. 3. Minnesota Statutes 2004, section 119B.09, subdivision 4, is amended to read:

Subd. 4. [ELIGIBILITY; ANNUAL INCOME; CALCULATION.] Annual income of the applicant family is the current monthly income of the family multiplied by 12 or the income for the 12-month period immediately preceding the date of application, or income calculated by the method which provides the most accurate assessment of income available to the family. Self-employment income must be calculated based on gross receipts less operating expenses. Income must be ~~redetermined~~ recalculated when the family's income changes, but no less often than every six

months. Income must be verified with documentary evidence. If the applicant does not have sufficient evidence of income, verification must be obtained from the source of the income.

Sec. 4. Minnesota Statutes 2004, section 119B.09, subdivision 9, is amended to read:

Subd. 9. [LICENSED AND LEGAL NONLICENSED FAMILY CHILD CARE PROVIDERS; ASSISTANCE.] Licensed and legal nonlicensed family child care providers are not eligible to receive child care assistance subsidies under this chapter for their own children or children in their ~~custody.~~ family during the hours they are providing child care or being paid to provide child care. Child care providers are eligible to receive child care assistance subsidies for their children when they are engaged in other activities that meet the requirements of this chapter and for which child care assistance can be paid. The hours for which the provider receives a child care subsidy for their own children must not overlap with the hours the provider provides child care services.

ARTICLE 4

CHILD SUPPORT

Section 1. Minnesota Statutes 2004, section 256.978, subdivision 2, is amended to read:

Subd. 2. [ACCESS TO INFORMATION.] (a) A request for information by the public authority responsible for child support of this state or any other state may be made to:

(1) employers when there is reasonable cause to believe that the subject of the inquiry is or was an employee or independent contractor of the employer. Information to be released by employers of employees is limited to place of residence, employment status, wage or payment information, benefit information, and Social Security number. Information to be released by employers of independent contractors is limited to place of residence or address, contract status, payment information, benefit information, and Social Security number or identification number;

(2) utility companies when there is reasonable cause to

believe that the subject of the inquiry is or was a retail customer of the utility company. Customer information to be released by utility companies is limited to place of residence, home telephone, work telephone, source of income, employer and place of employment, and Social Security number;

(3) insurance companies when there is reasonable cause to believe that the subject of the inquiry is or was receiving funds either in the form of a lump sum or periodic payments. Information to be released by insurance companies is limited to place of residence, home telephone, work telephone, employer, Social Security number, and amounts and type of payments made to the subject of the inquiry;

(4) labor organizations when there is reasonable cause to believe that the subject of the inquiry is or was a member of the labor association. Information to be released by labor associations is limited to place of residence, home telephone, work telephone, Social Security number, and current and past employment information; and

(5) financial institutions when there is reasonable cause to believe that the subject of the inquiry has or has had accounts, stocks, loans, certificates of deposits, treasury bills, life insurance policies, or other forms of financial dealings with the institution. Information to be released by the financial institution is limited to place of residence, home telephone, work telephone, identifying information on the type of financial relationships, Social Security number, current value of financial relationships, and current indebtedness of the subject with the financial institution.

(b) For purposes of this subdivision, utility companies include telephone companies, radio common carriers, and telecommunications carriers as defined in section 237.01, and companies that provide electrical, telephone, natural gas, propane gas, oil, coal, or cable television services to retail customers. The term financial institution includes banks, savings and loans, credit unions, brokerage firms, mortgage companies, insurance companies, benefit associations, safe

deposit companies, money market mutual funds, or similar entities authorized to do business in the state.

(c) For purposes of this section, the public authority may request or obtain information from any person or entity enumerated in this section, or from any third party who contracts with any such person or entity to obtain or retain information that may be requested by the public authority.

Sec. 2. Minnesota Statutes 2004, 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 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:

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 or the amount in effect under paragraph (k)	25%	30%	35%	39%	43%	47%	50%

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~~, not including payments or orders for child support or maintenance debts or arrears.

"Net income" does not include:

(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 obligor'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 obligee. 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 parenting time 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. If a court order provides for child care expenses and the public authority provides child support enforcement services, the collection of the amount allocated for child care expenses ~~terminates~~ must be suspended when either party ~~notifies~~ informs the public authority that ~~the~~ no child care costs ~~have ended and without any legal action on the part of either party~~ are being incurred and the public authority verifies the accuracy of the information with the other 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.~~ resume collection of the amount allocated for child care expenses when either party provides information that child care costs have resumed. If the parties provide conflicting information to the public authority regarding whether or not child care expenses are being incurred, the collection of the amount allocated for child care expenses must continue or resume. Either party, through motion to the court, may challenge the suspension or resumption of the collection of the amount allocated for child care expenses. All provisions of the court order remain in effect even though the public authority suspends collection activities for the amount allocated for child care expenses. In these and 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 obligor parent to care for the child while the obligee parent is working, as provided in section 518.175, subdivision 8, but this is not a reason to deviate from the guidelines.

(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 the AFDC program formerly codified under sections 256.72 to 256.82 or 256B.01 to 256B.40 and chapter 256J or 256K.

(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 256.741;

(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 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 256.741, 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 256.741, 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 States 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. 3. Minnesota Statutes 2004, section 518.68, subdivision 2, is amended to read:

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

IMPORTANT NOTICE

1. PAYMENTS TO PUBLIC AGENCY

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

2. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS -- A FELONY

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or visitation rights), according to Minnesota Statutes, section 609.26. A copy of that section is

available from any district court clerk.

3. NONSUPPORT OF A SPOUSE OR CHILD -- CRIMINAL PENALTIES

A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

4. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME

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

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

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

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

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

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

(g) If the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. If a motion is not filed, the support

obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (c).

(h) Reasonable parenting time guidelines are contained in Appendix B, which is available from the court administrator.

(i) The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

(j) The public authority may suspend or resume collection of the amount allocated for child care expenses if the conditions of Minnesota Statutes, section 518.551, subdivision 5, paragraph (b), are met.

5. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3

Unless otherwise provided by the Court:

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

(b) Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational

progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

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

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

6. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, section 518.6111 have been met. A copy of those sections is available from any district court clerk.

7. CHANGE OF ADDRESS OR RESIDENCE

Unless otherwise ordered, each party shall notify the other party, the court, and the public authority responsible for collection, if applicable, of the following information within ten days of any change: the residential and mailing address, telephone number, driver's license number, Social Security number, and name, address, and telephone number of the employer.

8. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

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

9. JUDGMENTS FOR UNPAID SUPPORT

If a person fails to make a child support payment, the payment owed becomes a judgment against the person

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

10. JUDGMENTS FOR UNPAID MAINTENANCE

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

11. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT

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

12. PARENTING TIME EXPEDITOR PROCESS

On request of either party or on its own motion, the court may appoint a parenting time expeditor to resolve parenting time disputes under Minnesota Statutes, section 518.1751. A copy of that section and a description of the expeditor process is available from any district court clerk.

13. PARENTING TIME REMEDIES AND PENALTIES

Remedies and penalties for the wrongful denial of parenting time are available under Minnesota Statutes, section 518.175, subdivision 6. These include compensatory parenting time; civil penalties; bond requirements; contempt; and reversal of custody. A copy of that

subdivision and forms for requesting relief are available from any district court clerk.

Sec. 4. Minnesota Statutes 2004, section 548.091, subdivision 1a, is amended to read:

Subd. 1a. [CHILD SUPPORT JUDGMENT BY OPERATION OF LAW.] (a) Any payment or installment of support required by a judgment or decree of dissolution or legal separation, determination of parentage, an order under chapter 518C, an order under section 256.87, or an order under section 260B.331 or 260C.331, that is not paid or withheld from the obligor's income as required under section 518.6111, or which is ordered as child support by judgment, decree, or order by a court in any other state, is a judgment by operation of law on and after the date it is due, is entitled to full faith and credit in this state and any other state, and shall be entered and docketed by the court administrator on the filing of affidavits as provided in subdivision 2a. Except as otherwise provided by paragraph (b), interest accrues from the date the unpaid amount due is greater than the current support due at the annual rate provided in section 549.09, subdivision 1, plus two percent, not to exceed an annual rate of 18 percent. A payment or installment of support that becomes a judgment by operation of law between the date on which a party served notice of a motion for modification under section 518.64, subdivision 2, and the date of the court's order on modification may be modified under that subdivision.

(b) Notwithstanding the provisions of section 549.09, upon motion to the court and upon proof by the obligor of ~~36~~ 12 consecutive months of complete and timely payments of both current support and court-ordered paybacks of a child support debt or arrearage, the court may order interest on the remaining debt or arrearage to stop accruing. Timely payments are those made in the month in which they are due. If, after that time, the obligor fails to make complete and timely payments of both current support and court-ordered paybacks of child support debt or arrearage, the public authority or the obligee may move the court for the reinstatement of interest as of the month in which

the obligor ceased making complete and timely payments.

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

(c) Notwithstanding the provisions of section 549.09, upon motion to the court, the court may order interest on a child support debt or arrearage to stop accruing where the court finds that the obligor is:

(1) unable to pay support because of a significant physical or mental disability;

(2) a recipient of Supplemental Security Income (SSI), Title II Older Americans Survivor's Disability Insurance (OASDI), other disability benefits, or public assistance based upon need; or

(3) institutionalized or incarcerated for at least 30 days for an offense other than nonsupport of the child or children involved, and is otherwise financially unable to pay support.

(d) If the conditions in paragraph (c) no longer exist, upon motion to the court, the court may order interest accrual to resume retroactively from the date of service of the motion to resume the accrual of interest.

ARTICLE 5

FAMILY SUPPORTS

Section 1. Minnesota Statutes 2004, section 119A.43, subdivision 2, is amended to read:

Subd. 2. [ESTABLISHMENT AND ADMINISTRATION.] A transitional housing program is established to be administered by the commissioner. The commissioner may make grants to eligible recipients or enter into agreements with community action agencies or other public or private nonprofit agencies to make grants to eligible recipients to initiate, maintain, or expand programs to provide transitional housing and support services for persons in need of transitional housing, which may include up to six months of follow-up support services for

persons who complete transitional housing as they stabilize in permanent housing. The commissioner must ensure that money appropriated to implement this section is distributed as soon as practicable. The commissioner may make grants directly to eligible recipients. The commissioner may use up to ten percent of the appropriation available for this program for persons needing assistance longer than 24 months.

Sec. 2. Minnesota Statutes 2004, section 144D.025, is amended to read:

144D.025 [OPTIONAL REGISTRATION.]

An establishment that meets all the requirements of this chapter except that fewer than 80 percent of the adult residents are age 55 or older, or a supportive housing establishment developed and funded in whole or in part with funds provided specifically as part of the plan to end long-term homelessness required under Laws 2003, chapter 128, article 15, section 9, may, at its option, register as a housing with services establishment.

Sec. 3. Minnesota Statutes 2004, section 256D.02, subdivision 17, is amended to read:

Subd. 17. [PROFESSIONAL CERTIFICATION.] "Professional certification" means~~:--(1)~~ a statement about a person's illness, injury, or incapacity that is signed by a ~~licensed physician, psychological practitioner, or licensed psychologist, qualified by professional training and experience to diagnose and certify the person's condition, or~~

~~(2) a statement about an incapacity involving a spinal subluxation condition that is signed by a licensed chiropractor qualified by professional training and experience to diagnose and certify the condition~~ "qualified professional" as defined in section 256J.08, subdivision 73a.

Sec. 4. Minnesota Statutes 2004, section 256D.051, subdivision 6c, is amended to read:

Subd. 6c. [PROGRAM FUNDING.] ~~(a)~~ Within the limits of available resources, the commissioner shall reimburse the actual costs of county agencies and their employment and training

service providers for the provision of food stamp employment and training services, including participant support services, direct program services, and program administrative activities. The cost of services for each county's food stamp employment and training program shall not exceed the annual allocated amount. No more than 15 percent of program funds may be used for administrative activities. The county agency may expend county funds in excess of the limits of this subdivision without state reimbursement.

Program funds shall be allocated based on the county's average number of food stamp cases as compared to the statewide total number of such cases. The average number of cases shall be based on counts of cases as of March 31, June 30, September 30, and December 31 of the previous calendar year. The commissioner may reallocate unexpended money appropriated under this section to those county agencies that demonstrate a need for additional funds.

~~(b) This subdivision expires effective June 30, 2005.~~

Sec. 5. Minnesota Statutes 2004, section 256I.04, subdivision 2a, is amended to read:

Subd. 2a. [LICENSE REQUIRED.] A county agency may not enter into an agreement with an establishment to provide group residential housing unless:

(1) the establishment is licensed by the Department of Health as a hotel and restaurant; a board and lodging establishment; a residential care home; a boarding care home before March 1, 1985; or a supervised living facility, and the service provider for residents of the facility is licensed under chapter 245A. However, an establishment licensed by the Department of Health to provide lodging need not also be licensed to provide board if meals are being supplied to residents under a contract with a food vendor who is licensed by the Department of Health;

(2) the residence is licensed by the commissioner of human services under Minnesota Rules, parts 9555.5050 to 9555.6265, or certified by a county human services agency prior to July 1,

1992, using the standards under Minnesota Rules, parts 9555.5050 to 9555.6265; ~~or~~

(3) the establishment is registered under chapter 144D and provides three meals a day, ~~except that~~ or is an establishment voluntarily registered under section 144D.025 ~~is not eligible for an agreement to provide group residential housing~~ as a supportive housing establishment; or

(4) an establishment voluntarily registered under section 144D.025, other than a supportive housing establishment under clause (3), is not eligible to provide group residential housing.

The requirements under clauses (1), (2), (3), and ~~(3)~~ (4) do not apply to establishments exempt from state licensure because they are located on Indian reservations and subject to tribal health and safety requirements.

Sec. 6. Minnesota Statutes 2004, section 256I.05, is amended by adding a subdivision to read:

Subd. 1g. [SUPPLEMENTARY SERVICE RATE FOR CERTAIN FACILITIES.] On or after July 1, 2005, a county agency may negotiate a supplementary service rate for recipients of assistance under section 256I.04, subdivision 1, paragraph (b), who relocate from a homeless shelter licensed and registered prior to December 31, 1996, by the Minnesota Department of Health under section 157.17, to a supportive housing establishment developed and funded in whole or in part with funds provided specifically as part of the plan to end long-term homelessness required under Laws 2003, chapter 128, article 15, section 9, not to exceed $456.75.

Sec. 7. Minnesota Statutes 2004, section 256J.626, subdivision 6, is amended to read:

Subd. 6. [BASE ALLOCATION TO COUNTIES AND TRIBES; DEFINITIONS.] (a) For purposes of this section, the following terms have the meanings given ~~them:~~.

(1) "2002 historic spending base" means the commissioner's determination of the sum of the reimbursement related to fiscal year 2002 of county or tribal agency expenditures for the base programs listed in clause ~~(4)~~ (6), items (i) through (iv), and

earnings related to calendar year 2002 in the base program listed in clause ~~(4)~~ (6), item (v), and the amount of spending in fiscal year 2002 in the base program listed in clause ~~(4)~~ (6), item (vi), issued to or on behalf of persons residing in the county or tribal service delivery area.

(2) "Adjusted caseload factor" means a factor weighted:

(i) 47 percent on the MFIP cases in each county at four points in time in the most recent 12-month period for which data is available multiplied by the county's caseload difficulty factor; and

(ii) 53 percent on the count of adults on MFIP in each county and tribe at four points in time in the most recent 12-month period for which data is available multiplied by the county or tribe's caseload difficulty factor.

(3) "Caseload difficulty factor" means a factor determined by the commissioner for each county and tribe based upon the self-support index described in section 256J.751, subdivision 2, clause (7).

~~(2)~~ (4) "Initial allocation" means the amount potentially available to each county or tribe based on the formula in paragraphs (b) through ~~(d)~~ (h).

~~(3)~~ (5) "Final allocation" means the amount available to each county or tribe based on the formula in paragraphs (b) through ~~(d)~~ (h), after adjustment by subdivision 7.

~~(4)~~ (6) "Base programs" means the:

(i) MFIP employment and training services under Minnesota Statutes 2002, section 256J.62, subdivision 1, in effect June 30, 2002;

(ii) bilingual employment and training services to refugees under Minnesota Statutes 2002, section 256J.62, subdivision 6, in effect June 30, 2002;

(iii) work literacy language programs under Minnesota Statutes 2002, section 256J.62, subdivision 7, in effect June 30, 2002;

(iv) supported work program authorized in Laws 2001, First Special Session chapter 9, article 17, section 2, in effect June

30, 2002;

(v) administrative aid program under section 256J.76 in effect December 31, 2002; and

(vi) emergency assistance program under Minnesota Statutes 2002, section 256J.48, in effect June 30, 2002.

(b) ~~(1) Beginning July 1, 2003,~~ The commissioner shall:

(1) beginning July 1, 2003, determine the initial allocation of funds available under this section according to clause (2)~~.~~;

(2) allocate all of the funds available for the period beginning July 1, 2003, and ending December 31, 2004, ~~shall be allocated~~ to each county or tribe in proportion to the county's or tribe's share of the statewide 2002 historic spending base~~.~~;

~~(c)~~ (3) determine for calendar year 2005~~, the commissioner shall determine~~ the initial allocation of funds to be made available under this section in proportion to the county or tribe's initial allocation for the period of July 1, 2003, to December 31, 2004~~.~~;

~~(d) The formula under this subdivision sunsets December 31, 2005.~~ (4) determine for calendar year 2006 the initial allocation of funds to be made available under this section based 90 percent on the proportion of the county or tribe's share of the statewide 2002 historic spending base and ten percent on the proportion of the county or tribe's share of the adjusted caseload factor;

(5) determine for calendar year 2007 the initial allocation of funds to be made available under this section based 70 percent on the proportion of the county or tribe's share of the statewide 2002 historic spending base and 30 percent on the proportion of the county or tribe's share of the adjusted caseload factor; and

(6) determine for calendar year 2008 and subsequent years the initial allocation of funds to be made available under this section based 50 percent on the proportion of the county or tribe's share of the statewide 2002 historic spending base and 50 percent on the proportion of the county or tribe's share of

the adjusted caseload factor.

~~(e)~~ (c) With the commencement of a new or expanded tribal TANF program or an agreement under section 256.01, subdivision 2, paragraph (g), in which some or all of the responsibilities of particular counties under this section are transferred to a tribe, the commissioner shall:

(1) in the case where all responsibilities under this section are transferred to a tribal program, determine the percentage of the county's current caseload that is transferring to a tribal program and adjust the affected county's allocation accordingly; and

(2) in the case where a portion of the responsibilities under this section are transferred to a tribal program, the commissioner shall consult with the affected county or counties to determine an appropriate adjustment to the allocation.

~~(f)~~ (d) Effective January 1, 2005, counties and tribes will have their final allocations adjusted based on the performance provisions of subdivision 7.

Sec. 8. Minnesota Statutes 2004, section 256J.626, subdivision 7, is amended to read:

Subd. 7. [PERFORMANCE BASE FUNDS.] (a) Beginning calendar year 2005, each county and tribe will be allocated 95 percent of their initial calendar year allocation. Counties and tribes will be allocated additional funds based on performance as follows:

(1) for calendar year 2005, a county or tribe that achieves a 30 percent rate or higher on the MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(2) for calendar year 2006, a county or tribe that achieves a 40 percent rate or a five percentage point improvement over the previous year's MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the

measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(3) for calendar year 2007, a county or tribe that achieves a 50 percent rate or a five percentage point improvement over the previous year's MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(4) for calendar year 2008 and yearly thereafter, a county or tribe that achieves a 50 percent MFIP participation rate under section 256J.751, subdivision 2, clause (8), as averaged across the four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(5) for calendar years 2005 and thereafter, a county or tribe that performs above the top of its annualized range of expected performance on the three-year self-support index under section 256J.751, subdivision 2, clause (7), ~~in both measurements in the preceding year~~ will receive an additional allocation equal to five percent of its initial allocation; or

(6) for calendar years 2005 and thereafter, a county or tribe that performs within its range of expected performance on the annualized three-year self-support index under section 256J.751, subdivision 2, clause (7), ~~in both measurements in the preceding year, or above the top of its range of expected performance in one measurement and within its expected range of performance in the other measurement,~~ will receive an additional allocation equal to 2.5 percent of its initial allocation.

(b) Performance-based funds for a federally approved tribal TANF program in which the state and tribe have in place a contract under section 256.01, addressing consolidated funding, will be allocated as follows:

(1) for calendar year 2006 and yearly thereafter, a tribe that achieves the participation rate approved in its federal

TANF plan using the average of four quarterly measurements for the most recent year for which the measurements are available, will receive an additional allocation equal to 2.5 percent of its initial allocation; and

(2) for calendar years 2006 and thereafter, a tribe that performs above the top of its annualized range of expected performance on the three-year self-support index under section 256J.751, subdivision 2, clause (7), will receive an additional allocation equal to five percent of its initial allocation; or

(3) for calendar years 2006 and thereafter, a tribe that performs within its range of expected performance on the annualized three-year self-support index under section 256J.751, subdivision 2, clause (7), will receive an additional allocation equal to 2.5 percent of its initial allocation.

~~(b)~~ (c) Funds remaining unallocated after the performance-based allocations in paragraph (a) are available to the commissioner for innovation projects under subdivision 5.

~~(c)~~ (d)(1) If available funds are insufficient to meet county and tribal allocations under paragraph (a), the commissioner may make available for allocation funds that are unobligated and available from the innovation projects through the end of the current biennium.

(2) If after the application of clause (1) funds remain insufficient to meet county and tribal allocations under paragraph (a), the commissioner must proportionally reduce the allocation of each county and tribe with respect to their maximum allocation available under paragraph (a).

Sec. 9. Minnesota Statutes 2004, section 256J.626, subdivision 8, is amended to read:

Subd. 8. [REPORTING REQUIREMENT AND REIMBURSEMENT.] (a) The commissioner shall specify requirements for reporting according to section 256.01, subdivision 2, clause (17). Each county or tribe shall be reimbursed for eligible expenditures up to the limit of its allocation and subject to availability of funds.

(b) Reimbursements for county administrative-related

expenditures determined through the income maintenance random moment time study shall be reimbursed at a rate of 50 percent of eligible expenditures.

(c) The commissioner of human services shall review county and tribal agency expenditures of the MFIP consolidated fund as appropriate and may reallocate unencumbered or unexpended money appropriated under this section to those county and tribal agencies that can demonstrate a need for additional money. as follows:

(1) to the extent that particular county or tribal allocations are reduced from the previous year's amount due to the phase-in under subdivision 6, paragraph (b), clauses (4) to (6), those tribes or counties would have first priority for reallocated funds; and

(2) to the extent that unexpended funds are insufficient to cover demonstrated need, funds will be prorated to those counties and tribes in relation to demonstrated need.

Sec. 10. Minnesota Statutes 2004, section 256J.751, subdivision 2, is amended to read:

Subd. 2. [QUARTERLY COMPARISON REPORT.] The commissioner shall report quarterly to all counties on each county's performance on the following measures:

(1) percent of MFIP caseload working in paid employment;

(2) percent of MFIP caseload receiving only the food portion of assistance;

(3) number of MFIP cases that have left assistance;

~~(4) federal participation requirements as specified in Title I of Public Law 104-193;~~

~~(5)~~ median placement wage rate;

~~(6)~~ (5) caseload by months of TANF assistance;

~~(7)~~ (6) percent of MFIP and diversionary work program (DWP) cases off cash assistance or working 30 or more hours per week at one-year, two-year, and three-year follow-up points from a baseline quarter. This measure is called the self-support index. ~~Twice annually,~~ The commissioner shall report quarterly an expected range of performance for each county, county

grouping, and tribe on the self-support index. The expected range shall be derived by a statistical methodology developed by the commissioner in consultation with the counties and tribes. The statistical methodology shall control differences across counties in economic conditions and demographics of the MFIP and DWP case load; and

~~(8)~~ (7) the MFIP work participation rate, defined as the participation requirements specified in title 1 of Public Law 104-193 applied to all MFIP cases except child only cases and cases exempt under section 256J.56.

Sec. 11. Minnesota Statutes 2004, section 256J.751, subdivision 5, is amended to read:

Subd. 5. [FAILURE TO MEET FEDERAL PERFORMANCE STANDARDS.] (a) If sanctions occur for failure to meet the performance standards specified in title 1 of Public Law 104-193 of the Personal Responsibility and Work Opportunity Act of 1996, the state shall pay 88 percent of the sanction. The remaining 12 percent of the sanction will be paid by the counties. The county portion of the sanction will be distributed across all counties in proportion to each county's percentage of the MFIP average monthly caseload during the period for which the sanction was applied.

(b) If a county fails to meet the performance standards specified in title 1 of Public Law 104-193 of the Personal Responsibility and Work Opportunity Act of 1996 for any year, the commissioner shall work with counties to organize a joint state-county technical assistance team to work with the county. The commissioner shall coordinate any technical assistance with other departments and agencies including the Departments of Employment and Economic Development and Education as necessary to achieve the purpose of this paragraph.

(c) For state performance measures, a low-performing county is one that:

(1) performs below the bottom of their expected range for the measure in subdivision 2, clause (7), in ~~both measurements during the~~ an annualized measurement reported in October of each

year; or

(2) performs below 40 percent for the measure in subdivision 2, clause (8), as averaged across the four quarterly measurements for the year, or the ten counties with the lowest rates if more than ten are below 40 percent.

(d) Low-performing counties under paragraph (c) must engage in corrective action planning as defined by the commissioner. The commissioner may coordinate technical assistance as specified in paragraph (b) for low-performing counties under paragraph (c).

Sec. 12. [REPEALER.]

Minnesota Rules, part 9500.1206, subparts 20, 26d, and 27, are repealed.

Article 1 CHILD WELFARE: ALTERNATIVE RESPONSE..... page 1

Article 2 CHILD WELFARE: PERMANENCY..... page 31

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Article 5 FAMILY SUPPORTS..... page 87

APPENDIX
Repealed Minnesota Statutes for S1710-1

626.5551 ALTERNATIVE RESPONSE PROGRAMS FOR CHILD PROTECTION ASSESSMENTS OR INVESTIGATIONS.

Subdivision 1. **Programs authorized.** (a) A county may establish a program that uses alternative responses to reports of child maltreatment under section 626.556, as provided in this section.

(b) The alternative response program is a voluntary program on the part of the family, which may include a family assessment and services approach under which the local welfare agency assesses the risk of abuse and neglect and the service needs of the family and arranges for appropriate services, diversions, referral for services, or other response identified in the plan under subdivision 4.

(c) This section may not be used for reports of maltreatment in facilities required to be licensed under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B, or in a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10, or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

Subd. 2. **Use of alternative response or investigation.** (a) Upon receipt of a report under section 626.556, the local welfare agency in a county that has established an alternative response program under this section shall determine whether to conduct an investigation using the traditional investigative model under section 626.556 or to use an alternative response as appropriate to prevent or provide a remedy for child maltreatment.

(b) The local welfare agency may conduct an investigation of any report using the traditional investigative model under section 626.556. However, the local welfare agency must use the traditional investigative model under section 626.556 to investigate reports involving substantial child endangerment. For purposes of this subdivision, substantial child endangerment includes when a person responsible for a child's care, by act or omission, commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in section 626.556, subdivision 2, paragraph (a);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in section 626.556, subdivision 2, paragraph (c), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185; 609.19; or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221; 609.222; or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378; or

(12) use of minor in sexual performance under section 617.246.

(c) Nothing in this section gives a county any broader authority to intervene, assess, or investigate a family other than under section 626.556.

(d) In addition, in all cases the local welfare agency shall notify the appropriate law enforcement agency as provided in section 626.556, subdivision 3.

(e) The local welfare agency shall begin an immediate investigation under section 626.556 if at any time when it is using an alternative response it determines that an investigation is required under paragraph (b) or would otherwise be appropriate. The local welfare agency may use an alternative response to a report that was initially referred for an investigation if the agency determines that a complete investigation is not required. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and consult with:

(1) the local law enforcement agency, if the local law enforcement is involved, and notify the county attorney of the decision to terminate the investigation; or

(2) the county attorney, if the local law enforcement is not involved.

Subd. 3. **Documentation.** When a case in which an alternative response was used is closed, the local welfare agency shall document the outcome of the approach, including a description of the response and services provided and the removal or reduction of risk to the child, if it existed. Records maintained under this section must contain the documentation and must be retained for at least four years.

Subd. 4. **Plan.** The county community social service plan required under section 256E.09 must address the extent that the county will use the alternative response program authorized under this section, based on the availability of new federal funding that is earned and other available revenue sources to fund the additional cost to the county of using the program. To the extent the county uses the program, the county must include the program in the community social service plan and in the program evaluation under section 256E.10. The plan must address alternative responses and services that will be used for the program and protocols for determining the appropriate response to reports under section 626.556 and address how the protocols comply with the guidelines of the commissioner under subdivision 5.

Subd. 5. **Commissioner of human services to develop guidelines.** The commissioner of human services, in consultation with county representatives, may develop guidelines defining alternative responses and setting out procedures for family assessment and service delivery under this section. The commissioner may also develop guidelines for counties regarding the provisions of section 626.556 that continue to apply when using an alternative response under this section. The commissioner may also develop forms, best practice guidelines, and training to assist counties in implementing alternative responses under this section.

Senator ..... moves to amend S.F. No. 1710 as follows:

Page 10, line 27, delete "a family assessment or investigation"

Page 10, line 28, delete "related to"

Page 28, line 8, after "determination that" insert "child"

Page 28, line 10, after the period, insert "Child protective services for a family are voluntary unless ordered by the court."

Page 37, after line 29, insert:

"Sec. 6. Minnesota Statutes 2004, section 259.67, subdivision 2, is amended to read:

Subd. 2. [ADOPTION ASSISTANCE AGREEMENT.] The placing agency shall certify a child as eligible for adoption assistance according to rules promulgated by the commissioner. The placing agency shall not certify a child who remains under the jurisdiction of the sending agency pursuant to section 260.851, article 5 for state funded adoption assistance when Minnesota is the receiving state. Not later than 30 days after a parent or parents are found and approved for adoptive placement of a child certified as eligible for adoption assistance, and before the final decree of adoption is issued, a written agreement must be entered into by the commissioner, the adoptive parent or parents, and the placing agency. The written agreement must be fully completed by the placing agency and in the form prescribed by the commissioner and must set forth the responsibilities of all parties, the anticipated duration of the adoption assistance payments, and the payment terms. The adoption assistance agreement shall be subject to the commissioner's approval, which must be granted or denied not later than 15 days after the agreement is entered.

The amount of adoption assistance is subject to the availability of state and federal funds and shall be determined through agreement with the adoptive parents. The agreement shall take into consideration the circumstances of the adopting parent or parents, the needs of the child being adopted and may provide ongoing monthly assistance, supplemental maintenance

expenses related to the adopted person's special needs, nonmedical expenses periodically necessary for purchase of services, items, or equipment related to the special needs, and medical expenses. The placing agency or the adoptive parent or parents shall provide written documentation to support the need for adoption assistance payments. The commissioner may require periodic reevaluation of adoption assistance payments. The amount of ongoing monthly adoption assistance granted may in no case exceed that which would be allowable for the child under foster family care and is subject to the availability of state and federal funds.

Sec. 7. Minnesota Statutes 2004, section 259.67, subdivision 4, is amended to read:

Subd. 4. [ELIGIBILITY CONDITIONS.] (a) The placing agency shall use the AFDC requirements as specified in federal law as of July 16, 1996, when determining the child's eligibility for adoption assistance under title IV-E of the Social Security Act. If the child does not qualify, the placing agency shall certify a child as eligible for state funded adoption assistance only if the following criteria are met:

(1) Due to the child's characteristics or circumstances it would be difficult to provide the child an adoptive home without adoption assistance.

(2)(i) A placement agency has made reasonable efforts to place the child for adoption without adoption assistance, but has been unsuccessful; or

(ii) the child's licensed foster parents desire to adopt the child and it is determined by the placing agency that the adoption is in the best interest of the child.

(3) The child has been a ward of the commissioner, a Minnesota-licensed child-placing agency, or a tribal social service agency of Minnesota recognized by the Secretary of the Interior. The placing agency shall not certify a child who remains under the jurisdiction of the sending agency pursuant to section 260.851, article 5 for state funded adoption assistance when Minnesota is the receiving state.

(b) For purposes of this subdivision, the characteristics or circumstances that may be considered in determining whether a child is a child with special needs under United States Code, title 42, chapter 7, subchapter IV, part E, or meets the requirements of paragraph (a), clause (1), are the following:

(1) The child is a member of a sibling group to be placed as one unit in which at least one sibling is older than 15 months of age or is described in clause (2) or (3).

(2) The child has documented physical, mental, emotional, or behavioral disabilities.

(3) The child has a high risk of developing physical, mental, emotional, or behavioral disabilities.

(4) The child is adopted according to tribal law without a termination of parental rights or relinquishment, provided that the tribe has documented the valid reason why the child cannot or should not be returned to the home of the child's parent.

(c) When a child's eligibility for adoption assistance is based upon the high risk of developing physical, mental, emotional, or behavioral disabilities, payments shall not be made under the adoption assistance agreement unless and until the potential disability manifests itself as documented by an appropriate health care professional."

Page 38, line 28, after "adoptive parents" insert ", including race where such data is available"

Page 39, line 20, after "efforts" insert comma

Page 39, line 21, after "services" insert a comma

Page 39, line 22, reinstate "or"

Page 39, line 22, delete the new language

Page 39, lines 23 and 24, delete the new language

Page 39, lines 27 to 30, delete the new language

Page 39, line 30, before the period, insert "and when a child cannot be reunified with the parent or guardian from whom the child was removed, the court must ensure that the responsible social services agency makes reasonable efforts to finalize an alternative permanent plan for the child as provided in paragraph (e)"

Page 39, line 34, delete "or" and insert "and"

Page 39, line 35, strike "not" and insert "always"

Page 39, line 35, after "required" insert "except"

Page 40, line 36, after the period, insert "In cases governed by the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, the responsible social services agency must provide active efforts as required under 25 U.S.C. 1911 (d)."

Page 40, line 36, strike "If a child is under the court's delinquency"

Page 41, strike lines 1 to 4

Page 41, line 7, after "child" insert "in foster care"

Page 41, line 12, delete everything after "(e)"

Page 41, line 13, delete "stage of the case,"

Page 41, line 14, delete "reasonable efforts" and insert "due diligence"

Page 41, line 21, after "care" insert "as required by section 260C.212, subdivision 4"

Page 41, line 21, delete "and"

Page 41, after line 21, insert:

"(3) conduct a relative search as required under section 260C.212, subdivision 5; and"

Page 41, line 22, delete "(3)" and insert "(4) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and" and after "permanent" insert "alternative"

Page 41, line 24, delete everything after the first "child"

Page 41, line 25, delete everything before the period

Page 41, line 27, after "use" insert "culturally"

Page 41, line 33, after "other" insert "culturally"

Page 41, line 36, after "efforts" insert "as described in paragraphs (a), (d), and (e)"

Page 42, line 6, after "placement" insert "of the child in foster care"

Page 42, after line 6, insert:

"(2) it has made reasonable efforts to eliminate the need for removal of the child from the child's home and to reunify

the child with the child's family at the earliest possible time"

Page 42, line 7, delete "(2)" and insert "(3)" and delete "the" and insert "an alternative"

Page 42, line 8, delete "plan" and insert "home"

Page 42, line 9, delete "(3)" and insert "(4)"

Page 42, line 25, after "case" insert "when there is clear and convincing evidence that the child is in need of protection or services"

Page 42, line 25, strike everything after "may" and insert " find the child in need of protection or services and order any of the dispositions available under section 260C.201, subdivision 1."

Page 43, line 27, after "or" insert "upon"

Page 52, line 15, delete "If, after"

Page 52, line 16, delete "reasonable attempts by"

Page 52, line 16, after "agency" insert "shall make reasonable attempts"

Page 52, line 17, delete the comma, and insert ". If"

Page 52, line 25, delete ", and" and insert ". The parent may ask the court to modify the plan to require different or additional services requested by the parent, but which the agency refused to provide."

Page 52, line 26, after "plan" insert "as presented by the agency or may modify the plan to require services requested by the parent. The court's approval shall be"

Page 54, line 13, after "visit" insert "in order to protect the child's health, safety, or welfare"

Page 54, line 13, after "and" insert "may"

Page 63, line 36, after "item" insert ", following proper notice that consent given under this provision is irrevocable upon acceptance by the court,"

Page 64, line 35, after "section" insert ", following proper notice that consent given under this provision is irrevocable upon acceptance by the court,"

Senator Betzold from the Committee on Judiciary, to which was re-referred

S.F. No. 1710: A bill for an act relating to human services; implementing child protection, child care, and child and family support provisions; amending Minnesota Statutes 2004, sections 119A.43, subdivision 2; 119B.025, subdivision 1; 119B.03, subdivision 6; 119B.09, subdivisions 4, 9; 144D.025; 256.978, subdivision 2; 256D.02, subdivision 17; 256D.051, subdivision 6c; 256I.04, subdivision 2a; 256I.05, by adding a subdivision; 256J.626, subdivisions 6, 7, 8; 256J.751, subdivisions 2, 5; 257.85, subdivisions 2, 3; 259.23, subdivisions 1, 2; 259.41, subdivision 3; 259.75, subdivision 1; 259.79, subdivision 1; 259.85, subdivision 1; 260.012; 260C.001, subdivision 3; 260C.007, subdivision 8; 260C.151, subdivision 6; 260C.178; 260C.201, subdivisions 1, 10, 11; 260C.312; 260C.317, subdivision 3; 518.551, subdivision 5; 518.68, subdivision 2; 548.091, subdivision 1a; 626.556, subdivisions 1, 2, 3, 10, 10b, 10e, 10f, 10i, 11, 11c, by adding subdivisions; repealing Minnesota Statutes 2004, sections 626.5551, subdivisions 1, 2, 3, 4, 5; Minnesota Rules, parts 9500.1206, subparts 20, 26d, 27; 9560.0220, subpart 6, item B; 9560.0230, subpart 2.

Reports the same back with the recommendation that the bill be amended as follows:

Page 10, line 27, delete "a family assessment or investigation"

Page 10, line 28, delete "related to"

Page 28, line 8, after "that" insert "child"

Page 28, line 10, after the period, insert "Child protective services for a family are voluntary unless ordered by the court."

Page 37, after line 29, insert:

"Sec. 6. Minnesota Statutes 2004, section 259.67, subdivision 2, is amended to read:

Subd. 2. [ADOPTION ASSISTANCE AGREEMENT.] The placing agency shall certify a child as eligible for adoption assistance according to rules promulgated by the commissioner. The placing agency shall not certify a child who remains under the jurisdiction of the sending agency pursuant to section 260.851, article 5, for state funded adoption assistance when Minnesota is the receiving state. Not later than 30 days after a parent or parents are found and approved for adoptive placement of a child certified as eligible for adoption assistance, and before the final decree of adoption is issued, a written agreement must be entered into by the commissioner, the adoptive parent or parents, and the placing agency. The written agreement must be fully completed by the placing agency and in the form

prescribed by the commissioner and must set forth the responsibilities of all parties, the anticipated duration of the adoption assistance payments, and the payment terms. The adoption assistance agreement shall be subject to the commissioner's approval, which must be granted or denied not later than 15 days after the agreement is entered.

The amount of adoption assistance is subject to the availability of state and federal funds and shall be determined through agreement with the adoptive parents. The agreement shall take into consideration the circumstances of the adopting parent or parents, the needs of the child being adopted and may provide ongoing monthly assistance, supplemental maintenance expenses related to the adopted person's special needs, nonmedical expenses periodically necessary for purchase of services, items, or equipment related to the special needs, and medical expenses. The placing agency or the adoptive parent or parents shall provide written documentation to support the need for adoption assistance payments. The commissioner may require periodic reevaluation of adoption assistance payments. The amount of ongoing monthly adoption assistance granted may in no case exceed that which would be allowable for the child under foster family care and is subject to the availability of state and federal funds.

Sec. 7. Minnesota Statutes 2004, section 259.67, subdivision 4, is amended to read:

Subd. 4. [ELIGIBILITY CONDITIONS.] (a) The placing agency shall use the AFDC requirements as specified in federal law as of July 16, 1996, when determining the child's eligibility for adoption assistance under title IV-E of the Social Security Act. If the child does not qualify, the placing agency shall certify a child as eligible for state funded adoption assistance only if the following criteria are met:

(1) Due to the child's characteristics or circumstances it would be difficult to provide the child an adoptive home without adoption assistance.

(2)(i) A placement agency has made reasonable efforts to

place the child for adoption without adoption assistance, but has been unsuccessful; or

(ii) the child's licensed foster parents desire to adopt the child and it is determined by the placing agency that the adoption is in the best interest of the child.

(3) The child has been a ward of the commissioner, a Minnesota-licensed child-placing agency, or a tribal social service agency of Minnesota recognized by the Secretary of the Interior. The placing agency shall not certify a child who remains under the jurisdiction of the sending agency pursuant to section 260.851, article 5, for state funded adoption assistance when Minnesota is the receiving state.

(b) For purposes of this subdivision, the characteristics or circumstances that may be considered in determining whether a child is a child with special needs under United States Code, title 42, chapter 7, subchapter IV, part E, or meets the requirements of paragraph (a), clause (1), are the following:

(1) The child is a member of a sibling group to be placed as one unit in which at least one sibling is older than 15 months of age or is described in clause (2) or (3).

(2) The child has documented physical, mental, emotional, or behavioral disabilities.

(3) The child has a high risk of developing physical, mental, emotional, or behavioral disabilities.

(4) The child is adopted according to tribal law without a termination of parental rights or relinquishment, provided that the tribe has documented the valid reason why the child cannot or should not be returned to the home of the child's parent.

(c) When a child's eligibility for adoption assistance is based upon the high risk of developing physical, mental, emotional, or behavioral disabilities, payments shall not be made under the adoption assistance agreement unless and until the potential disability manifests itself as documented by an appropriate health care professional."

Page 38, line 28, after "adoptive parents" insert ", including race where such data is available"

Page 39, line 20, after "efforts" insert a comma

Page 39, line 21, after the first "services" insert a comma

Page 39, line 22, delete the new language and reinstate the stricken "or"

Page 39, lines 23 and 24, delete the new language

Page 39, lines 27 to 30, delete the new language and insert "and when a child cannot be reunified with the parent or guardian from whom the child was removed, the court must ensure that the responsible social services agency makes reasonable efforts to finalize an alternative permanent plan for the child as provided in paragraph (e)"

Page 39, line 34, delete "or" and insert "and"

Page 39, line 35, strike "not" and insert "always" and after "required" insert "except"

Page 40, line 36, strike "If a child is under the court's delinquency"

Page 41, strike lines 1 to 4 and insert "In cases governed by the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, the responsible social services agency must provide active efforts as required under 25 U.S.C. 1911 (d)."

Page 41, line 7, after "child" insert "in foster care"

Page 41, line 12, delete everything after "(e)"

Page 41, line 13, delete "stage of the case,"

Page 41, line 14, delete "reasonable efforts" and insert "due diligence"

Page 41, line 21, after "care" insert "as required by section 260C.212, subdivision 4" and delete "and" and insert:

"(3) conduct a relative search as required under section 260C.212, subdivision 5; and"

Page 41, line 22, delete "(3)" and insert "(4) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and" and after "permanent" insert "alternative"

Page 41, line 24, delete everything after the first "child"

Page 41, line 25, delete everything before the period

Page 41, line 27, after "use" insert "culturally"

Page 41, line 33, after "other" insert "culturally"

Page 41, line 36, after "efforts" insert "as described in paragraphs (a), (d), and (e)"

Page 42, line 6, after "placement" insert "of the child in foster care"

Page 42, after line 6, insert:

"(2) it has made reasonable efforts to eliminate the need for removal of the child from the child's home and to reunify the child with the child's family at the earliest possible time;"

Page 42, line 7, delete "(2)" and insert "(3)" and delete "the" and insert "an alternative"

Page 42, line 8, delete "plan" and insert "home"

Page 42, line 9, delete "(3)" and insert "(4)"

Page 42, line 25, after "case" insert "when there is clear and convincing evidence that the child is in need of protection or services" and strike everything after "may" and insert "find the child in need of protection or services and order any of the dispositions available under section 260C.201, subdivision 1."

Page 43, line 27, after "or" insert "upon"

Page 52, line 15, delete "If, after"

Page 52, line 16, delete "reasonable attempts by" and after "agency" insert "shall make reasonable attempts"

Page 52, line 17, delete the comma and insert ". If"

Page 52, line 25, delete ", and" and insert ". The parent may ask the court to modify the plan to require different or additional services requested by the parent, but which the agency refused to provide."

Page 52, line 26, after "plan" insert "as presented by the agency or may modify the plan to require services requested by the parent. The court's approval shall be"

Page 54, line 13, after "visit" insert "in order to protect the child's health, safety, or welfare" and after "and" insert "may"

Page 63, line 36, after "item" insert ", following proper notice that consent given under this provision is irrevocable upon acceptance by the court,"

Page 64, line 35, after "section" insert ", following proper notice that consent given under this provision is irrevocable upon acceptance by the court,"

Renumber the sections in sequence

Amend the title as follows:

Page 1, line 12, after the first semicolon, insert "259.67, subdivisions 2, 4;"

And when so amended the bill do pass and be re-referred to the Committee on Finance. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 7, 2005.....
(Date of Committee recommendation)

Senate Counsel, Research, and Fiscal Analysis

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1416 - Class Actions Certification

Author: Senator Julieanne E. Ortman

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: April 7, 2005

S.F. No. 1416 allows immediate appeals of orders by trial judges that certify or refuse to certify classes for class actions. All other proceedings in the action are stayed while an appeal is being decided.

HW:cs

Senators Ortman, Michel and Gerlach introduced--

S.F. No. 1416: Referred to the Committee on Judiciary.

A bill for an act

relating to civil actions; providing for interlocutory appeal on the question of class certification in a civil action; specifying required damages in order to be a member of a class; proposing coding for new law in Minnesota Statutes, chapter 540.

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

Section 1. [540.19] [CLASS ACTIONS.]

Subdivision 1. [INTERLOCUTORY APPEAL.] A court's order certifying a class or refusing to certify a class action is appealable in the same manner as a final order to the Court of Appeals. An appeal must be filed within 30 days of the order certifying or refusing to certify the class. Pending appeal under this subdivision, all discovery and other proceedings in the district court are stayed during the pendency of the appeal unless the Court of Appeals finds upon the motion of a party that specific discovery is necessary to preserve evidence or prevent undue prejudice to the party.

Subd. 2. [DAMAGE REQUIREMENT TO BE CLASS MEMBER.] In order to be a member of a class, an individual must have suffered an ascertainable loss of money or property, real or personal.

Sec. 2. [EFFECTIVE DATE; APPLICATION.]

Section 1 is effective August 1, 2005, and applies to actions commenced on or after that date.

Senators Hann and LeClair introduced--

S.F. No. 631: Referred to the Committee on Judiciary.

A bill for an act

relating to civil actions; prohibiting actions against certain persons for weight gain as a result of consuming certain foods; proposing coding for new law in Minnesota Statutes, chapter 604.

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

Section 1. [604.17] [ACTIONS ALLEGING WEIGHT GAIN OR OBESITY FROM FOOD CONSUMPTION.]

Subdivision 1. [ACTIONS PROHIBITED.] An action may not be brought against a manufacturer or seller of a food or a trade association for a food to recover damages or obtain injunctive relief for alleged injury resulting from consumption of food and weight gain, obesity, or any health condition associated with weight gain or obesity.

Subd. 2. [ACTIONS PERMITTED.] Subdivision 1 does not prohibit an action:

(1) against a manufacturer or seller of a food that knowingly and willfully violated a state law applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the food, and the violation was a proximate cause of injury related to a person's weight gain, obesity, or any health condition associated with a person's weight gain or obesity; or

(2) an action for breach of express contract or express warranty in connection with the purchase of food.

Subd. 3. [PLEADINGS.] In an action described in

subdivision 2, the complaint must state with particularity each and every state statute that was violated and the facts that caused the alleged injuries.

Subd. 4. [DISCOVERY IN CERTAIN ACTIONS.] (a) In an action described in subdivision 2, discovery and other proceedings must be stayed during the pendency of a motion to dismiss unless the court finds on motion of a party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

(b) During the pendency of a stay of discovery under this subdivision, unless otherwise ordered by the court, a party to the action with actual notice of the allegations contained in the complaint shall treat every tangible object or document in that party's control or custody that is relevant to the allegations as if the object or document was the subject of a continuing request for production of documents from any opposing party under the Rules of Civil Procedure. "Document" includes any written or electronically recorded or stored compilation of data.

(c) A party aggrieved by the failure of another party to comply with this subdivision may apply to the court for an order awarding appropriate sanctions.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective August 1, 2005, and applies to actions commenced on or after that date.

Senator ..... moves to amend S.F. No. 631 as follows:

Delete everything after the enacting clause and insert:

"Section 1. [604.17] [PERSONAL RESPONSIBILITY IN FOOD CONSUMPTION ACT.]

Subdivision 1. [TITLE.] This act may be cited as the Personal Responsibility in Food Consumption Act.

Subd. 2. [DEFINITIONS.] (a) For purposes of this section the following terms have the meanings given.

(b) "Long-term consumption" means the cumulative effect of the consumption of food or nonalcoholic beverages, and not the effect of a single instance of consumption.

(c) "Party" means an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

Subd. 3. [IMMUNITY FROM CIVIL LIABILITY.] A producer, grower, manufacturer, packer, distributor, carrier, holder, marketer, or seller of a food or nonalcoholic beverage intended for human consumption, or an association of one or more of such entities, shall not be subject to civil liability based on any individual's or group of individuals' purchase or consumption of food or nonalcoholic beverages in cases where liability arises from weight gain, obesity, or a health condition associated with weight gain or obesity and resulting from the individual's or group of individuals' long-term purchase or consumption of a food or nonalcoholic beverage.

Subd. 4. [ACTIONS PERMITTED.] Subdivision 3 does not apply to a claim of weight gain or obesity that is based on:

(1) a material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, or regulation and the claimed injury was proximately caused by the violation; or

(2) any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, if the violation is knowing and willful, and the claimed injury was proximately caused by the violation.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment and applies to any action brought by any party on or after the effective date."

Delete the title and insert:

"A bill for an act relating to civil actions; prohibiting actions against certain persons for weight gain as a result of consuming certain foods; proposing coding for new law in Minnesota Statutes, chapter 604."

Senator ..... moves to amend the SCS0631A-2 amendment to S.F. No. 631 as follows:

Page 1, after line 8, insert:

"(b) "Food" means articles used for food or drink for human consumption and articles used for components of any such article. It does not include tobacco or tobacco products."

Page 1, line 9, delete "(b)" and insert "(c)"

Page 1, line 12, delete "(c)" and insert "(d)"

Senator ..... moves to amend S.F. No. 631 as follows:

Page 1, after line 6, insert:

"Section 1. [157.30] [RETAIL FOOD ESTABLISHMENTS; NUTRITIONAL INFORMATION.]

Subdivision 1. [DEFINITION.] As used in this section, "retail food establishment" means any fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, commissary, delicatessen, grocery store, or any similar place that is part of a chain with 20 or more locations in the state doing business under the same trade name, and in which food or drink is prepared for retail sale or service on the premises or elsewhere.

Subd. 2. [DISCLOSURES.] Notwithstanding any provision of law to the contrary, a retail food establishment:

(1) shall list in a clear and conspicuous manner adjacent to each food or beverage item on a standard printed menu, the total number of calories, grams of saturated and trans fat, grams of carbohydrates, and milligrams of sodium, per serving, as usually prepared and offered for sale; and

(2) using a menu board system or similar signage shall list adjacent to each food or beverage item on the board or sign, the total number of calories per serving as usually prepared and offered for sale. Information about saturated and trans fat, carbohydrates, and sodium content shall be made available to each customer upon request.

Subd. 3. [ADDITIONAL DISCLOSURES.] Nothing in this section shall prohibit a retail food establishment from providing additional nutritional information to its customers for each food or beverage item listed on its menu.

Subd. 4. [NONAPPLICATION.] The provisions of this section do not apply to any:

(1) item not listed on a standard printed menu, menu board system, or similar signage, including, but not limited to, condiments or other products placed on a table or counter for general use; or

(2) daily specials, temporary menu items, or food or beverage items from a salad bar or other self-service facility.

Subd. 5. [CIVIL PENALTIES.] A proprietor of a retail food establishment who violates the provisions of this section shall be subject to a penalty of not less than $50 or more than $100 for the first offense, and not less than $250 or more than $500 for the second or any subsequent offense."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

Senator Betzold from the Committee on Judiciary, to which was referred

S.F. No. 631: A bill for an act relating to civil actions; prohibiting actions against certain persons for weight gain as a result of consuming certain foods; proposing coding for new law in Minnesota Statutes, chapter 604.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. [604.17] [WEIGHT GAIN CIVIL LIABILITY.]

Subdivision 1. [DEFINITIONS.] (a) For purposes of this section the following terms have the meanings given.

(b) "Food" means articles used for food or drink for human consumption and articles used for components of any such article. It does not include tobacco or tobacco products.

(c) "Long-term consumption" means the cumulative effect of the consumption of food or nonalcoholic beverages, and not the effect of a single instance of consumption.

(d) "Party" means an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

Subd. 2. [IMMUNITY FROM CIVIL LIABILITY.] A producer, grower, manufacturer, packer, distributor, carrier, holder, marketer, or seller of a food or nonalcoholic beverage intended for human consumption, or an association of one or more of such entities, shall not be subject to civil liability based on any individual's or group of individuals' purchase or consumption of food or nonalcoholic beverages in cases where liability arises from weight gain, obesity, or a health condition associated with weight gain or obesity and resulting from the individual's or group of individuals' long-term purchase or consumption of a food or nonalcoholic beverage.

Subd. 3. [ACTIONS PERMITTED.] Subdivision 2 does not apply to a claim of weight gain or obesity that is based on:

(1) a material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, or regulation and the claimed injury was proximately caused by the violation; or

(2) any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, if the violation is knowing and willful, and the claimed injury was proximately caused by the violation."

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 7, 2005.....
(Date of Committee recommendation)

Two Unanswered Questions From The Minnesota Department of Human Services, Child Support Division

It is important to note:

The Minnesota DHS is assigned the task of supervising all 87 county child support enforcement offices to ensure county compliance with federal Law.

Question One-

A: Are the due process rights of the non-custodial parent adequately protected under the county agency's proceedures for accepting an Application for Support and Collections Services and Information on Child Support Enforcement (DHS-1958-ENG 6-02).

B: What forum or proceedure is available to a non-custodial parent who wants to contest the custodial parents application for IV-D services, including income withholding.

Federal law requires Minnesota to provide notice of the proceedures available in which the noncustodial parent may contest IV-D income withholding.

SEC. 466 {42 USC 666 (19(4)(A)(ii) states:

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies— (i) that the withholding has commenced; and
(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact (emphasis added).

Apparantly, the Minnesota DHS is not in compliance with this Federal statute and, therefore, Minnesota's state IV-D plan is subject to disapproval by the Secretary of DHHS. This could result in the State losing millions of federal dollars.

Question two-

Does the Minnesota DHS Child Support Division provide the local County Child Support Enforcement Offices with Data Privacy Notices required to be given to the non-custodial parent prior to collecting and using the non-custodial parents private data?

The following State statute and rule requires a data privacy notice prior to collecting and using private child support data.

1205.1300 DUTIES OF THE RESPONSIBLE AUTHORITY IN ADMINISTERING PRIVATE AND CONFIDENTIAL DATA. Subp. 3. states:

> **B. identify the purposes for the collection of and the intended uses of all private or confidential data <u>that have been communicated to data subjects or should have been communicated to data subjects at the time of data collection</u>, pursuant to Minnesota Statutes, section 13.04, subdivision 2 (emphasis added).**

The Application for Support and Collections requests the applicant to provide private information on the non-custodial parent without a requirement that county agency provide the non-custodial parent with notice of the application. As required by Minn. Stat. §13.04, Subd. 2, the applicant is given a Tennessen Warning at the time of application but the other parent is not given the Tennessen Warning This certainly points out the huge privacy and due process holes in the Minnesota Government Data Practices Act. These holes need immediate patching.

Minnesota DHS <u>does not</u> comply with data privacy notice requirements and, accordingly, all data collected in absense of this notice is rendered unusable for any government purpose.

It's important to note: The applicant for IV-D child support services recieves the data privacy notice stating "the system" can and will share private data with 44 entitys not only in the United States but also with other countries. Not only does the subject of the private data (non-custodail parent) not receive notice but, he or she has no opportunity to secure his/her right to their private data when they have done nothing wrong to have this right to privacy/notice taken away.

I would appreciate an answer to these questions today!

Sincerely,

Terry Nyblom
3610 Edgerton St.
Vadnais HTS, MN
(651) 484-3295

Minnesota Child Support Notice of Privacy Practices

This notice is found in the application for Child Support Enforcement.
DHS Form # 1958-ENG-6-02

You have privacy rights under the Minnesota Government Data Practices Act. These laws protect your privacy, but also let us give information about you to others if a law requires it.

Do I Have to Answer the Questions You Ask?

Generally, the law does not say you have to give us this information. However, we need your social security number in order to give you some kinds of financial help or child support enforcement.

With Whom May You Share the Information About Me?
We may give information about you to the following agencies.

- U.S. Department of Agriculture
- U.S. Department of Health and Human Services
- U.S. Department of Labor
- United States Citizenship and Immigration Services
- Internal Revenue Service
- Social Security Administration
- Minnesota Department of Employment and Economic Development
- Minnesota Department of Education
- Minnesota Department of Human Rights
- Minnesota Department of Human Services
- Minnesota Department of Labor and Industry
- Minnesota Department of Natural Resources
- Minnesota Department of Public Safety
- Minnesota Department of Revenue
- Minnesota Department of Veterans Affairs
- Minnesota Historical Society
- American Indian tribes, if your family is in need of human services at a tribal reservation
- Higher Education Coordinating Board
- State hospitals or long-term care facilities
- State and federal auditors
- Court officials
- Anyone under contract with the Minnesota Department of Human Services or U.S. Department of Health and Human Services, or the county social services agency
- Local and state health departments
- County human services boards
- Child or adult protection teams
- People who investigate child or adult
- Other human services offices, including child support enforcement offices
- Fraud prevention and control units
- Employees or volunteers of any welfare agency who need the information to do their jobs
- County attorney, attorney general or other law enforcement officials
- Mental health centers
- Ombudsman for families
- County Advocates for Minnesota Managed Health Care Programs
- Guardian, conservator or person who has power of attorney for you
- Local collaborative agencies
- Community food shelves or surplus food programs
- Health care providers
- School Districts
- Schools and other institutions of higher education
- Coroner/medical examiner if you die and your death is investigated
- Hospitals if you, a friend, or relative has an emergency and we need to contact someone
- Others who may pay for your care
- Insurance companies to check health care benefits you or your children may get
- Managed care organizations about your health care or benefits
- Credit bureaus
- Creditors
- Collection Agencies, if you do not pay fees you owe to us for services
- Financial Institutions
- Anyone else to whom the law says we can give the information

You Have the Right to Information We Have About You.

S. F. 1710 Lourey **H.F. 1889 Wilkin**

TITLE: Children and Family Services Policy Bill

This proposal has no fiscal implications but is substantive policy change and clarification. The policy changes are relatively non controversial, yet important to children, families and program services delivery. Many provisions were heard and approved by the House of Representatives in 2004 but did not meet Senate deadline.

Article 1 Child Welfare: Alternative Response

- Integrates a new approach for dealing with less serious cases that works with families to develop or restore a safe and nurturing home environment for the child. It preserves the investigative approach in existing law for more serious cases. An assessment and supports approach will be used for families in the child protection system that has less serious problems. In 2000, 20 Minnesota counties began a pilot project that provided workers the flexibility to offer a broad range of supportive services to families reported to the child protection system in cases where children were not in imminent danger. The project, called Alternative Response, was so successful that all 87 counties voluntarily implemented it as of January 2004.
- Clarifies the time frame for face to face contact with a child reported to be maltreated and with the child's primary care giver to five calendar days To assure the safety and well-being of children a timely contact with the child and care giver. This change aligns Minnesota with the clear and prompt timelines that are required under federal standards for initiating a response to a report of child maltreatment.
- Reduces the time frame to complete an investigation or family assessment from 90 days to 45 days and changes the time frame for creating protective services plans from 60 days to 30 days. This change assures that the intervention is applied at the point in time most likely to prevent subsequent maltreatment.

Article 2 – Child Welfare: Permanency

- Expands relative custody and adoption laws to include relatives gaining permanent legal custody of children under the order of a tribal court to participate in the relative custody program, minimize competing adoption proceedings in different court districts, bring the background check requirement for adoptive parents in line with foster care licensing

standards, clarify adoption record retention responsibilities and identify the families that are eligible for postadoption service grants.

- Amends juvenile court statutes to:
    - Achieve compliance with federal Title IV-E requirements for judicial determinations for reasonable efforts, agency responsibility, permanency planning and permanency hearings;
    - Clarify service and permanency requirements when a child is removed due to egregious harm;
    - Make the requirement for "compelling reasons" consistent throughout 260C;
    - Make review requirements consistent with juvenile court rules;
    - Change terms to be consistent with juvenile court rules and Title IV-E; and
    - Clarify requirements related to the agency's duties to implement a case plan prior to adjudication and to the court's authority to order the delivery of services under the plan once it is filed

- Brings state law into compliance with federal Title IV-E requirements for permanency hearings, allows a new disposition option called "trial home visit" that is allowable under federal law, clarifies the agency's role and responsibilities for children ordered into long-term foster care, clarifies due process protections for the parent and child, makes consent to adoption irrevocable except as that is prohibited by ICWA and permits the Commissioner to identify and make an alternative adoptive placement without having to wait 12 months when the identified prospective adoptive home is not viable.

- Clarifies the requirements related to termination of parental rights, permits the court to order a trial home visit after a denial of a termination of rights petition when the child has been in placement 15 of the last 22 months and prohibits the agency from asking the court to order long-term foster care for a state ward until there have been exhaustive efforts to place the child for adoption for at least two years following termination.

Article 3 – Child Care

- Allows counties to have families fill out a streamlined Change Report Form rather than requiring a full re-determination if a family reports a change. A full re-determination of eligibility for child care will still be required every six months; however, a simplified process will be used when small changes occur during the interim;
- Expands the types of families who are included in the reallocation formula used to redistribute BSF funds among counties. The current formula includes families who are on the waiting list but does not include families whose cases have been closed due to a reduction in the county allocation. By modifying the reallocation formula to include these cases, funds could be redistributed more quickly to the counties with greatest need; and
- Revises current law to allow child care providers to be eligible for child care assistance for their own children during authorized activities.

Article 4 - Child Support

- Clarifies that the public authority can ask for location and asset information about program participants of third party contractors of employers, financial institutions, utility companies, etc. who hold, administer or distribute such information;
- Makes changes to the way other orders are considered in determining net income for guidelines support calculations;
- Improves and makes administrative the process for suspending and reinstating collection of child care child support amounts; and
- Changes current law to 12 months of consecutive payments, from 36 months, before the obligor may bring a motion to stop interest charging on overdue child support.

Article 5 - Family Supports

- Authorizes the use of up to 10% of Transitional Housing Program funding for more than 24 months in order to better serve long-term homeless currently assisted by transitional housing;
- Changes the housing with services statute to allow supportive housing participants, as defined in the Governor's Initiative to End Homelessness, to voluntarily register as housing with services participants;
- Allows registered supportive housing to contract to receive Group Residential Housing (GRH) payments so that eligible homeless adults will be able to use GRH to pay for permanent supportive housing and a GRH client to continue to receive a GRH service payment if relocating from a shelter to supportive housing;
- Continues allowing flexibility in the amount used per participant with Food Stamp Employment and Training (FSET) funds;
- Deletes obsolete language and uses more recent definitions of professionals qualified to determine a person's illness, injury or incapacity ; and
- Improves the MFIP Consolidated Fund formula by phasing-in an adjusted caseload factor that takes into consideration caseload difficulty.

Contact:

Anne Martineau 651-296-0310

Senator ..... moves to amend the committee engrossment (SCS0630CE1) of S.F. No. 630 as follows:

Page 1, line 16, strike "obligated" and insert "ordered"

Page 1, line 17, reinstate the stricken "maintenance or"

Page 9, line 6, delete "modified"

Page 20, delete lines 24 to 27, and insert:

"Subd. 2. [GROSS INCOME FOR DETERMINING CHILD SUPPORT.] "Gross income for determining child support" means gross income minus deductions for nonjoint children as allowed by section 518.717."

Page 21, line 18, delete "private school tuition,"

Page 22, delete lines 2 to 7, and insert:

"(1) the gross income of the parent calculated pursuant to section 518.7123; plus

(2) the potential income of the parent, if any, as determined in subdivision 19; minus

(3) spousal maintenance that any party has been ordered to pay."

Page 22, delete lines 19 to 29

Page 22, line 30, delete "14" and insert "12"

Page 22, delete lines 34 to 36, and insert:

"Subd. 13. [OBLIGOR.] "Obligor" has the meaning provided by section 518.54, subdivision 8."

Page 23, delete lines 1 to 6

Page 23, line 7, delete "16" and insert "14"

Page 23, line 9, delete "17" and insert "15"

Page 23, line 13, after the period, insert "For purposes of section 518.722, the percentage of parenting time may be calculated by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights as the parent has significant time periods where the child is in the parent's physical custody, but does not stay overnight."

Page 23, line 14, delete "18" and insert "16"

Page 23, line 21, delete "19" and insert "17"

Page 23, line 23, before "unemployed" insert "voluntarily" and before "employed" insert "underemployed, or"

Page 24, delete lines 6 to 8, and insert:

"(c) A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that:

(1) unemployment or underemployment is temporary and will ultimately lead to an increase in income;

(2) the unemployment or underemployment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or

(3) the parent is unable to work full-time due to a verified disability or due to incarceration."

Page 24, delete lines 17 to 21, and insert:

"(f) If a parent stays at home to care for a child who is subject to the child support order, the court may consider the following factors when determining whether the parent is voluntarily unemployed or underemployed:

(1) the parties parenting and child care arrangements before the child support action;

(2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individuals with the parent's qualifications;

(3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;

(4) the child's age and health, including whether the child is physically or mentally disabled; and

(5) the availability of child care providers."

Page 24, line 22, delete "20" and insert "18"

Page 24, line 26, delete "21" and insert "19"

Page 24, line 30, delete "22" and insert "20"

Page 24, line 36, delete "23" and insert "21"

Page 25, delete lines 3 to 12, and insert:

"Subd. 22. [SPOUSAL MAINTENANCE.] "Spousal maintenance" has the definition as provided in section 518.54, subdivision 3,

and includes the amount of any preexisting or concurrently entered court ordered spousal maintenance."

Page 25, line 13, delete "25" and insert "23"

Page 25, line 28, delete "26" and insert "24"

Page 25, line 33, before "GROSS" insert "CALCULATION OF"

Page 26, line 4, delete "and alimony" and insert "alimony, spousal maintenance payments, income from self-employment or operation of a business, as determined under section 518.7125. All salary, wages, commissions, or other compensation paid by third parties shall be based upon Medicare gross income. No deductions shall be allowed for contributions to pensions, 401-K, IRA, or other deferred compensation."

Page 26, delete line 5

Page 26, delete lines 32 to 36

Page 27, line 1, delete "(f)" and insert "(e)"

Page 27, line 5, delete "(g)" and insert "(f)"

Page 27, line 26, delete "518.726" and insert "518.712, subdivision 9"

Page 27, delete lines 27 and 28

Page 27, line 29, delete "(3)" and insert "(2)" and delete " adjusted" and after "income" insert "for determining child support"

Page 27, line 31, delete "modified"

Page 27, line 33, delete "(4)" and insert "(3)"

Page 28, line 1, delete "(5)" and insert "(4)"

Page 28, line 3, delete "(6)" and insert "(5)"

Page 28, line 6, delete "(7)" and insert "(6)" and delete "time credit" and insert "expense adjustment"

Page 28, line 9, delete "(8)" and insert "(7)"

Page 28, line 11, delete "(9)" and insert "(8)"

Page 28, line 13, delete "(10)" and insert "(9)"

Page 28, line 17, delete "(11)" and insert "(10)"

Page 28, line 22, delete "(12)" and insert "(11)"

Page 28, line 25, delete "(13)" and insert "(12)"

Page 28, line 27, delete "(14)" and insert "(13)"

Page 28, line 32, delete "(15)" and insert "(14)"

Page 28, line 33, after "pay" insert "or the minimum support obligation"

Page 28, line 35, delete "(16)" and insert "(15)"

Page 29, delete line 21, and insert:

"(2) the extraordinary financial needs and resources,"

Page 29, line 29, delete "and"

Page 29, line 30, before "needs" insert "extraordinary" and before the period, insert "; and

(7) the obligor's total payments for court-ordered child support exceed the limitations set forth in section 571.922"

Page 31, line 14, delete "modified"

Page 32, line 4, delete "or" and insert "for"

Page 32, line 6, delete "modified"

Page 32, line 8, after the period, insert "If the number of nonjoint children to be used for the determination is greater than two, the determination shall be made using the number two instead of the greater number."

Page 37, delete lines 14 to 22, and insert:

"(2) if the joint child is receiving any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of medical assistance under chapter 256B or MinnesotaCare under chapter 256L. The amount of the contribution of the noncustodial parent is the amount the custodial parent would pay for the child's premiums if the custodial parent's income meets the eligibility requirements for public coverage. For purposes of determining the premium amount, a custodial parent's household size is equal to the parent plus the child who is the subject of the child support order. The court may order the parent with whom the child resides to apply for public coverage for the child."

Page 37, line 23, delete everything after "(g)"

Page 37, delete lines 24 to 29

Page 49, line 32, delete "12 years old or younger"

Page 51, delete lines 7 to 11

Pages 51 to 53, delete section 25

Page 53, line 4, delete "TIME CREDIT" and insert "EXPENSE ADJUSTMENT"

Page 53, delete lines 5 to 7, and insert:

"(a) This section shall apply when the amount of parenting time granted to an obligor is ten percent or greater. Every child support order shall specify the total percent of parenting time granted to each parent."

Page 53, lines 8 and 9, delete "time credit" and insert "expense adjustment"

Page 53, line 15, delete "18" and insert "12"

Page 53, lines 19 and 20, delete "time credit" and insert "expense adjustment"

Page 53, lines 21 and 23, delete "time credit" and insert "expense adjustment"

Page 53, line 29, delete "the amount"

Page 53, line 30, delete "of" and delete everything after "support"

Page 53, line 31, delete everything before the comma

Page 53, after line 31, insert:

"(1) multiply the combined basic support by 1.5;"

Page 53, line 32, delete "(1) after" and insert "(2) prorate"

Page 53, line 35, delete "(2)" and insert "(3)"

Page 53, line 36, delete "time credit" and insert "expense adjustment"

Page 54, line 2, delete "time credit" and insert "expense adjustment"

Page 54, delete section 27

Page 54, delete lines 27 to 31, and insert:

"(1) calculate the obligor's income available for support by subtracting a monthly self-support reserve equal to the percent of the federal poverty guidelines used to determine the MFIP transitional standard for one person from the obligor's gross income;"

Page 54, line 34, delete "(13)" and insert "(15)"

Page 62, line 12, delete "of policy studies"

Senator ..... moves to amend S.F. No. 630 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 518.005, is amended by adding a subdivision to read:

Subd. 6. [FILING FEE.] The initial pleading filed in all proceedings for dissolution of marriage, legal separation, or annulment or proceedings to establish child support obligations shall be accompanied by a filing fee of $..... The fee is in addition to any other prescribed by law or rule.

Sec. 2. Minnesota Statutes 2004, section 518.54, subdivision 7, is amended to read:

Subd. 7. [OBLIGEE.] "Obligee" means a person to whom payments for maintenance ~~or support~~ are owed.

Sec. 3. Minnesota Statutes 2004, section 518.54, subdivision 8, is amended to read:

Subd. 8. [OBLIGOR.] "Obligor" means a person obligated to pay ~~maintenance or~~ child 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. For purposes of ordering medical support under section 518.719, a custodial parent may be an obligor subject to a cost-of-living adjustment under section 518.641 and a payment agreement under section 518.553.

Sec. 4. Minnesota Statutes 2004, section 518.55, subdivision 4, is amended 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. The court shall presume that the latest order that involves the same obligor and joint child is controlling, subject to contrary proof.

Sec. 5. Minnesota Statutes 2004, 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 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~~ section 518.725. 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)~~ (b). 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)~~ section 518.714 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:~~

~~Net Income Per Number of Children~~

~~Month of Obligor~~

~~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-------(v)-Union-Dues-~~

~~---------use-of-tax-tables-----(vi)-Cost-of-Dependent-Health~~

~~---------recommended----------------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:~~

~~(i)-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-obligor'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 obligee. 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 parenting time 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 obligor parent to care for the child while the obligee parent is working, as provided in section 518.175, subdivision 8, but this is not a reason to deviate from the guidelines.~~

~~(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 the AFDC program formerly codified under sections 256.72 to 256.82 or 256B.01 to 256B.40 and chapter 256J or 256K.~~

~~(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 256.741;~~

~~(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 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 256.741, 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 256.741, 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 States 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. 6. Minnesota Statutes 2004, 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, unemployment benefits statements, workers' compensation statements, and all other documents evidencing income as received that provide verification of income over a longer

~~period~~ In any case where the parties have joint children for which a child support order must be determined, the parties shall serve and file with their initial pleadings or motion documents, a financial affidavit, disclosing all sources of gross income and other information sufficient to calculate modified gross income and adjusted gross income. The financial affidavit shall include supporting documentation for all adjusted gross income, including, but not limited to, pay stubs for the most recent three months, employer statements, or statements of receipts and expenses if self-employed. Documentation of earnings and income also include copies of each parent's most recent federal tax returns, including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification for the financial affidavit.

(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~~ serve and file the financial affidavit with the parent's initial pleading, the court shall set income for that parent based on credible evidence before the court or in accordance with ~~paragraph (d)~~ section 518.712, subdivision 19. 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 Employment and Economic Development

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, 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 there is insufficient information to determine actual income or to impute income pursuant to paragraph (d), the court may calculate 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 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. 7. [518.6197] [CHILD SUPPORT DEBT/ARREARAGE MANAGEMENT.]

In order to reduce and otherwise manage support debts and

arrearages, the parties, including the public authority where arrearages have been assigned to the public authority, may compromise unpaid support debts or arrearages owed by one party to another, whether or not docketed as a judgment. A party may agree or disagree to compromise only those debts or arrearages owed to that party.

Sec. 8. Minnesota Statutes 2004, section 518.62, is amended to read:

518.62 [TEMPORARY MAINTENANCE.]

Temporary maintenance ~~and temporary support~~ may be awarded as provided in section 518.131. The court may also award to either party to the proceeding, having due regard to all the circumstances and the party awarded the custody of the children, the right to the exclusive use of the household goods and furniture of the parties pending the proceeding and the right to the use of the homestead of the parties, exclusive or otherwise, pending the proceeding. The court may order either party to remove from the homestead of the parties upon proper application to the court for an order pending the proceeding.

Sec. 9. Minnesota Statutes 2004, 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~~ gross income of an obligor or obligee; (2) substantially increased or decreased need of ~~a party~~ an obligor or obligee or the child or children that are the subject of these proceedings; (3) receipt of assistance under the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for either party as measured by the Federal Bureau of Labor 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; (7) upon the emancipation of the child if there is still a child under the order. A child support obligation for two or more children that is not a support obligation in a specific amount per child continues in the full amount until modified or until the emancipation of the last child that the order was made.

~~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.~~

(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~~ $75 per month higher or lower than the current support order;

(2) the medical support provisions of the order established under section ~~518.171~~ 518.719 are not enforceable by the public authority or the obligee;

(3) health coverage ordered under section ~~518.171~~ 518.719 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) A child support order is not presumptively modifiable solely because an obligor or obligee becomes responsible for the support of an additional nonjoint child, which is born after an existing order.

(d) 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~~ 518.725, 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)~~ (e) A modification of support or maintenance, including interest that accrued pursuant to section 548.091, 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:~~

~~(i) 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;~~

~~(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;~~

~~(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; or~~

~~(4) the party seeking modification was institutionalized or incarcerated for an offense other than nonsupport of a child during the period for which retroactive modification is sought and lacked the financial ability to pay the support ordered during that time period. In determining whether to allow the retroactive modification, the court shall consider whether and when a request was made to the public authority for support modification.~~

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

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

(i) An enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order.

(j) There may be no modification of an existing child support order during the first year following the effective date of sections 518.711 to 518.729 except as follows:

(1) there is at least a 20 percent change in the gross income of the obligor;

(2) there is a change in the number of joint children for whom the obligor is legally responsible and actually supporting;

(3) the child supported by the existing child support order becomes disabled; or

(4) both parents consent to modification of the existing order in compliance with the new income shares guidelines.

(k) On the first modification under the income shares method of calculation, the modification of basic support may be limited if the amount of the full variance would create hardship for either the obligor or the obligee.

Paragraph (j) expires January 1, 2008.

Sec. 10. Minnesota Statutes 2004, section 518.64, is amended by adding a subdivision to read:

Subd. 7. [CHILD CARE EXCEPTION.] 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 expense is decreased.

Sec. 11. Minnesota Statutes 2004, section 518.64, is amended by adding a subdivision to read:

Subd. 8. [CHILD SUPPORT DEBT AND ARREARAGE MANAGEMENT.] The parties, including the public authority, may compromise child support debt or arrearages owed by one party to another, whether or not reduced to judgment, upon agreement of the parties involved.

Sec. 12. Minnesota Statutes 2004, section 518.68, subdivision 2, is amended to read:

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

IMPORTANT NOTICE

1. PAYMENTS TO PUBLIC AGENCY

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

2. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS -- A FELONY

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or visitation rights), according to Minnesota Statutes, section 609.26. A copy of that section is available from any district court clerk.

3. NONSUPPORT OF A SPOUSE OR CHILD -- CRIMINAL PENALTIES

A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

4. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME

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

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

(c) Nonpayment of support is not grounds to deny parenting time. The party entitled to receive support may apply for

support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

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

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

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

(g) If the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. If a motion is not filed, the support obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (c).

(h) Reasonable parenting time guidelines are contained in Appendix B, which is available from the court administrator.

(i) The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

(j) The public authority may suspend or resume collection of the amount allocated for child care expenses if the conditions of section 518.551, subdivision 5, paragraph

(b), are met.

5. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3

Unless otherwise provided by the Court:

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

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

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

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

6. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, section 518.6111 have been met. A copy of those sections is available from any district court clerk.

7. CHANGE OF ADDRESS OR RESIDENCE

Unless otherwise ordered, each party shall notify the other party, the court, and the public authority responsible for

collection, if applicable, of the following information within ten days of any change: the residential and mailing address, telephone number, driver's license number, Social Security number, and name, address, and telephone number of the employer.

8. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

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

9. JUDGMENTS FOR UNPAID SUPPORT

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

10. JUDGMENTS FOR UNPAID MAINTENANCE

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

11. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT

A judgment for attorney fees and other collection costs

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

12. PARENTING TIME EXPEDITOR PROCESS

On request of either party or on its own motion, the court may appoint a parenting time expeditor to resolve parenting time disputes under Minnesota Statutes, section 518.1751. A copy of that section and a description of the expeditor process is available from any district court clerk.

13. PARENTING TIME REMEDIES AND PENALTIES

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

Sec. 13. [518.712] [DEFINITIONS.]

Subdivision 1. [SCOPE.] The definitions in this section apply to sections 518.712 to 518.753.

Subd. 2. [ADJUSTED GROSS INCOME.] "Adjusted gross income" means modified gross income minus deductions for the nonjoint child as allowed by section 518.717 and plus Social Security or veterans' benefits as allowed by section 518.718.

Subd. 3. [APPORTIONED VETERANS' BENEFITS.] "Apportioned veterans' benefits" means the amount the Veterans Administration deducts from the veteran's award and disburses to the child or the child's representative payee. The apportionment of veterans' benefits shall be that determined by the Veterans Administration and governed by 38 Code of Federal Regulations, sections 3.450 to 3.458.

Subd. 4. [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.

Subd. 5. [BASIC SUPPORT.] "Basic support" means the support obligation determined by applying the parent's adjusted gross income, or if there are two parents, their combined adjusted gross income, to the guideline in the manner set out in section 518.725.

Basic support includes the dollar amount ordered for a child's housing, food, clothing, transportation, and education costs, and other expenses relating to the child's care. Basic support does not include monetary contributions for a child's private school tuition, child care expenses, and medical and dental expenses.

Subd. 6. [CHILD.] "Child" means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support.

Subd. 7. [CHILD SUPPORT.] "Child support or support money" means an amount for basic support, child care support, and medical support pursuant to:

(1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support, and education of a child of the marriage or of the parties to the proceeding;

(2) a contribution by parents ordered under section 256.87; or

(3) support ordered under chapter 518B or 518C.

Subd. 8. [DEPOSIT ACCOUNT.] "Deposit account" means funds deposited with a financial institution in the form of a savings account, checking account, NOW account, or demand deposit account.

Subd. 9. [GROSS INCOME.] "Gross income" means:

(1) the gross income of the parent calculated pursuant to section 518.7123;

(2) the potential income of the parent as determined in subdivision 19; or

(3) a combination of gross income and potential income as calculated under clauses (1) and (2).

Subd. 10. [IV-D CASE.] "IV-D case" means a case where a party assigns rights to child support to the state because the party receives public assistance, as defined in section 256.741, or applies for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4).

Subd. 11. [JOINT CHILD.] "Joint child" means the dependent child who is the son or daughter of both parents in the support proceeding. In those cases where support is sought from only one parent of a child, a joint child is the child for whom support is sought.

Subd. 12. [LOW-INCOME ADJUSTMENT.] "Low-income adjustment" means the child support guideline amount appropriate for a low-income obligor under section 518.723, determined by applying the lesser of:

(1) the parents' pro rata share of the basic support obligation; or

(2) the support obligation determined by applying the parents' single modified gross income to the guideline in the manner set out in sections 518.725.

Subd. 13. [MODIFIED GROSS INCOME.] "Modified gross income" means gross income plus or minus court-ordered spousal support.

Subd. 14. [NONJOINT CHILD.] "Nonjoint child" means the legal child of one, but not both of the parents subject to this determination. Specifically excluded from this definition are stepchildren.

Subd. 15. [OBLIGOR.] "Obligor" means a person obligated to pay child 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 unless the court makes specific written findings to overcome this presumption. For purposes of ordering or enforcing medical support under section 518.719, a custodial parent may be an obligor subject to a cost-of-living adjustment under section 518.641 and a payment agreement under section 518.553.

Subd. 16. [OBLIGEE.] "Obligee" means a person to whom payments for child support are owed.

Subd. 17. [PARENTING TIME.] "Parenting time" means the amount of time a child is scheduled to spend with the parent according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time.

Subd. 18. [PAYOR OF FUNDS.] "Payor of funds" means a person or entity that provides funds to an obligor, including an employer as defined under chapter 24, section 3401(d), of the Internal Revenue Code, an independent contractor, payor of workers' compensation benefits or unemployment insurance benefits, or a financial institution as defined in section 13B.06.

Subd. 19. [POTENTIAL INCOME.] "Potential income" is income determined under this subdivision.

(a) If a parent is unemployed, employed on a less than a full-time basis, or there is no direct evidence of any income, child support shall be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.

(b) Determination of potential income shall be made according to one of three methods, as appropriate:

(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community; or

(2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated

using the actual amount of the unemployment compensation or workers' compensation benefit received; or

(3) the amount of income a parent could earn working full-time at 150 percent of the current federal or state minimum wage, whichever is higher.

(c) This presumption does not apply to a parent who is unable to work full-time due to a verified disability or to an incarcerated obligor.

(d) As used in this section, "full-time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.

(e) If the parent of a joint child is a recipient of a temporary assistance to a needy family (TANF) cash grant, no potential income shall be imputed to that parent.

(f) If the court determines that a parent is unemployed or underemployed because it is necessary to provide child care for a joint child, the court may reduce the amount of potential income by the reasonable value of child care expenses that are saved.

Subd. 20. [PRIMARY PHYSICAL CUSTODY.] The parent having "primary physical custody" means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.

Subd. 21. [PUBLIC AUTHORITY.] "Public authority" means the local unit of government, acting on behalf of the state, that is responsible for child support enforcement or the Department of Human Services, Child Support Enforcement Division.

Subd. 22. [SOCIAL SECURITY BENEFITS.] "Social Security benefits" means the monthly amount the Social Security Administration pays to a joint child or the child's representative payee due solely to the disability or retirement of either parent. Benefits paid to a parent due to the disability of a child are excluded from this definition.

Subd. 23. [SPLIT CUSTODY.] "Split custody" means that each

parent in a two-parent calculation has primary physical custody of at least one of the joint children.

Subd. 24. [SPOUSAL MAINTENANCE.] The amount of any preexisting or concurrently entered court-ordered spousal maintenance shall be deducted from the gross income of the parent obligated to pay the spousal support whether the spousal support is to be paid to the other parent or any other person. The amount of any preexisting or concurrently entered court-ordered spousal maintenance to be received by a parent from the other parent or any other person shall be added to the gross income of the parent entitled to receive the spousal support.

Subd. 25. [SUPPORT ORDER.] (a) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction that:

(1) provides for the support of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living;

(2) provides for basic support, child care, medical support including expenses for confinement and pregnancy, arrears, or reimbursement; and

(3) may include related costs and fees, interest and penalties, income withholding, and other relief.

(b) The definition in paragraph (a) applies to orders issued under this chapter and chapters 256, 257, and 518C.

Subd. 26. [SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.] "Survivors' and dependents' educational assistance" are funds disbursed by the Veterans Administration under 38 United States Code, chapter 35, to the child or the child's representative payee.

Sec. 14. [518.7123] [GROSS INCOME.]

(a) Except as excluded below, gross income includes income from any source, including, but not limited to, salaries, wages, commissions, advances, bonuses, dividends, severance pay,

pensions, interest, honoraria, trust income, annuities, return on capital, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, including lottery winnings, and alimony or separate maintenance received.

(b) Excluded and not counted in gross income is compensation received by a party for employment in excess of a 40-hour work week, provided that:

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

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

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

(ii) 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;

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

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

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

(c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they reduce personal living expenses.

(d) Gross income may be calculated on either an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying the weekly income by 4.33.

(e) If the parent of a joint child is a recipient of Temporary Assistance for Needy Families (TANF), the gross income attributed to that parent shall be the amount which could be earned by full-time work (40 hours a week) at the state minimum wage.

(f) Excluded and not counted as income is any child support payment. It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are excluded and not counted as income.

(g) Excluded and not counted as income is the income of the obligor's spouse and the obligee's spouse.

Sec. 15. [518.7125] [INCOME FROM SELF-EMPLOYMENT OR OPERATION OF A BUSINESS.]

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support.

Sec. 16. [518.713] [COMPUTATION OF INDIVIDUAL CHILD SUPPORT OBLIGATIONS.]

To determine the presumptive amount of support owed by a parent, follow the procedure set forth in this section:

(1) determine the gross income of each parent using the definition in section 518.726;

(2) determine the modified gross income of each parent using the definition in section 518.712, subdivision 13;

(3) determine the adjusted gross income of each parent, and if there are two parents, the combined adjusted gross income by subtracting from the modified gross income, the credit, if any, for any nonjoint children under section 518.717;

(4) if there are two parents, determine the percentage contribution of each parent to the combined adjusted gross income by dividing the combined adjusted gross income into each parent's adjusted gross income;

(5) determine the basic child support obligation by application of the guideline in section 518.725;

(6) determine each parent's share of the basic child support obligation by multiplying the percentage figure from clause (4) by the basic child support obligation in clause (5);

(7) determine the parenting time credit if any and determine the basic child support obligation of the parents as provided in section 518.722;

(8) apply the low-income adjustment, if applicable, as provided in section 518.723;

(9) determine the cost for each parent for child care costs as allowed by section 518.72;

(10) determining the cost for each parent for medical expenses and health care coverage as allowed by section 518.719. If costs are not equal each month, annual costs shall be averaged to determine a monthly cost;

(11) calculate the total costs owed by each parent to the other by applying the parent's percentage of income as determined in clause (4) to the actual out-of-pocket medical costs incurred by the other parent. Add these amounts to each parent's child support obligation;

(12) calculate the total child support obligation of each parent by adding for each parent, the basic child support obligation from clause (7) and the total costs from clause (11);

(13) determine the net child support obligation by subtracting the smaller of the obligations from the larger;

(14) if Social Security benefits or veterans' benefits are received by the obligee as a representative payee for a joint child due to the obligor's disability or retirement, subtract the amount of benefits from the obligor's net child support obligation, if any;

(15) determine the portion of the calculated child support obligation the obligor has the ability to pay as provided in section 518.724; and

(16) the final child support order shall separately designate the amount owed for basic support, child care support,

and medical support.

Sec. 17. [518.7131] [TEMPORARY SUPPORT.]

Temporary support may be awarded as provided in section 518.131.

Sec. 18. [518.714] [DEVIATIONS FROM CHILD SUPPORT GUIDELINES.]

Subdivision 1. [GENERAL FACTORS.] Among other reasons, deviation from the presumptive guideline amount is intended to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty. In addition to the child support guidelines, the court must take into consideration the following factors in setting or modifying child support or in determining whether to deviate upward or downward from the extraordinary or diminished guidelines:

(1) all earnings, income circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of section 518.7123, paragraph (b), clause (2);

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

(3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

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

(5) the parents' debts as provided in subdivision 2; and

(6) the number and needs of other dependents of a parent.

Subd. 2. [DEBT OWED TO PRIVATE CREDITORS.] (a) 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 256.741;

(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 may 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 original debt amount, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.

(b) A schedule prepared under paragraph (a), clause (3), must 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.

(c) Any further departure below the guidelines that is based on a consideration of debts owed to private creditors must not exceed 18 months in duration. After 18 months the support must increase automatically to the level ordered by the court. This section does not prohibit one or more step increases in support to reflect debt retirement during the 18-month period.

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

Subd. 3. [EVIDENCE.] The court may receive evidence on the factors in this section to determine if the guidelines should be exceeded or modified in a particular case.

Subd. 4. [PAYMENTS ASSIGNED TO PUBLIC AUTHORITY.] If the child support payments are assigned to the public authority under section 256.741, 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.

Subd. 5. [JOINT LEGAL CUSTODY.] An award of joint legal custody is not a reason for deviation from the guidelines.

Subd. 6. [SELF-SUPPORT LIMITATION.] If, after payment of income and payroll taxes, the obligor can establish that they do not have enough for the self-support reserve, a downward

deviation may be allowed.

Sec. 19. [518.715] [WRITTEN FINDINGS.]

Subdivision 1. [NO DEVIATION.] If the court does not deviate from the guidelines, the court must make written findings concerning the amount of the parties' income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the child support determination.

Subd. 2. [DEVIATION.] (a) If the court deviates from the guidelines, the court must make written findings giving the amount of support calculated under the guidelines, the reasons for the deviation, and must specifically address how the deviation serves the best interests of the child.

(b) Determine each parent's gross modified income.

Subd. 3. [WRITTEN FINDINGS REQUIRED IN EVERY CASE.] The provisions of this section apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The court must review stipulations presented to it for conformity to the guidelines. The court is not required to conduct a hearing, but the parties must provide sufficient documentation of gross income.

Sec. 20. [518.716] [GUIDELINES REVIEW.]

No later than 2006 and every four years after that, the Department of Human Services must conduct a review of the child support guidelines.

Sec. 21. [518.717] [NONJOINT CHILDREN.]

(a) When either or both parents of the joint child subject to this determination are legally responsible for a nonjoint child who resides in that parent's household, or a nonjoint child to whom or on whose behalf a parent owes an ongoing child support obligation under a court or administrative order, a credit for this obligation shall be calculated under this section.

(b) Determine the modified gross income for each parent by subtracting from a parent's gross income the amount of any spousal support a court orders that parent to pay, and adding to

a parent's gross income any spousal support the parent is entitled to receive.

(c) Using the guideline as established in section 518.725, determine the basic child support obligation or the nonjoint child or children who actually reside in the parent's household, by using the modified gross income of the parent for whom the credit is being calculated, and using the number of nonjoint children actually in the parent's immediate household.

(d) The credit for nonjoint children shall be 50 percent of the guideline amount from paragraph (c), plus the amount of any existing support order for other nonjoint children.

Sec. 22. [518.718] [SOCIAL SECURITY OR VETERANS' BENEFIT PAYMENTS RECEIVED ON BEHALF OF THE CHILD.]

(a) The amount of the monthly Social Security benefits or apportioned veterans' benefits received by the child or on behalf of the child shall be added to the gross income of the parent for whom the disability or retirement benefit was paid.

(b) The amount of the monthly survivors' and dependents' educational assistance received by the child or on behalf of the child shall be added to the gross income of the parent for whom the disability or retirement benefit was paid.

(c) If the Social Security or apportioned veterans' benefits are paid on behalf of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits may also be subtracted from the obligor's net child support obligation as calculated pursuant to section 518.713.

(d) If the survivors' and dependents' educational assistance is paid on behalf of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's net child support obligation as calculated pursuant to section 518.713.

Sec. 23. [518.719] [MEDICAL SUPPORT.]

Subdivision 1. [DEFINITIONS.] The definitions in this subdivision apply to sections 518.711 to 518.733.

(a) "Health care coverage" means health care benefits that are provided by a health plan. Health care coverage does not include any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L.

(b) "Health carrier" means a carrier as defined in sections 62A.011, subdivision 2, and 62L.02, subdivision 16.

(c) "Health plan" means a plan meeting the definition under section 62A.011, subdivision 3, a group health plan governed under the federal Employee Retirement Income Security Act of 1974 (ERISA), a self-insured plan under sections 43A.23 to 43A.317 and 471.617, or a policy, contract, or certificate issued by a community-integrated service network licensed under chapter 62N. Health plan includes plans:

(1) provided on an individual and group basis;

(2) provided by an employer or union;

(3) purchased in the private market; and

(4) available to a person eligible to carry insurance for the joint child.

Health plan includes a plan providing for dependent-only dental or vision coverage and a plan provided through a party's spouse or parent.

(d) "Medical support" means providing health care coverage for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the joint child.

(e) "National medical support notice" means an administrative notice issued by the public authority to enforce health insurance provisions of a support order in accordance with Code of Federal Regulations, title 45, section 303.32, in cases where the public authority provides support enforcement services.

(f) "Public coverage" means health care benefits provided by any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L.

(g) "Uninsured medical expenses" means a joint child's

reasonable and necessary health-related expenses if the joint child is not covered by a health plan or public coverage when the expenses are incurred.

(h) "Unreimbursed medical expenses" means a joint child's reasonable and necessary health-related expenses if a joint child is covered by a health plan or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to, deductibles, co-payments, and expenses for orthodontia, and prescription eyeglasses and contact lenses but not over the counter medications.

Subd. 2. [ORDER.] (a) A completed national medical support notice issued by the public authority or a court order that complies with this section is a qualified medical child support order under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a).

(b) Every order addressing child support must state:

(1) the names, last known addresses, and Social Security numbers of the parents and the joint child that is a subject of the order unless the court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan;

(2) whether appropriate health care coverage for the joint child is available and, if so, state:

(i) which party must carry health care coverage;

(ii) the cost of premiums and how the cost is allocated between the parties;

(iii) how unreimbursed expenses will be allocated and collected by the parties; and

(iv) the circumstances, if any, under which the obligation to provide health care coverage for the joint child will shift from one party to the other;

(3) if appropriate health care coverage is not available

for the joint child, whether a contribution for medical support is required; and

(4) whether the amount ordered for medical support is subject to a cost-of-living adjustment under section 518.641.

Subd. 3. [DETERMINING APPROPRIATE HEALTH CARE COVERAGE.] (a) In determining whether a party has appropriate health care coverage for the joint child, the court must evaluate the health plan using the following factors:

(1) accessible coverage. Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:

(i) primary care coverage is available within 30 minutes or 30 miles of the joint child's residence and specialty care coverage is available within 60 minutes or 60 miles of the joint child's residence;

(ii) the coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and

(iii) no preexisting conditions exist to delay coverage unduly;

(2) comprehensive coverage. Dependent health care coverage is comprehensive if it includes, at a minimum, medical and hospital coverage and provides for preventive, emergency, acute, and chronic care. If both parties have health care coverage that meets the minimum requirements, the court must determine which health care coverage is more comprehensive by considering whether the coverage includes:

(i) basic dental coverage;

(ii) orthodontia;

(iii) eyeglasses;

(iv) contact lenses;

(v) mental health services; or

(vi) substance abuse treatment;

(3) affordable coverage. Dependent health care coverage is

affordable if it is reasonable in cost; and

(4) the joint child's special medical needs, if any.

(b) If both parties have health care coverage available for a joint child, and the court determines under paragraph (a), clauses (1) and (2), that the available coverage is comparable with regard to accessibility and comprehensiveness, the least costly health care coverage is the presumed appropriate health care coverage for the joint child.

Subd. 4. [ORDERING HEALTH CARE COVERAGE.] (a) If a joint child is presently enrolled in health care coverage, the court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parties agree otherwise or a party requests a change in coverage and the court determines that other health care coverage is more appropriate.

(b) If a joint child is not presently enrolled in health care coverage, upon motion of a party or the public authority, the court must determine whether one or both parties have appropriate health care coverage for the joint child and order the party with appropriate health care coverage available to carry the coverage for the joint child.

(c) If only one party has appropriate health care coverage available, the court must order that party to carry the coverage for the joint child.

(d) If both parties have appropriate health care coverage available, the court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:

(1) either party expresses a preference for coverage available through the parent with whom the joint child does not reside;

(2) the parent with whom the joint child does not reside is already carrying dependent health care coverage for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or

(3) the parents agree to provide coverage and agree on the allocation of costs.

(e) If the exception in paragraph (d), clause (1) or (2), applies, the court must determine which party has the most appropriate coverage available and order that party to carry coverage for the joint child. If the court determines under subdivision 3, paragraph (a), clauses (1) and (2), that the parties' health care coverage for the joint child is comparable with regard to accessibility and comprehensiveness, the court must presume that the party with the least costly health care coverage to carry coverage for the joint child.

(f) If neither party has appropriate health care coverage available, the court must order the parents to:

(1) contribute toward the actual health care costs of the joint children based on a pro rata share; or

(2) if the joint child is receiving any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of medical assistance under chapter 256B or MinnesotaCare under chapter 256L determined by the court to be just and appropriate; the contribution of the parent with whom the joint child resides is the monthly contribution as determined by the eligibility requirements for public coverage.

(g) If the court finds a pro rata apportionment unjust or inappropriate under paragraph (f), the court shall:

(1) order the parties to contribute an amount of the cost of health care as the court finds just and appropriate; and

(2) make findings regarding the factors considered, the amount of each parent's share of the cost, and the reasons the court did not order a pro rata apportionment.

A presumption of no less than $50 per month must be applied to the actual health care costs of the joint children or to the cost of health care coverage.

(h) The commissioner of human services must publish a table with the premium schedule for public coverage and update the chart for changes to the schedule by July 1 of each year.

Subd. 5. [MEDICAL SUPPORT COSTS; UNREIMBURSED AND

UNINSURED MEDICAL EXPENSES.] (a) Unless otherwise agreed to by the parties and approved by the court, the court must order that the cost of health care coverage and all unreimbursed and uninsured medical expenses be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly adjusted gross income.

(b) If a party owes a joint child support obligation for a child and is ordered to carry health care coverage for the joint child, and the other party is ordered to contribute to the carrying party's cost for coverage, the carrying party's child support payment must be reduced by the amount of the contributing party's contribution.

(c) If a party owes a joint child support obligation for a child and is ordered to contribute to the other party's cost for carrying health care coverage for the joint child, the contributing party's child support payment must be increased by the amount of the contribution.

(d) If the party ordered to carry health care coverage for the joint child already carries dependent health care coverage for other dependents and would incur no additional premium costs to add the joint child to the existing coverage, the court must not order the other party to contribute to the premium costs for coverage of the joint child.

(e) If a party ordered to carry health care coverage for the joint child does not already carry dependent health care coverage but has other dependents who may be added to the ordered coverage, the full premium costs of the dependent health care coverage must be allocated between the parties in proportion to the party's share of the parties' combined income, unless the parties agree otherwise.

(f) If a party ordered to carry health care coverage for the joint child is required to enroll in a health plan so that the joint child can be enrolled in dependent health care coverage under the plan, the court must allocate the costs of the dependent health care coverage between the parties. The costs of the health care coverage for the party ordered to carry

the coverage for the joint child must not be allocated between the parties.

Subd. 6. [NOTICE OR COURT ORDER SENT TO PARTY'S EMPLOYER, UNION, OR HEALTH CARRIER.] (a) The public authority must forward a copy of the national medical support notice or court order for health care coverage to the party's employer within two business days after the date the party is entered into the work reporting system under section 256.998.

(b) The public authority or a party seeking to enforce an order for health care coverage must forward a copy of the national medical support notice or court order to the obligor's employer or union, or to the health carrier under the following circumstances:

(1) the party ordered to carry health care coverage for the joint child fails to provide written proof to the other party or the public authority, within 30 days of the effective date of the court order, that the party has applied for health care coverage for the joint child;

(2) the party seeking to enforce the order or the public authority gives written notice to the party ordered to carry health care coverage for the joint child of its intent to enforce medical support. The party seeking to enforce the order or public authority must mail the written notice to the last known address of the party ordered to carry health care coverage for the joint child; and

(3) the party ordered to carry health care coverage for the joint child fails, within 15 days after the date on which the written notice under clause (2) was mailed, to provide written proof to the other party or the public authority that the party has applied for health care coverage for the joint child.

(c) The public authority is not required to forward a copy of the national medical support notice or court order to the obligor's employer or union, or to the health carrier, if the court orders health care coverage for the joint child that is not employer-based or union-based coverage.

Subd. 7. [EMPLOYER OR UNION REQUIREMENTS.] (a) An employer

or union must forward the national medical support notice or court order to its health plan within 20 business days after the date on the national medical support notice or after receipt of the court order.

(b) Upon determination by an employer's or union's health plan administrator that a joint child is eligible to be covered under the health plan, the employer or union and health plan must enroll the joint child as a beneficiary in the health plan, and the employer must withhold any required premiums from the income or wages of the party ordered to carry health care coverage for the joint child.

(c) If enrollment of the party ordered to carry health care coverage for a joint child is necessary to obtain dependent health care coverage under the plan, and the party is not enrolled in the health plan, the employer or union must enroll the party in the plan.

(d) Enrollment of dependents and, if necessary, the party ordered to carry health care coverage for the joint child must be immediate and not dependent upon open enrollment periods. Enrollment is not subject to the underwriting policies under section 62A.048.

(e) Failure of the party ordered to carry health care coverage for the joint child to execute any documents necessary to enroll the dependent in the health plan does not affect the obligation of the employer or union and health plan to enroll the dependent in a plan. Information and authorization provided by the public authority, or by a party or guardian, is valid for the purposes of meeting enrollment requirements of the health plan.

(f) An employer or union that is included under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a), may not deny enrollment to the joint child or to the parent if necessary to enroll the joint child based on exclusionary clauses described in section 62A.048.

(g) A new employer or union of a party who is ordered to

provide health care coverage for a joint child must enroll the joint child in the party's health plan as required by a national medical support notice or court order.

Subd. 8. [HEALTH PLAN REQUIREMENTS.] (a) If a health plan administrator receives a completed national medical support notice or court order, the plan administrator must notify the parties, and the public authority if the public authority provides support enforcement services, within 40 business days after the date of the notice or after receipt of the court order, of the following:

(1) whether coverage is available to the joint child under the terms of the health plan and, if not, the reason why coverage is not available;

(2) whether the joint child is covered under the health plan;

(3) the effective date of the joint child's coverage under the health plan; and

(4) what steps, if any, are required to effectuate the joint child's coverage under the health plan.

(b) If the employer or union offers more than one plan and the national medical support notice or court order does not specify the plan to be carried, the plan administrator must notify the parents and the public authority if the public authority provides support enforcement services. When there is more than one option available under the plan, the public authority, in consultation with the parent with whom the joint child resides, must promptly select from available plan options.

(c) The plan administrator must provide the parents and public authority, if the public authority provides support enforcement services, with a notice of the joint child's enrollment, description of the coverage, and any documents necessary to effectuate coverage.

(d) The health plan must send copies of all correspondence regarding the health care coverage to the parents.

(e) An insured joint child's parent's signature is a valid authorization to a health plan for purposes of processing an

insurance reimbursement payment to the medical services provider or to the parent, if medical services have been prepaid by that parent.

Subd. 9. [EMPLOYER OR UNION LIABILITY.] (a) An employer or union that willfully fails to comply with the order or notice is liable for any uninsured medical expenses incurred by the dependents while the dependents were eligible to be enrolled in the health plan and for any other premium costs incurred because the employer or union willfully failed to comply with the order or notice.

(b) An employer or union that fails to comply with the order or notice is subject to a contempt finding, a $250 civil penalty under section 518.615, and is subject to a civil penalty of $500 to be paid to the party entitled to reimbursement or the public authority. Penalties paid to the public authority are designated for child support enforcement services.

Subd. 10. [CONTESTING ENROLLMENT.] (a) A party may contest a joint child's enrollment in a health plan on the limited grounds that the enrollment is improper due to mistake of fact or that the enrollment meets the requirements of section 518.145.

(b) If the party chooses to contest the enrollment, the party must do so no later than 15 days after the employer notifies the party of the enrollment by doing the following:

(1) filing a motion in district court or according to section 484.702 and the expedited child support process rules if the public authority provides support enforcement services;

(2) serving the motion on the other party and public authority if the public authority provides support enforcement services; and

(3) securing a date for the matter to be heard no later than 45 days after the notice of enrollment.

(c) The enrollment must remain in place while the party contests the enrollment.

Subd. 11. [DISENROLLMENT; CONTINUATION OF COVERAGE; COVERAGE OPTIONS.] (a) Unless a court order provides otherwise, a child for whom a party is required to provide health care

coverage under this section must be covered as a dependent of the party until the child is emancipated, until further order of the court, or as consistent with the terms of the coverage.

(b) The health carrier, employer, or union may not disenroll or eliminate coverage for the child unless:

(1) the health carrier, employer, or union is provided satisfactory written evidence that the court order is no longer in effect;

(2) the joint child is or will be enrolled in comparable health care coverage through another health plan that will take effect no later than the effective date of the disenrollment;

(3) the employee is no longer eligible for dependent coverage; or

(4) the required premium has not been paid by or on behalf of the joint child.

(c) The health plan must provide 30 days' written notice to the joint child's parents, and the public authority if the public authority provides support enforcement services, before the health plan disenrolls or eliminates the joint child's coverage.

(d) A joint child enrolled in health care coverage under a qualified medical child support order, including a national medical support notice, under this section is a dependent and a qualified beneficiary under the Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA), Public Law 99-272. Upon expiration of the order, the joint child is entitled to the opportunity to elect continued coverage that is available under the health plan. The employer or union must provide notice to the parties and the public authority, if it provides support services, within ten days of the termination date.

(e) If the public authority provides support enforcement services and a plan administrator reports to the public authority that there is more than one coverage option available under the health plan, the public authority, in consultation with the parent with whom the joint child resides, must promptly select coverage from the available options.

Subd. 12. [SPOUSAL OR FORMER SPOUSAL COVERAGE.] The court must require the parent with whom the joint child does not reside to provide dependent health care coverage for the benefit of the parent with whom the joint child resides if the parent is ordered to provide dependent health care coverage for the parties' joint child and adding the other parent to the coverage results in no additional premium cost.

Subd. 13. [DISCLOSURE OF INFORMATION.] (a) If the public authority provides support enforcement services, the parties must provide the public authority with the following information:

(1) information relating to dependent health care coverage or public coverage available for the benefit of the joint child for whom support is sought, including all information required to be included in a medical support order under this section;

(2) verification that application for court-ordered health care coverage was made within 30 days of the court's order; and

(3) the reason that a joint child is not enrolled in court-ordered health care coverage, if a joint child is not enrolled in coverage or subsequently loses coverage.

(b) Upon request from the public authority under section 256.978, an employer, union, or plan administrator, including an employer subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a), must provide the public authority the following information:

(1) information relating to dependent health care coverage available to a party for the benefit of the joint child for whom support is sought, including all information required to be included in a medical support order under this section; and

(2) information that will enable the public authority to determine whether a health plan is appropriate for a joint child, including, but not limited to, all available plan options, any geographic service restrictions, and the location of service providers.

(c) The employer, union, or plan administrator must not release information regarding one party to the other party. The

employer, union, or plan administrator must provide both parties with insurance identification cards and all necessary written information to enable the parties to utilize the insurance benefits for the covered dependent.

(d) The public authority is authorized to release to a party's employer, union, or health plan information necessary to verify availability of dependent health care coverage, or to establish, modify, or enforce medical support.

(e) An employee must disclose to an employer if medical support is required to be withheld under this section and the employer must begin withholding according to the terms of the order and under section 518.6111. If an employee discloses an obligation to obtain health care coverage and coverage is available through the employer, the employer must make all application processes known to the individual and enroll the employee and dependent in the plan.

Subd. 14. [CHILD SUPPORT ENFORCEMENT SERVICES.] The public authority must take necessary steps to establish and enforce an order for medical support if the joint child receives public assistance or a party completes an application for services from the public authority under section 518.551, subdivision 7.

Subd. 15. [ENFORCEMENT.] (a) Remedies available for collecting and enforcing child support apply to medical support.

(b) For the purpose of enforcement, the following are additional support:

(1) the costs of individual or group health or hospitalization coverage;

(2) dental coverage;

(3) medical costs ordered by the court to be paid by either party, including health and dental insurance premiums paid by the obligee because of the obligor's failure to obtain coverage as ordered; and

(4) liabilities established under this subdivision.

(c) A party who fails to carry court-ordered dependent health care coverage is liable for the joint child's uninsured medical expenses unless a court order provides otherwise. A

party's failure to carry court-ordered coverage, or to provide other medical support as ordered, is a basis for modification of a support order under section 518.64, subdivision 2.

(d) Payments by the health carrier or employer for services rendered to the dependents that are directed to a party not owed reimbursement must be endorsed over to and forwarded to the vendor or appropriate party or the public authority. A party retaining insurance reimbursement not owed to the party is liable for the amount of the reimbursement.

Subd. 16. [INCOME WITHHOLDING; OFFSET.] (a) If a party owes no joint child support obligation for a child and is an obligor ordered to contribute to the other party's cost for carrying health care coverage for the joint child, the obligor is subject to an offset under subdivision 5 or income withholding under section 518.6111.

(b) If a party's court-ordered health care coverage for the joint child terminates and the joint child is not enrolled in other health care coverage or public coverage, and a modification motion is not pending, the public authority may remove the offset to a party's child support obligation or terminate income withholding instituted against a party under section 518.6111. The public authority must provide notice to the parties of the action.

(c) A party may contest the public authority's action to remove the offset to the child support obligation or terminate income withholding if the party makes a written request for a hearing within 30 days after receiving written notice. If a party makes a timely request for a hearing, the public authority must schedule a hearing and send written notice of the hearing to the parties by mail to the parties' last known addresses at least 14 days before the hearing. The hearing must be conducted in district court or in the expedited child support process if section 484.702 applies. The district court or child support magistrate must determine whether removing the offset or terminating income withholding is appropriate and, if appropriate, the effective date for the removal or termination.

(d) If the party does not request a hearing, the district court or child support magistrate must order the offset or income withholding termination effective the first day of the month following termination of the joint child's health care coverage.

Subd. 17. [COLLECTING UNREIMBURSED AND UNINSURED MEDICAL EXPENSES.] (a) A party must initiate a request for reimbursement of unreimbursed and uninsured medical expenses within two years of the date that the party incurred the unreimbursed or uninsured medical expenses. The time period in this paragraph does not apply if the location of the other party is unknown.

(b) A party seeking reimbursement of unreimbursed and uninsured medical expenses must mail a written notice of intent to collect the expenses and a copy of an affidavit of health care expenses to the other party at the other party's last known address.

(c) The written notice must include a statement that the party has 30 days from the date the notice was mailed to (1) pay in full; (2) enter a payment agreement; or (3) file a motion requesting a hearing contesting the matter. If the public authority provides support enforcement services, the written notice also must include a statement that the requesting party must submit the amount due to the public authority for collection.

(d) The affidavit of health care expenses must itemize and document the joint child's unreimbursed or uninsured medical expenses and include copies of all bills, receipts, and insurance company explanations of benefits.

(e) If the public authority provides support enforcement services, the party seeking reimbursement must send to the public authority a copy of the written notice, the original affidavit, and copies of all bills, receipts, and insurance company explanations of benefits.

(f) If the party does not respond to the request for reimbursement within 30 days, the party seeking reimbursement or public authority, if the public authority provides support

enforcement services, must commence an enforcement action against the party under subdivision 18.

(g) The public authority must serve the other party with a notice of intent to enforce unreimbursed and uninsured medical expenses and file an affidavit of service by mail with the district court administrator. The notice must state that, unless the party (1) pays in full; (2) enters into a payment agreement; or (3) files a motion contesting the matter within 14 days of service of the notice, the public authority will commence enforcement of the expenses as medical support arrears under subdivision 18.

(h) If the party files a timely motion for a hearing contesting the requested reimbursement, the contesting party must schedule a hearing in district court or in the expedited child support process if section 484.702 applies. The contesting party must provide the party seeking reimbursement and the public authority, if the public authority provides support enforcement services, with written notice of the hearing at least 14 days before the hearing by mailing notice of the hearing to the public authority and the party at the party's last known address. The party seeking reimbursement must file the original affidavit of health care expenses with the court at least five days before the hearing. Based upon the evidence presented, the district court or child support magistrate must determine liability for the expenses and order that the liable party is subject to enforcement of the expenses as medical support arrears under subdivision 18.

Subd. 18. [ENFORCING AN ORDER FOR MEDICAL SUPPORT ARREARS.] (a) If a party liable for unreimbursed and uninsured medical expenses owes a child support obligation to the party seeking reimbursement of the expenses, the expenses must be collected as medical support arrears.

(b) If a party liable for unreimbursed and uninsured medical expenses does not owe a child support obligation to the party seeking reimbursement, and the party seeking reimbursement owes the liable party basic support arrears, the liable party's

medical support arrears must be deducted from the amount of the basic support arrears.

(c) If a liable party owes medical support arrears after deducting the amount owed from the amount of the child support arrears owed by the party seeking reimbursement, it must be collected as follows:

(1) if the party seeking reimbursement owes a child support obligation to the liable party, the child support obligation must be reduced by 20 percent until the medical support arrears are satisfied;

(2) if the party seeking reimbursement does not owe a child support obligation to the liable party, the liable party's income must be subject to income withholding under section 518.6111 for an amount required under section 518.553 until the medical support arrears are satisfied; or

(3) if the party seeking reimbursement does not owe a child support obligation, and income withholding under section 518.6111 is not available, payment of the medical support arrears must be required under a payment agreement under section 518.553.

(d) If a liable party fails to enter into or comply with a payment agreement, the party seeking reimbursement or the public authority, if it provides support enforcement services, may schedule a hearing to have a court order payment. The party seeking reimbursement or the public authority must provide the liable party with written notice of the hearing at least 14 days before the hearing.

Sec. 24. [518.72] [CHILD CARE SUPPORT.]

Subdivision 1. [CHILD CARE COSTS.] Unless otherwise agreed to by the parties and approved by the court, the court must order that work-related or education-related child care costs of joint children 12 years old or younger be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly adjusted gross income. Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of a joint child.

The Department of Human Services shall develop tables to calculate the applicable credit based upon the custodial parent's adjusted gross income.

Subd. 2. [LOW-INCOME OBLIGOR.] (a) If the obligor's adjusted gross income meets the income eligibility requirements for child care assistance under the basic sliding fee program under chapter 119B, the court must order the obligor to pay the lesser of the following amounts:

(1) the amount of the obligor's monthly co-payment for child care assistance under the basic sliding fee schedule established by the commissioner of education under chapter 119B, based on an obligor's monthly adjusted gross income and the size of the obligor's household provided that the obligee is actually receiving child care assistance under the basic sliding fee program. For purposes of this subdivision, the obligor's household includes the obligor and the number of joint children for whom child support is being ordered; or

(2) the amount of the obligor's child care obligation under subdivision 1.

(b) The commissioner of human services must publish a table with the child care assistance basic sliding fee amounts and update the table for changes to the basic sliding fee schedule by July 1 of each year.

Subd. 3. [DETERMINING COSTS.] (a) The court must require verification of employment or school attendance and documentation of child care expenses from the obligee and the public authority, if applicable.

(b) If child care expenses fluctuate during the year because of the obligee's seasonal employment or school attendance or extended periods of parenting time with the obligor, the court must determine child care expenses based on an average monthly cost.

(c) 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.

(d) The court may allow the parent with whom the joint

child does not reside to care for the joint child while the parent with whom the joint child resides is working or attending school, as provided in section 518.175, subdivision 8. Allowing the parent with whom the joint child does not reside to care for the joint child under section 518.175, subdivision 8, is not a reason to deviate from the guidelines.

(e) The court may limit child care expenses to the market rates found for the city or county of residence of the obligee as surveyed by the commissioner of human services for purposes of chapter 119B provided that child care space is actually available at the lesser rate.

Subd. 4. [CHANGE IN CHILD CARE.] (a) When a court order provides for child care expenses and the public authority provides child support enforcement services, the public authority must suspend collecting the amount allocated for child care expenses when:

(1) either party informs the public authority that no child care costs are being incurred; and

(2) the public authority verifies the accuracy of the information with the other party.

The public authority will resume collecting child care expenses when either party provides information that child care costs have resumed.

(b) If the parties provide conflicting information to the public authority regarding whether child care expenses are being incurred, the public authority will continue or resume collecting child care expenses. Either party, by motion to the court, may challenge the suspension or resumption of the collection of child care expenses. If the public authority suspends collection activities for the amount allocated for child care expenses, all other provisions of the court order remain in effect.

(c) In cases where there is a substantial increase or decrease in child care expenses, the parties may modify the order under section 518.64.

Sec. 25. [518.721] [PARENTING TIME.]

(a) Each parent is presumptively entitled to receive 25 percent of the parenting time for each joint child.

(b) The amount of parenting time may be increased or decreased by evidence:

(1) that the parties have agreed to a different amount of parenting time;

(2) that circumstances exist which warrant either more or less parenting time in the child's best interest;

(3) of the parent's past history of parenting time with the child;

(4) that one parent has intentionally interfered with or denied parenting time to the other parent;

(5) that a parent has not utilized parenting time that has been previously awarded;

(6) that the age or developmental needs of the child would warrant a lesser amount of parenting time; or

(7) that a child who is 14 years of age or older and has expressed an uncoerced preference to increase or decrease the amount of that child's parenting time with a parent.

(c) If there is a current court order providing for parenting time or split custody, the percentage of overall parenting time for each parent shall be calculated as follows:

(1) multiply the number of joint children by 365 to arrive at a total number of child overnights. Add together the total number of overnights the parent is allowed with each joint child and divide the parenting time overnights by the total number of child overnights;

(2) if the parents have court-ordered split custody providing for parenting time, each parent shall be attributed 365 days for each joint child in the parent's physical custody; and

(3) notwithstanding the calculation provided in paragraph (c), clauses (1) and (2), the percentage of parenting time may be determined using a method other than overnights if a parent has significant time periods where the child is in the parent's physical custody but does not stay overnight.

(d) If there is no court order providing for parenting time, the parent having primary physical custody shall be treated as having 100 percent of the parenting time.

Sec. 26. [518.722] [PARENTING TIME CREDIT.]

(a) This section shall apply when the overall parenting time calculated pursuant to section 518.721 is ten percent or greater for each parent.

(b) The obligor shall be entitled to a parenting time credit calculated as follows:

(1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor below:

	Percentage Range of Parenting Time	Adjustment Percentage
(i)	less than 10 percent	no adjustment
(ii)	10 percent to 45 percent	18 percent
(iii)	45.1 percent to 50 percent	presume parenting time is equal

(2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting time credit.

(c) Subtract the parenting time credit from the obligor's basic child support obligation. The result is the obligor's obligation after parenting time credit.

(d) If the parenting time is equal, the expenses for the children are equally shared, and the adjusted gross incomes of the parents also are equal, no support shall be paid.

(e) If the parenting time is equal but the parents' adjusted gross incomes are not equal, the parent having the greater adjusted gross income shall be obligated for the amount of basic child support needed to equalize the basic child support to each parent, calculated as follows:

(1) after the basic child support obligation has been prorated between the parents, subtract the lower amount from the higher amount and divide the balance in half; and

(2) the resulting figure is the obligation after parenting time credit for the parent with the greater adjusted gross

income.

(f) This parenting time credit reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses.

Sec. 27. [518.723] [LOW-INCOME ADJUSTMENT.]

(a) The low-income adjustment is a calculation to ensure that parents who are at or near the federal poverty level have sufficient income to support themselves after the payment of child support.

(b) To determine if the low-income adjustment applies, find each parent's single income obligation by referencing the guideline in section 518.725 at the appropriate number of joint children and each parent's individual modified gross income as defined in section 518.712, subdivision 8.

(c) Compare the amounts obtained in paragraph (b) of this section to the prorated basic child support obligation after parenting time credit and apply the lower of the two figures to the remaining calculation for each parent.

Sec. 28. [518.724] [ABILITY TO PAY; SELF-SUPPORT ADJUSTMENT.]

It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, follow the procedure set out in this section:

(1) calculate the obligor's income available for support by subtracting a monthly self-support reserve of 120 percent of the federal poverty guidelines for one person from the obligor's modified gross income as defined in section 518.712, subdivision 13;

(2) compare the obligor's income available for support to the amount of support calculated as per section 518.713, clauses (1) to (13). The amount of child support that is presumed to be correct as defined in section 518.713 is the lesser of these two amounts;

(3) this section does not apply to an incarcerated obligor;

(4) if the obligor's child support is reduced under clause (2), then the court must apply the reduction to the child support obligation in the following order:

(i) medical support obligation;

(ii) child support obligation; and

(iii) basic support obligation; and

(5) [MINIMUM BASIC SUPPORT AMOUNT.] if the obligor's income available for support is less than the self-support reserve, then the court must order minimum support as follows:

(i) for one or two children, the obligor's basic support obligation is $50 per month;

(ii) for three or four children, the obligor's basic support obligation is $75 per month; and

(iii) for five or more children, the obligor's basic support obligation is $100 per month.

If the court orders the obligor to pay the minimum basic support amount under this paragraph, the obligor is presumed unable to pay child care support and medical support.

If the court finds the obligor receives no income and completely lacks the ability to earn income, the minimum basic support amount under this paragraph does not apply.

Sec. 29. [518.725] [GUIDELINE USED IN CHILD SUPPORT DETERMINATIONS.]

Subdivision 1. [DETERMINATION OF SUPPORT OBLIGATION.] (a) The guideline in this section is a rebuttable presumption and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under chapter 518.

(b) The basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children and the combined adjusted gross income of the parents.

(c) If a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children, and the parent's individual adjusted gross income, not the combined

adjusted gross income of the parents.

(d) For combined adjusted gross incomes exceeding $15,000 per month, the presumed basic child support obligations shall be as for parents with combined adjusted gross income of $15,000 per month. A basic child support obligation in excess of this level may be demonstrated for those reasons set forth in section 518.714.

Subd. 2. [BASIC SUPPORT; GUIDELINE.] Unless otherwise agreed to by the parents and approved by the court, when establishing basic support, the court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly income, as determined under section 518.713. Basic support must be computed using the following guideline:

Parents' Combined Adjusted Gross Income	Number of Children					
	One	Two	Three	Four	Five	Six
$0- $799	$50	$50	$75	$75	$100	$100
800- 899	80	129	149	173	201	233
900- 999	90	145	167	194	226	262
1,000- 1,099	116	161	186	216	251	291
1,100- 1,199	145	205	237	275	320	370
1,200- 1,299	177	254	294	341	396	459
1,300- 1,399	212	309	356	414	480	557
1,400- 1,499	251	368	425	493	573	664
1,500- 1,599	292	433	500	580	673	780
1,600- 1,699	337	502	580	673	781	905
1,700- 1,799	385	577	666	773	897	1,040
1,800- 1,899	436	657	758	880	1,021	1,183
1,900- 1,999	490	742	856	994	1,152	1,336
2,000- 2,099	516	832	960	1,114	1,292	1,498
2,100- 2,199	528	851	981	1,139	1,320	1,531
2,200- 2,299	538	867	1,000	1,160	1,346	1,561
2,300- 2,399	546	881	1,016	1,179	1,367	1,586
2,400- 2,499	554	893	1,029	1,195	1,385	1,608
2,500- 2,599	560	903	1,040	1,208	1,400	1,625
2,600- 2,699	570	920	1,060	1,230	1,426	1,655

1	2,700- 2,799	580	936	1,078	1,251	1,450	1,683
2	2,800- 2,899	589	950	1,094	1,270	1,472	1,707
3	2,900- 2,999	596	963	1,109	1,287	1,492	1,730
4	3,000- 3,099	603	975	1,122	1,302	1,509	1,749
5	3,100- 3,199	613	991	1,141	1,324	1,535	1,779
6	3,200- 3,299	623	1,007	1,158	1,344	1,558	1,807
7	3,300- 3,399	632	1,021	1,175	1,363	1,581	1,833
8	3,400- 3,499	640	1,034	1,190	1,380	1,601	1,857
9	3,500- 3,599	648	1,047	1,204	1,397	1,621	1,880
10	3,600- 3,699	657	1,062	1,223	1,418	1,646	1,909
11	3,700- 3,799	667	1,077	1,240	1,439	1,670	1,937
12	3,800- 3,899	676	1,018	1,257	1,459	1,693	1,963
13	3,900- 3,999	684	1,104	1,273	1,478	1,715	1,988
14	4,000- 4,099	692	1,116	1,288	1,496	1,736	2,012
15	4,100- 4,199	701	1,132	1,305	1,516	1,759	2,039
16	4,200- 4,299	710	1,147	1,322	1,536	1,781	2,064
17	4,300- 4,399	718	1,161	1,338	1,554	1,802	2,088
18	4,400- 4,499	726	1,175	1,353	1,572	1,822	2,111
19	4,500- 4,599	734	1,184	1,368	1,589	1,841	2,133
20	4,600- 4,699	743	1,200	1,386	1,608	1,864	2,160
21	4,700- 4,799	753	1,215	1,402	1,627	1,887	2,186
22	4,800- 4,899	762	1,231	1,419	1,645	1,908	2,212
23	4,900- 4,999	771	1,246	1,435	1,663	1,930	2,236
24	5,000- 5,099	780	1,260	1,450	1,680	1,950	2,260
25	5,100- 5,199	788	1,275	1,468	1,701	1,975	2,289
26	5,200- 5,299	797	1,290	1,485	1,722	1,999	2,317
27	5,300- 5,399	805	1,304	1,502	1,743	2,022	2,345
28	5,400- 5,499	812	1,318	1,518	1,763	2,046	2,372
29	5,500- 5,599	820	1,331	1,535	1,782	2,068	2,398
30	5,600- 5,699	829	1,346	1,551	1,801	2,090	2,424
31	5,700- 5,799	838	1,357	1,568	1,819	2,111	2,449
32	5,800- 5,899	847	1,376	1,583	1,837	2,132	2,473
33	5,900- 5,999	856	1,390	1,599	1,855	2,152	2,497
34	6,000- 6,099	864	1,404	1,614	1,872	2,172	2,520
35	6,100- 6,199	874	1,419	1,631	1,892	2,195	2,546
36	6,200- 6,299	883	1,433	1,645	1,912	2,217	2,572

1	6,300- 6,399	892	1,448	1,664	1,932	2,239	2,597
2	6,400- 6,499	901	1,462	1,682	1,951	2,260	2,621
3	6,500- 6,599	910	1,476	1,697	1,970	2,282	2,646
4	6,600- 6,699	919	1,490	1,713	1,989	2,305	2,673
5	6,700- 6,799	927	1,505	1,730	2,009	2,328	2,700
6	6,800- 6,899	936	1,519	1,746	2,028	2,350	2,727
7	6,900- 6,999	944	1,533	1,762	2,047	2,379	2,753
8	7,000- 7,099	952	1,547	1,778	2,065	2,394	2,779
9	7,100- 7,199	961	1,561	1,795	2,085	2,417	2,805
10	7,200- 7,299	971	1,574	1,812	2,104	2,439	2,830
11	7,300- 7,399	980	1,587	1,828	2,123	2,462	2,854
12	7,400- 7,499	989	1,600	1,844	2,142	2,483	2,879
13	7,500- 7,599	998	1,613	1,860	2,160	2,505	2,903
14	7,600- 7,699	1,006	1,628	1,877	2,180	2,528	2,929
15	7,700- 7,799	1,015	1,643	1,894	2,199	2,550	2,955
16	7,800- 7,899	1,023	1,658	1,911	2,218	2,572	2,981
17	7,900- 7,999	1,032	1,673	1,928	2,237	2,594	3,007
18	8,000- 8,099	1,040	1,688	1,944	2,256	2,616	3,032
19	8,100- 8,199	1,048	1,703	1,960	2,274	2,637	3,057
20	8,200- 8,299	1,056	1,717	1,976	2,293	2,658	3,082
21	8,300- 8,399	1,064	1,731	1,992	2,311	2,679	3,106
22	8,400- 8,499	1,072	1,746	2,008	2,328	2,700	3,130
23	8,500- 8,599	1,080	1,760	2,023	2,346	2,720	3,154
24	8,600- 8,699	1,092	1,780	2,047	2,374	2,752	3,191
25	8,700- 8,799	1,105	1,801	2,071	2,401	2,784	3,228
26	8,800- 8,899	1,118	1,822	2,094	2,429	2,816	3,265
27	8,900- 8,999	1,130	1,842	2,118	2,456	2,848	3,302
28	9,000- 9,099	1,143	1,863	2,142	2,484	2,880	3,339
29	9,100- 9,199	1,156	1,884	2,166	2,512	2,912	3,376
30	9,200- 9,299	1,168	1,904	2,190	2,539	2,944	3,413
31	9,300- 9,399	1,181	1,925	2,213	2,567	2,976	3,450
32	9,400- 9,499	1,194	1,946	2,237	2,594	3,008	3,487
33	9,500- 9,599	1,207	1,967	2,261	2,622	3,040	3,525
34	9,600- 9,699	1,219	1,987	2,285	2,650	3,072	3,562
35	9,700- 9,799	1,232	2,008	2,309	2,677	3,104	3,599
36	9,800- 9,899	1,245	2,029	2,332	2,705	3,136	3,636

1	9,900- 9,999	1,257	2,049	2,356	2,732	3,168	3,673
2	10,000-10,099	1,270	2,070	2,380	2,760	3,200	3,710
3	10,100-10,199	1,283	2,091	2,404	2,788	3,232	3,747
4	10,200-10,299	1,295	2,111	2,428	2,815	3,264	3,784
5	10,300-10,399	1,308	2,132	2,451	2,843	3,296	3,821
6	10,400-10,499	1,321	2,153	2,475	2,870	3,328	3,858
7	10,500-10,599	1,334	2,174	2,499	2,898	3,360	3,896
8	10,600-10,699	1,346	2,194	2,523	2,926	3,392	3,933
9	10,700-10,799	1,359	2,215	2,547	2,953	3,424	3,970
10	10,800-10,899	1,372	2,236	2,570	2,981	3,456	4,007
11	10,900-10,999	1,384	2,256	2,594	3,008	3,488	4,044
12	11,000-11,099	1,397	2,277	2,618	3,036	3,520	4,081
13	11,100-11,199	1,410	2,298	2,642	3,064	3,552	4,118
14	11,200-11,299	1,422	2,318	2,666	3,091	3,584	4,155
15	11,300-11,399	1,435	2,339	2,689	3,119	3,616	4,192
16	11,400-11,499	1,448	2,360	2,713	3,146	3,648	4,229
17	11,500-11,599	1,461	2,381	2,737	3,174	3,680	4,267
18	11,600-11,699	1,473	2,401	2,761	3,202	3,712	4,304
19	11,700-11,799	1,486	2,422	2,785	3,229	3,744	4,341
20	11,800-11,899	1,499	2,443	2,808	3,257	3,776	4,378
21	11,900-11,999	1,511	2,463	2,832	3,284	3,808	4,415
22	12,000-12,099	1,524	2,484	2,856	3,312	3,840	4,452
23	12,100-12,199	1,537	2,505	2,880	3,340	3,872	4,489
24	12,200-12,299	1,549	2,525	2,904	3,367	3,904	4,526
25	12,300-12,399	1,562	2,546	2,927	3,395	3,936	4,563
26	12,400-12,499	1,575	2,567	2,951	3,422	3,968	4,600
27	12,500-12,599	1,588	2,588	2,975	3,450	4,000	4,638
28	12,600-12,699	1,600	2,608	2,999	3,478	4,032	4,675
29	12,700-12,799	1,613	2,629	3,023	3,505	4,064	4,712
30	12,800-12,899	1,626	2,650	3,046	3,533	4,096	4,749
31	12,900-12,999	1,638	2,670	3,070	3,560	4,128	4,786
32	13,000-13,099	1,651	2,691	3,094	3,588	4,160	4,823
33	13,100-13,199	1,664	2,712	3,118	3,616	4,192	4,860
34	13,200-13,299	1,676	2,732	3,142	3,643	4,224	4,897
35	13,300-13,399	1,689	2,753	3,165	3,671	4,256	4,934
36	13,400-13,499	1,702	2,774	3,189	3,698	4,288	4,971

13,500-13,599	1,715	2,795	3,213	3,726	4,320	5,009
13,600-13,699	1,727	2,815	3,237	3,754	4,352	5,046
13,700-13,799	1,740	2,836	3,261	3,781	4,384	5,083
13,800-13,899	1,753	2,857	3,284	3,809	4,416	5,120
13,900-13,999	1,765	2,877	3,308	3,836	4,448	5,157
14,000-14,009	1,778	2,898	3,332	3,864	4,480	5,194
14,100-14,199	1,791	2,919	3,356	3,892	4,512	5,231
14,200-14,299	1,803	2,939	3,380	3,919	4,544	5,268
14,300-14,399	1,816	2,960	3,403	3,947	4,576	5,305
14,400-14,499	1,829	2,981	3,427	3,974	4,608	5,342
14,500-14,599	1,842	3,002	3,451	4,002	4,640	5,380
14,600-14,699	1,854	3,022	3,475	4,030	4,672	5,417
14,700-14,799	1,867	3,043	3,499	4,057	4,704	5,454
14,800-14,899	1,880	3,064	3,522	4,085	4,736	5,491
14,900-14,999	1,892	3,084	3,546	4,112	4,768	5,528
15,000, or the amount in effect under subd. 4	1,905	3,105	3,570	4,140	4,800	5,565

Subd. 3. [INCOME CAP ON DETERMINING BASIC SUPPORT.] (a) The basic support obligation for parents with a combined monthly income in excess of the income limit currently in effect under subdivision 1 must be the same dollar amount as provided for parties with a combined monthly income equal to the income limit in effect under subdivision 1.

(b) A court may order a basic support obligation in a child support order in an amount that exceeds the income limit in subdivision 1 if it finds that a child has a disability or other substantial, demonstrated need for the additional support and that the additional support will directly benefit the child.

(c) The dollar amount for the cap in subdivision 1 must be adjusted on July 1 of every even-numbered year to reflect cost-of-living changes. The Supreme Court must select the index for the adjustment from the indices listed in section 518.641, subdivision 1. The state court administrator must make the changes in the dollar amounts 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.

Subd. 4. [MORE THAN SIX CHILDREN.] If a child support proceeding involves more than six children, the court may derive a support order without specifically following the guidelines. However, the court must consider the basic principles encompassed by the guidelines and must consider both parents' needs, resources, and circumstances.

Subd. 5. [REPORT TO LEGISLATURE.] No later than 2006 and every four years after that, the commissioner of human services shall conduct a review of the child support guidelines.

Subd. 6. [FINDINGS; DEVIATION.] The guidelines in section 518.725 are a rebuttable presumption and shall be used in all cases when establishing or modifying child support. If the court does not deviate 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 section 518.714 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 256.741, the court may deviate downward only as provided in subdivision 7. 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.

Sec. 30. [518.729] [WORKSHEET.]

The commissioner of human services must create and publish a worksheet to assist in calculating child support under sections 518.711 to 518.728. The worksheet must not impose substantive requirements other than requirements contained in sections 518.711 to 518.728. The commissioner must update the worksheet by July 1 of each year. The commissioner must make an interactive version of the worksheet available on the Department of Human Services Web site.

Sec. 31. [STUDY OF ECONOMIC IMPACT OF CHILD SUPPORT GUIDELINES.]

The commissioner of human services shall contract with a private provider of policy studies to conduct an economic analysis of the child support guidelines contained in this act to evaluate whether the guidelines fairly represent the cost of raising children for the respective parental income levels, excluding medical support, child care, and education costs.

The results of the study shall be completed by no later than January 30, 2006. The private provider must have experience in evaluating or establishing child support guidelines, using the income shares approach, in other states.

Sec. 32. [REVISOR'S INSTRUCTION.]

The revisor of statutes shall renumber the provisions of Minnesota Statutes listed in column A to the references listed in column B. The revisor shall also make necessary cross-reference changes in Minnesota Statutes and Minnesota Rules consistent with the renumbering.

Column A	Column B
518.5513	518.741
518.553	518.743
518.57	518.745
518.575	518.747
518.585	518.749
518.5851	518.751
518.5852	518.752
518.5853	518.753
518.6111	518.755

518.612	518.757
518.614	518.759
518.615	518.761
518.616	518.763
518.617	518.765
518.618	518.767
518.6195	518.769
518.6196	518.770
518.641	518.771
518.642	518.773

Sec. 33. [APPROPRIATIONS.]

$..... is appropriated in fiscal year 2006 and $..... is appropriated in fiscal year 2007 from the general fund to the commissioner of human services to fund implementation of this act and to reimburse counties for their implementation costs. The commissioner of human services shall distribute funds to the counties for their costs of implementation based upon their total county IV-D caseload. The appropriation base in fiscal year 2008 for grants to counties shall be $.....

$..... is appropriated in fiscal year 2007 from the general fund to the supreme court administrator to fund implementation of this act. This is a onetime appropriation.

Sec. 34. [REPEALER.]

Minnesota Statutes 2004, sections 518.171; 518.54, subdivisions 2, 4, and 4a; and 518.551, subdivisions 1, 5a, 5c, and 5f, are repealed.

Sec. 35. [EFFECTIVE DATE.]

This act is effective January 1, 2007, and applies to orders adopted or modified after that date.

Delete the title and insert:

"A bill for an act relating to civil law; reforming law relating to child support; establishing criteria for support obligations; defining parents' rights and responsibilities; appropriating money; amending Minnesota Statutes 2004, sections 518.005, by adding a subdivision; 518.54, subdivisions 7, 8; 518.55, subdivision 4; 518.551, subdivisions 5, 5b; 518.62; 518.64, subdivision 2, by adding subdivisions; 518.68, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 518; repealing Minnesota Statutes 2004, sections 518.171; 518.54, subdivisions 2, 4, 4a; 518.551, subdivisions 1, 5a, 5c, 5f."

Senator Betzold from the Committee on Judiciary, to which was referred

S.F. No. 630: A bill for an act relating to civil law; reforming and recodifying the law relating to marriage dissolution, child custody, child support, maintenance, and property division; changing a fee; making style and form changes; appropriating money; amending Minnesota Statutes 2004, sections 357.021, by adding a subdivision; 518.002; 518.003, subdivisions 1, 3; 518.005; 518.01; 518.02; 518.03; 518.04; 518.05; 518.055; 518.06; 518.07; 518.09; 518.091, subdivision 1; 518.10; 518.11; 518.12; 518.13; 518.131; 518.14, subdivision 1; 518.148; 518.155; 518.156; 518.157, subdivisions 1, 2, 3, 5, 6; 518.165; 518.166; 518.167, subdivisions 3, 4, 5; 518.168; 518.1705, subdivisions 2, 6, 7, 8, 9; 518.175; 518.1751, subdivisions 1b, 2, 2a, 2b, 2c, 3; 518.1752; 518.176; 518.177; 518.178; 518.179, subdivision 1; 518.18; 518.191, subdivision 1; 518.195, subdivisions 2, 3; 518.24; 518.25; 518.27; 518.54, subdivisions 1, 5, 6, 7, 8; 518.55; 518.552; 518.58; 518.581; 518.582; 518.612; 518.619; 518.62; 518.64, subdivisions 1, 2; 518.641; 518.642; 518.646; 518.65; 518.68, subdivision 1; 519.11, subdivision 1; proposing coding for new law as Minnesota Statutes, chapters 517A; 517B; 517C; repealing Minnesota Statutes 2004, sections 518.111; 518.14, subdivision 2; 518.171; 518.24; 518.255; 518.54, subdivisions 2, 4a, 13, 14; 518.55, subdivision 4; 518.551; 518.5513; 518.553; 518.57; 518.575; 518.585; 518.5851; 518.5852; 518.5853; 518.61; 518.6111; 518.614; 518.615; 518.616; 518.617; 518.618; 518.6195; 518.6196; 518.62; 518.64, subdivisions 4, 4a, 5; 518.68.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 518.005, is amended by adding a subdivision to read:

Subd. 6. [FILING FEE.] The initial pleading filed in all proceedings for dissolution of marriage, legal separation, or annulment or proceedings to establish child support obligations shall be accompanied by a filing fee of $..... The fee is in addition to any other prescribed by law or rule.

Sec. 2. Minnesota Statutes 2004, section 518.54, subdivision 7, is amended to read:

Subd. 7. [OBLIGEE.] "Obligee" means a person to whom payments for maintenance ~~or support~~ are owed.

Sec. 3. Minnesota Statutes 2004, section 518.54, subdivision 8, is amended to read:

Subd. 8. [OBLIGOR.] "Obligor" means a person ~~obligated~~ ordered to pay maintenance or child 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. For purposes of ordering medical support under section 518.719, a custodial parent may be an obligor subject to a cost-of-living adjustment under section 518.641 and a payment agreement under section 518.553.

Sec. 4. Minnesota Statutes 2004, section 518.55, subdivision 4, is amended 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. The court shall presume that the latest order that involves the same obligor and joint child is controlling, subject to contrary proof.

Sec. 5. Minnesota Statutes 2004, 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 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~~ section 518.725. 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)~~ (b). 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)~~ section 518.714 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:~~

~~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 ------- (v) Union Dues
---------- use of tax tables ----- (vi) Cost of Dependent Health
---------- recommended ---------- 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:

(i) 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-obligor'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 obligee.--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-parenting-time-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 obligor parent to care for the child while the obligee parent is working, as provided in section 518.175, subdivision 8, but this is not a reason to deviate from the guidelines.~~

~~(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 the AFDC program formerly codified under sections 256.72 to 256.82 or 256B.01 to 256B.40 and chapter 256J or 256K.~~

~~(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 256.741;~~

~~(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 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 256.741, 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 256.741, 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 States 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. 6. Minnesota Statutes 2004, 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, unemployment benefits statements, workers' compensation statements, and all other documents evidencing income as received that provide verification over a longer period~~ In any case where the parties have joint children for which a child support order must be determined, the parties shall serve and file with their initial pleadings or motion documents, a financial affidavit, disclosing all sources of gross income and other information sufficient to calculate gross income and adjusted gross income. The financial affidavit shall include supporting documentation for all adjusted gross income, including, but not limited to, pay stubs for the most recent three months, employer statements, or statements of receipts and expenses if self-employed. Documentation of earnings and income also include copies of each parent's most recent federal tax returns, including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification for the financial affidavit.

(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~~ serve and file the financial affidavit with the parent's initial pleading, the court shall set income for that parent based on credible evidence before the court or in accordance with ~~paragraph (d)~~ section 518.712, subdivision 19. 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 Employment and Economic Development 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, 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 there is insufficient information to determine actual income or to impute income pursuant to paragraph (d), the court may calculate 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 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. 7. [518.6197] [CHILD SUPPORT DEBT/ARREARAGE MANAGEMENT.]

In order to reduce and otherwise manage support debts and arrearages, the parties, including the public authority where arrearages have been assigned to the public authority, may compromise unpaid support debts or arrearages owed by one party to another, whether or not docketed as a judgment. A party may agree or disagree to compromise only those debts or arrearages owed to that party.

Sec. 8. Minnesota Statutes 2004, section 518.62, is amended to read:

518.62 [TEMPORARY MAINTENANCE.]

Temporary maintenance ~~and temporary support~~ may be awarded as provided in section 518.131. The court may also award to either party to the proceeding, having due regard to all the circumstances and the party awarded the custody of the children, the right to the exclusive use of the household goods and furniture of the parties pending the proceeding and the right to the use of the homestead of the parties, exclusive or otherwise, pending the proceeding. The court may order either party to remove from the homestead of the parties upon proper application to the court for an order pending the proceeding.

Sec. 9. Minnesota Statutes 2004, 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~~ gross income of an obligor or obligee; (2) substantially increased or decreased need of ~~a party~~ an obligor or obligee or the child or children that are the subject of these proceedings; (3) receipt of assistance under the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for either party as measured by the Federal Bureau of Labor 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; (7) upon the emancipation of the child if there is still a child under the order. A child support obligation for two or more children that is not a support obligation in a specific amount per child continues in the full amount until modified or until the emancipation of the last child that the order was made.

~~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.~~

(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~~ $75 per month higher or lower than the current support order;

(2) the medical support provisions of the order established under section ~~518.171~~ 518.719 are not enforceable by the public

authority or the obligee;

(3) health coverage ordered under section ~~518.171~~ 518.719 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) A child support order is not presumptively modifiable solely because an obligor or obligee becomes responsible for the support of an additional nonjoint child, which is born after an existing order.

(d) 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~~ 518.725, 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)~~ (e) A modification of support or maintenance, including interest that accrued pursuant to section 548.091, 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;~~

~~(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;~~

~~(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; or~~

~~(4) the party seeking modification was institutionalized or incarcerated for an offense other than nonsupport of a child during the period for which retroactive modification is sought and lacked the financial ability to pay the support ordered during that time period. In determining whether to allow the retroactive modification, the court shall consider whether and when a request was made to the public authority for support modification.~~

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

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

(i) An enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order.

(j) There may be no modification of an existing child support order during the first year following the effective date of sections 518.712 to 518.729 except as follows:

(1) there is at least a 20 percent change in the gross income of the obligor;

(2) there is a change in the number of joint children for whom the obligor is legally responsible and actually supporting;

(3) the child supported by the existing child support order becomes disabled; or

(4) both parents consent to modification of the existing order in compliance with the new income shares guidelines.

(k) On the first modification under the income shares method of calculation, the modification of basic support may be limited if the amount of the full variance would create hardship for either the obligor or the obligee.

Paragraph (j) expires January 1, 2008.

Sec. 10. Minnesota Statutes 2004, section 518.64, is amended by adding a subdivision to read:

Subd. 7. [CHILD CARE EXCEPTION.] 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 expense is decreased.

Sec. 11. Minnesota Statutes 2004, section 518.64, is amended by adding a subdivision to read:

Subd. 8. [CHILD SUPPORT DEBT AND ARREARAGE MANAGEMENT.] The parties, including the public authority, may compromise child support debt or arrearages owed by one party to another, whether or not reduced to judgment, upon agreement of the parties involved.

Sec. 12. Minnesota Statutes 2004, section 518.68, subdivision 2, is amended to read:

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

IMPORTANT NOTICE

1. PAYMENTS TO PUBLIC AGENCY

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

2. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS -- A FELONY

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or visitation rights), according to Minnesota Statutes, section 609.26. A copy of that section is available from any district court clerk.

3. NONSUPPORT OF A SPOUSE OR CHILD -- CRIMINAL PENALTIES

A person who fails to pay court-ordered child support or

maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

4. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME

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

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

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

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

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

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

(g) If the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. If a motion is not filed, the support obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision

2, paragraph (c).

(h) Reasonable parenting time guidelines are contained in Appendix B, which is available from the court administrator.

(i) The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

(j) The public authority may suspend or resume collection of the amount allocated for child care expenses if the conditions of section 518.551, subdivision 5, paragraph (b), are met.

5. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3

Unless otherwise provided by the Court:

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

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

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

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

6. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, section 518.6111 have been met. A copy of those sections is available from any district court clerk.

7. CHANGE OF ADDRESS OR RESIDENCE

Unless otherwise ordered, each party shall notify the other party, the court, and the public authority responsible for collection, if applicable, of the following information within ten days of any change: the residential and mailing address, telephone number, driver's license number, Social Security number, and name, address, and telephone number of the employer.

8. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

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

9. JUDGMENTS FOR UNPAID SUPPORT

If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain

entry and docketing of the judgment WITHOUT NOTICE to the person responsible to make the payment under Minnesota Statutes, section 548.091. Interest begins to accrue on a payment or installment of child support whenever the unpaid amount due is greater than the current support due, according to Minnesota Statutes, section 548.091, subdivision 1a.

10. JUDGMENTS FOR UNPAID MAINTENANCE

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

11. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT

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

12. PARENTING TIME EXPEDITOR PROCESS

On request of either party or on its own motion, the court may appoint a parenting time expeditor to resolve parenting time disputes under Minnesota Statutes, section 518.1751. A copy of that section and a description of the expeditor process is available from any district court clerk.

13. PARENTING TIME REMEDIES AND PENALTIES

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

Sec. 13. [518.712] [DEFINITIONS.]

Subdivision 1. [SCOPE.] The definitions in this section apply to sections 518.712 to 518.753.

Subd. 2. [GROSS INCOME FOR DETERMINING CHILD SUPPORT.] "Gross income for determining child support" means gross income minus deductions for nonjoint children as allowed by section 518.717.

Subd. 3. [APPORTIONED VETERANS' BENEFITS.] "Apportioned veterans' benefits" means the amount the Veterans Administration deducts from the veteran's award and disburses to the child or the child's representative payee. The apportionment of veterans' benefits shall be that determined by the Veterans Administration and governed by 38 Code of Federal Regulations, sections 3.450 to 3.458.

Subd. 4. [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.

Subd. 5. [BASIC SUPPORT.] "Basic support" means the support obligation determined by applying the parent's adjusted gross income, or if there are two parents, their combined adjusted gross income, to the guideline in the manner set out in section 518.725.

Basic support includes the dollar amount ordered for a child's housing, food, clothing, transportation, and education costs, and other expenses relating to the child's care. Basic support does not include monetary contributions for a child's child care expenses, and medical and dental expenses.

Subd. 6. [CHILD.] "Child" means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or

mental condition, is incapable of self-support.

Subd. 7. [CHILD SUPPORT.] "Child support or support money" means an amount for basic support, child care support, and medical support pursuant to:

(1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support, and education of a child of the marriage or of the parties to the proceeding;

(2) a contribution by parents ordered under section 256.87; or

(3) support ordered under chapter 518B or 518C.

Subd. 8. [DEPOSIT ACCOUNT.] "Deposit account" means funds deposited with a financial institution in the form of a savings account, checking account, NOW account, or demand deposit account.

Subd. 9. [GROSS INCOME.] "Gross income" means:

(1) the gross income of the parent calculated pursuant to section 518.7123; plus

(2) the potential income of the parent, if any, as determined in subdivision 19; minus

(3) spousal maintenance that any party has been ordered to pay.

Subd. 10. [IV-D CASE.] "IV-D case" means a case where a party assigns rights to child support to the state because the party receives public assistance, as defined in section 256.741, or applies for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4).

Subd. 11. [JOINT CHILD.] "Joint child" means the dependent child who is the son or daughter of both parents in the support proceeding. In those cases where support is sought from only one parent of a child, a joint child is the child for whom support is sought.

Subd. 12. [NONJOINT CHILD.] "Nonjoint child" means the legal child of one, but not both of the parents subject to this determination. Specifically excluded from this definition are stepchildren.

Subd. 13. [OBLIGOR.] "Obligor" has the meaning provided by section 518.54, subdivision 8.

Subd. 14. [OBLIGEE.] "Obligee" means a person to whom payments for child support are owed.

Subd. 15. [PARENTING TIME.] "Parenting time" means the amount of time a child is scheduled to spend with the parent according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. For purposes of section 518.722, the percentage of parenting time may be calculated by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights as the parent has significant time periods where the child is in the parent's physical custody, but does not stay overnight.

Subd. 16. [PAYOR OF FUNDS.] "Payor of funds" means a person or entity that provides funds to an obligor, including an employer as defined under chapter 24, section 3401(d), of the Internal Revenue Code, an independent contractor, payor of workers' compensation benefits or unemployment insurance benefits, or a financial institution as defined in section 13B.06.

Subd. 17. [POTENTIAL INCOME.] "Potential income" is income determined under this subdivision.

(a) If a parent is voluntarily unemployed, underemployed, or employed on a less than a full-time basis, or there is no direct evidence of any income, child support shall be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.

(b) Determination of potential income shall be made according to one of three methods, as appropriate:

(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community; or

(2) if a parent is receiving unemployment compensation or

workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or

(3) the amount of income a parent could earn working full-time at 150 percent of the current federal or state minimum wage, whichever is higher.

(c) A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that:

(1) unemployment or underemployment is temporary and will ultimately lead to an increase in income;

(2) the unemployment or underemployment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or

(3) the parent is unable to work full-time due to a verified disability or due to incarceration.

(d) As used in this section, "full-time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.

(e) If the parent of a joint child is a recipient of a temporary assistance to a needy family (TANF) cash grant, no potential income shall be imputed to that parent.

(f) If a parent stays at home to care for a child who is subject to the child support order, the court may consider the following factors when determining whether the parent is voluntarily unemployed or underemployed:

(1) the parties' parenting and child care arrangements before the child support action;

(2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;

(3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available

jobs within the community for an individual with the parent's qualifications;

(4) the child's age and health, including whether the child is physically or mentally disabled; and

(5) the availability of child care providers.

Subd. 18. [PRIMARY PHYSICAL CUSTODY.] The parent having "primary physical custody" means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.

Subd. 19. [PUBLIC AUTHORITY.] "Public authority" means the local unit of government, acting on behalf of the state, that is responsible for child support enforcement or the Department of Human Services, Child Support Enforcement Division.

Subd. 20. [SOCIAL SECURITY BENEFITS.] "Social Security benefits" means the monthly amount the Social Security Administration pays to a joint child or the child's representative payee due solely to the disability or retirement of either parent. Benefits paid to a parent due to the disability of a child are excluded from this definition.

Subd. 21. [SPLIT CUSTODY.] "Split custody" means that each parent in a two-parent calculation has primary physical custody of at least one of the joint children.

Subd. 22. [SPOUSAL MAINTENANCE.] "Spousal maintenance" has the definition as provided in section 518.54, subdivision 3, and includes the amount of any preexisting or concurrently entered court ordered spousal maintenance.

Subd. 23. [SUPPORT ORDER.] (a) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction that:

(1) provides for the support of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living;

(2) provides for basic support, child care, medical support including expenses for confinement and pregnancy, arrears, or

reimbursement; and

(3) may include related costs and fees, interest and penalties, income withholding, and other relief.

(b) The definition in paragraph (a) applies to orders issued under this chapter and chapters 256, 257, and 518C.

Subd. 24. [SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.] "Survivors' and dependents' educational assistance" are funds disbursed by the Veterans Administration under 38 United States Code, chapter 35, to the child or the child's representative payee.

Sec. 14. [518.7123] [CALCULATION OF GROSS INCOME.]

(a) Except as excluded below, gross income includes income from any source, including, but not limited to, salaries, wages, commissions, advances, bonuses, dividends, severance pay, pensions, interest, honoraria, trust income, annuities, return on capital, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, including lottery winnings, alimony, spousal maintenance payments, income from self-employment or operation of a business, as determined under section 518.7125. All salary, wages, commissions, or other compensation paid by third parties shall be based upon Medicare gross income. No deductions shall be allowed for contributions to pensions, 401-K, IRA, or other deferred compensation.

(b) Excluded and not counted in gross income is compensation received by a party for employment in excess of a 40-hour work week, provided that:

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

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

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

(ii) 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;

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

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

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

(c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they reduce personal living expenses.

(d) Gross income may be calculated on either an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying the weekly income by 4.33.

(e) Excluded and not counted as income is any child support payment. It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are excluded and not counted as income.

(f) Excluded and not counted as income is the income of the obligor's spouse and the obligee's spouse.

Sec. 15. [518.7125] [INCOME FROM SELF-EMPLOYMENT OR OPERATION OF A BUSINESS.]

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support.

Sec. 16. [518.713] [COMPUTATION OF INDIVIDUAL CHILD SUPPORT OBLIGATIONS.]

To determine the presumptive amount of support owed by a parent, follow the procedure set forth in this section:

(1) determine the gross income of each parent using the definition in section 518.712, subdivision 9;

(2) determine the gross income for determining child support of each parent, and if there are two parents, the combined adjusted gross income by subtracting from the gross income, the credit, if any, for any nonjoint children under section 518.717;

(3) if there are two parents, determine the percentage contribution of each parent to the combined adjusted gross income by dividing the combined adjusted gross income into each parent's adjusted gross income;

(4) determine the basic child support obligation by application of the guideline in section 518.725;

(5) determine each parent's share of the basic child support obligation by multiplying the percentage figure from clause (3) by the basic child support obligation in clause (4);

(6) determine the parenting expense adjustment if any and determine the basic child support obligation of the parents as provided in section 518.722;

(7) apply the low-income adjustment, if applicable, as provided in section 518.723;

(8) determine the cost for each parent for child care costs as allowed by section 518.72;

(9) determining the cost for each parent for medical expenses and health care coverage as allowed by section 518.719. If costs are not equal each month, annual costs shall be averaged to determine a monthly cost;

(10) calculate the total costs owed by each parent to the other by applying the parent's percentage of income as determined in clause (3) to the actual out-of-pocket medical costs incurred by the other parent. Add these amounts to each parent's child support obligation;

(11) calculate the total child support obligation of each parent by adding for each parent, the basic child support

obligation from clause (6) and the total costs from clause (10);

(12) determine the net child support obligation by subtracting the smaller of the obligations from the larger;

(13) if Social Security benefits or veterans' benefits are received by the obligee as a representative payee for a joint child due to the obligor's disability or retirement, subtract the amount of benefits from the obligor's net child support obligation, if any;

(14) determine the portion of the calculated child support obligation the obligor has the ability to pay or the minimum support obligation as provided in section 518.724; and

(15) the final child support order shall separately designate the amount owed for basic support, child care support, and medical support.

Sec. 17. [518.7131] [TEMPORARY SUPPORT.]

Temporary support may be awarded as provided in section 518.131.

Sec. 18. [518.714] [DEVIATIONS FROM CHILD SUPPORT GUIDELINES.]

Subdivision 1. [GENERAL FACTORS.] Among other reasons, deviation from the presumptive guideline amount is intended to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty. In addition to the child support guidelines, the court must take into consideration the following factors in setting or modifying child support or in determining whether to deviate upward or downward from the extraordinary or diminished guidelines:

(1) all earnings, income circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of section 518.7123, paragraph (b), clause (2);

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

(3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

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

(5) the parents' debts as provided in subdivision 2; and

(6) the obligor's total payments for court-ordered child support exceed the limitations set forth in section 571.922.

Subd. 2. [DEBT OWED TO PRIVATE CREDITORS.] (a) 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 256.741;

(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 may 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 original debt amount, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.

(b) A schedule prepared under paragraph (a), clause (3), must 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.

(c) Any further departure below the guidelines that is based on a consideration of debts owed to private creditors must not exceed 18 months in duration. After 18 months the support must increase automatically to the level ordered by the court. This section does not prohibit one or more step increases in support to reflect debt retirement during the 18-month period.

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

Subd. 3. [EVIDENCE.] The court may receive evidence on the factors in this section to determine if the guidelines should be exceeded or modified in a particular case.

Subd. 4. [PAYMENTS ASSIGNED TO PUBLIC AUTHORITY.] If the child support payments are assigned to the public authority under section 256.741, 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.

Subd. 5. [JOINT LEGAL CUSTODY.] An award of joint legal custody is not a reason for deviation from the guidelines.

Subd. 6. [SELF-SUPPORT LIMITATION.] If, after payment of income and payroll taxes, the obligor can establish that they do not have enough for the self-support reserve, a downward deviation may be allowed.

Sec. 19. [518.715] [WRITTEN FINDINGS.]

Subdivision 1. [NO DEVIATION.] If the court does not deviate from the guidelines, the court must make written findings concerning the amount of the parties' income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the child support determination.

Subd. 2. [DEVIATION.] (a) If the court deviates from the guidelines, the court must make written findings giving the amount of support calculated under the guidelines, the reasons for the deviation, must specifically address how the deviation serves the best interests of the child; and

(b) Determine each parent's gross income.

Subd. 3. [WRITTEN FINDINGS REQUIRED IN EVERY CASE.] The provisions of this section apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The court must review stipulations presented to it for conformity to the guidelines. The court is not required to conduct a hearing, but the parties must provide sufficient documentation of gross income.

Sec. 20. [518.716] [GUIDELINES REVIEW.]

No later than 2006 and every four years after that, the Department of Human Services must conduct a review of the child support guidelines.

Sec. 21. [518.717] [NONJOINT CHILDREN.]

(a) When either or both parents of the joint child subject to this determination are legally responsible for a nonjoint child who resides in that parent's household, or a nonjoint child to whom or on whose behalf a parent owes an ongoing child support obligation under a court or administrative order, a credit for this obligation shall be calculated under this section.

(b) Determine the modified gross income for each parent by subtracting from a parent's gross income the amount of any spousal support a court orders that parent to pay, and adding to a parent's gross income any spousal support the parent is entitled to receive.

(c) Using the guideline as established in section 518.725, determine the basic child support obligation for the nonjoint child or children who actually reside in the parent's household, by using the gross income of the parent for whom the credit is being calculated, and using the number of nonjoint children actually in the parent's immediate household. If the number of nonjoint children to be used for the determination is greater than two, the determination shall be made using the number two instead of the greater number.

(d) The credit for nonjoint children shall be 50 percent of the guideline amount from paragraph (c), plus the amount of any existing support order for other nonjoint children.

Sec. 22. [518.718] [SOCIAL SECURITY OR VETERANS' BENEFIT PAYMENTS RECEIVED ON BEHALF OF THE CHILD.]

(a) The amount of the monthly Social Security benefits or apportioned veterans' benefits received by the child or on behalf of the child shall be added to the gross income of the parent for whom the disability or retirement benefit was paid.

(b) The amount of the monthly survivors' and dependents' educational assistance received by the child or on behalf of the

child shall be added to the gross income of the parent for whom the disability or retirement benefit was paid.

(c) If the Social Security or apportioned veterans' benefits are paid on behalf of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits may also be subtracted from the obligor's net child support obligation as calculated pursuant to section 518.713.

(d) If the survivors' and dependents' educational assistance is paid on behalf of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's net child support obligation as calculated pursuant to section 518.713.

Sec. 23. [518.719] [MEDICAL SUPPORT.]

Subdivision 1. [DEFINITIONS.] The definitions in this subdivision apply to sections 518.712 to 518.773.

(a) "Health care coverage" means health care benefits that are provided by a health plan. Health care coverage does not include any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L.

(b) "Health carrier" means a carrier as defined in sections 62A.011, subdivision 2, and 62L.02, subdivision 16.

(c) "Health plan" means a plan meeting the definition under section 62A.011, subdivision 3, a group health plan governed under the federal Employee Retirement Income Security Act of 1974 (ERISA), a self-insured plan under sections 43A.23 to 43A.317 and 471.617, or a policy, contract, or certificate issued by a community-integrated service network licensed under chapter 62N. Health plan includes plans:

(1) provided on an individual and group basis;

(2) provided by an employer or union;

(3) purchased in the private market; and

(4) available to a person eligible to carry insurance for the joint child.

Health plan includes a plan providing for dependent-only dental

or vision coverage and a plan provided through a party's spouse or parent.

(d) "Medical support" means providing health care coverage for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the joint child.

(e) "National medical support notice" means an administrative notice issued by the public authority to enforce health insurance provisions of a support order in accordance with Code of Federal Regulations, title 45, section 303.32, in cases where the public authority provides support enforcement services.

(f) "Public coverage" means health care benefits provided by any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L.

(g) "Uninsured medical expenses" means a joint child's reasonable and necessary health-related expenses if the joint child is not covered by a health plan or public coverage when the expenses are incurred.

(h) "Unreimbursed medical expenses" means a joint child's reasonable and necessary health-related expenses if a joint child is covered by a health plan or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to, deductibles, co-payments, and expenses for orthodontia, and prescription eyeglasses and contact lenses but not over-the-counter medications.

Subd. 2. [ORDER.] (a) A completed national medical support notice issued by the public authority or a court order that complies with this section is a qualified medical child support order under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a).

(b) Every order addressing child support must state:

(1) the names, last known addresses, and Social Security numbers of the parents and the joint child that is a subject of the order unless the court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan;

(2) whether appropriate health care coverage for the joint child is available and, if so, state:

(i) which party must carry health care coverage;

(ii) the cost of premiums and how the cost is allocated between the parties;

(iii) how unreimbursed expenses will be allocated and collected by the parties; and

(iv) the circumstances, if any, under which the obligation to provide health care coverage for the joint child will shift from one party to the other;

(3) if appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required; and

(4) whether the amount ordered for medical support is subject to a cost-of-living adjustment under section 518.641.

Subd. 3. [DETERMINING APPROPRIATE HEALTH CARE COVERAGE.] (a) In determining whether a party has appropriate health care coverage for the joint child, the court must evaluate the health plan using the following factors:

(1) accessible coverage. Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:

(i) primary care coverage is available within 30 minutes or 30 miles of the joint child's residence and specialty care coverage is available within 60 minutes or 60 miles of the joint child's residence;

(ii) the coverage is available through an employer and the employee can be expected to remain employed for a reasonable

amount of time; and

(iii) no preexisting conditions exist to delay coverage unduly;

(2) comprehensive coverage. Dependent health care coverage is comprehensive if it includes, at a minimum, medical and hospital coverage and provides for preventive, emergency, acute, and chronic care. If both parties have health care coverage that meets the minimum requirements, the court must determine which health care coverage is more comprehensive by considering whether the coverage includes:

(i) basic dental coverage;

(ii) orthodontia;

(iii) eyeglasses;

(iv) contact lenses;

(v) mental health services; or

(vi) substance abuse treatment;

(3) affordable coverage. Dependent health care coverage is affordable if it is reasonable in cost; and

(4) the joint child's special medical needs, if any.

(b) If both parties have health care coverage available for a joint child, and the court determines under paragraph (a), clauses (1) and (2), that the available coverage is comparable with regard to accessibility and comprehensiveness, the least costly health care coverage is the presumed appropriate health care coverage for the joint child.

Subd. 4. [ORDERING HEALTH CARE COVERAGE.] (a) If a joint child is presently enrolled in health care coverage, the court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parties agree otherwise or a party requests a change in coverage and the court determines that other health care coverage is more appropriate.

(b) If a joint child is not presently enrolled in health care coverage, upon motion of a party or the public authority, the court must determine whether one or both parties have appropriate health care coverage for the joint child and order the party with appropriate health care coverage available to

carry the coverage for the joint child.

(c) If only one party has appropriate health care coverage available, the court must order that party to carry the coverage for the joint child.

(d) If both parties have appropriate health care coverage available, the court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:

(1) either party expresses a preference for coverage available through the parent with whom the joint child does not reside;

(2) the parent with whom the joint child does not reside is already carrying dependent health care coverage for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or

(3) the parents agree to provide coverage and agree on the allocation of costs.

(e) If the exception in paragraph (d), clause (1) or (2), applies, the court must determine which party has the most appropriate coverage available and order that party to carry coverage for the joint child. If the court determines under subdivision 3, paragraph (a), clauses (1) and (2), that the parties' health care coverage for the joint child is comparable with regard to accessibility and comprehensiveness, the court must presume that the party with the least costly health care coverage to carry coverage for the joint child.

(f) If neither party has appropriate health care coverage available, the court must order the parents to:

(1) contribute toward the actual health care costs of the joint children based on a pro rata share; or

(2) if the joint child is receiving any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of medical assistance under chapter 256B or MinnesotaCare under chapter 256L. The amount of the contribution of the noncustodial parent

is the amount the custodial parent would pay for the child's premiums if the custodial parent's income meets the eligibility requirements for public coverage. For purposes of determining the premium amount, a custodial parent's household size is equal to the parent plus the child who is the subject of the child support order. The court may order the parent with whom the child resides to apply for public coverage for the child.

(g) A presumption of no less than $50 per month must be applied to the actual health care costs of the joint children or to the cost of health care coverage.

(h) The commissioner of human services must publish a table with the premium schedule for public coverage and update the chart for changes to the schedule by July 1 of each year.

Subd. 5. [MEDICAL SUPPORT COSTS; UNREIMBURSED AND UNINSURED MEDICAL EXPENSES.] (a) Unless otherwise agreed to by the parties and approved by the court, the court must order that the cost of health care coverage and all unreimbursed and uninsured medical expenses be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly adjusted gross income.

(b) If a party owes a joint child support obligation for a child and is ordered to carry health care coverage for the joint child, and the other party is ordered to contribute to the carrying party's cost for coverage, the carrying party's child support payment must be reduced by the amount of the contributing party's contribution.

(c) If a party owes a joint child support obligation for a child and is ordered to contribute to the other party's cost for carrying health care coverage for the joint child, the contributing party's child support payment must be increased by the amount of the contribution.

(d) If the party ordered to carry health care coverage for the joint child already carries dependent health care coverage for other dependents and would incur no additional premium costs to add the joint child to the existing coverage, the court must not order the other party to contribute to the premium costs for

coverage of the joint child.

(e) If a party ordered to carry health care coverage for the joint child does not already carry dependent health care coverage but has other dependents who may be added to the ordered coverage, the full premium costs of the dependent health care coverage must be allocated between the parties in proportion to the party's share of the parties' combined income, unless the parties agree otherwise.

(f) If a party ordered to carry health care coverage for the joint child is required to enroll in a health plan so that the joint child can be enrolled in dependent health care coverage under the plan, the court must allocate the costs of the dependent health care coverage between the parties. The costs of the health care coverage for the party ordered to carry the coverage for the joint child must not be allocated between the parties.

Subd. 6. [NOTICE OR COURT ORDER SENT TO PARTY'S EMPLOYER, UNION, OR HEALTH CARRIER.] (a) The public authority must forward a copy of the national medical support notice or court order for health care coverage to the party's employer within two business days after the date the party is entered into the work reporting system under section 256.998.

(b) The public authority or a party seeking to enforce an order for health care coverage must forward a copy of the national medical support notice or court order to the obligor's employer or union, or to the health carrier under the following circumstances:

(1) the party ordered to carry health care coverage for the joint child fails to provide written proof to the other party or the public authority, within 30 days of the effective date of the court order, that the party has applied for health care coverage for the joint child;

(2) the party seeking to enforce the order or the public authority gives written notice to the party ordered to carry health care coverage for the joint child of its intent to enforce medical support. The party seeking to enforce the order

or public authority must mail the written notice to the last known address of the party ordered to carry health care coverage for the joint child; and

(3) the party ordered to carry health care coverage for the joint child fails, within 15 days after the date on which the written notice under clause (2) was mailed, to provide written proof to the other party or the public authority that the party has applied for health care coverage for the joint child.

(c) The public authority is not required to forward a copy of the national medical support notice or court order to the obligor's employer or union, or to the health carrier, if the court orders health care coverage for the joint child that is not employer-based or union-based coverage.

Subd. 7. [EMPLOYER OR UNION REQUIREMENTS.] (a) An employer or union must forward the national medical support notice or court order to its health plan within 20 business days after the date on the national medical support notice or after receipt of the court order.

(b) Upon determination by an employer's or union's health plan administrator that a joint child is eligible to be covered under the health plan, the employer or union and health plan must enroll the joint child as a beneficiary in the health plan, and the employer must withhold any required premiums from the income or wages of the party ordered to carry health care coverage for the joint child.

(c) If enrollment of the party ordered to carry health care coverage for a joint child is necessary to obtain dependent health care coverage under the plan, and the party is not enrolled in the health plan, the employer or union must enroll the party in the plan.

(d) Enrollment of dependents and, if necessary, the party ordered to carry health care coverage for the joint child must be immediate and not dependent upon open enrollment periods. Enrollment is not subject to the underwriting policies under section 62A.048.

(e) Failure of the party ordered to carry health care

coverage for the joint child to execute any documents necessary to enroll the dependent in the health plan does not affect the obligation of the employer or union and health plan to enroll the dependent in a plan. Information and authorization provided by the public authority, or by a party or guardian, is valid for the purposes of meeting enrollment requirements of the health plan.

(f) An employer or union that is included under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a), may not deny enrollment to the joint child or to the parent if necessary to enroll the joint child based on exclusionary clauses described in section 62A.048.

(g) A new employer or union of a party who is ordered to provide health care coverage for a joint child must enroll the joint child in the party's health plan as required by a national medical support notice or court order.

Subd. 8. [HEALTH PLAN REQUIREMENTS.] (a) If a health plan administrator receives a completed national medical support notice or court order, the plan administrator must notify the parties, and the public authority if the public authority provides support enforcement services, within 40 business days after the date of the notice or after receipt of the court order, of the following:

(1) whether coverage is available to the joint child under the terms of the health plan and, if not, the reason why coverage is not available;

(2) whether the joint child is covered under the health plan;

(3) the effective date of the joint child's coverage under the health plan; and

(4) what steps, if any, are required to effectuate the joint child's coverage under the health plan.

(b) If the employer or union offers more than one plan and the national medical support notice or court order does not specify the plan to be carried, the plan administrator must

notify the parents and the public authority if the public authority provides support enforcement services. When there is more than one option available under the plan, the public authority, in consultation with the parent with whom the joint child resides, must promptly select from available plan options.

(c) The plan administrator must provide the parents and public authority, if the public authority provides support enforcement services, with a notice of the joint child's enrollment, description of the coverage, and any documents necessary to effectuate coverage.

(d) The health plan must send copies of all correspondence regarding the health care coverage to the parents.

(e) An insured joint child's parent's signature is a valid authorization to a health plan for purposes of processing an insurance reimbursement payment to the medical services provider or to the parent, if medical services have been prepaid by that parent.

Subd. 9. [EMPLOYER OR UNION LIABILITY.] (a) An employer or union that willfully fails to comply with the order or notice is liable for any uninsured medical expenses incurred by the dependents while the dependents were eligible to be enrolled in the health plan and for any other premium costs incurred because the employer or union willfully failed to comply with the order or notice.

(b) An employer or union that fails to comply with the order or notice is subject to a contempt finding, a $250 civil penalty under section 518.615, and is subject to a civil penalty of $500 to be paid to the party entitled to reimbursement or the public authority. Penalties paid to the public authority are designated for child support enforcement services.

Subd. 10. [CONTESTING ENROLLMENT.] (a) A party may contest a joint child's enrollment in a health plan on the limited grounds that the enrollment is improper due to mistake of fact or that the enrollment meets the requirements of section 518.145.

(b) If the party chooses to contest the enrollment, the party must do so no later than 15 days after the employer

notifies the party of the enrollment by doing the following:

(1) filing a motion in district court or according to section 484.702 and the expedited child support process rules if the public authority provides support enforcement services;

(2) serving the motion on the other party and public authority if the public authority provides support enforcement services; and

(3) securing a date for the matter to be heard no later than 45 days after the notice of enrollment.

(c) The enrollment must remain in place while the party contests the enrollment.

Subd. 11. [DISENROLLMENT; CONTINUATION OF COVERAGE; COVERAGE OPTIONS.] (a) Unless a court order provides otherwise, a child for whom a party is required to provide health care coverage under this section must be covered as a dependent of the party until the child is emancipated, until further order of the court, or as consistent with the terms of the coverage.

(b) The health carrier, employer, or union may not disenroll or eliminate coverage for the child unless:

(1) the health carrier, employer, or union is provided satisfactory written evidence that the court order is no longer in effect;

(2) the joint child is or will be enrolled in comparable health care coverage through another health plan that will take effect no later than the effective date of the disenrollment;

(3) the employee is no longer eligible for dependent coverage; or

(4) the required premium has not been paid by or on behalf of the joint child.

(c) The health plan must provide 30 days' written notice to the joint child's parents, and the public authority if the public authority provides support enforcement services, before the health plan disenrolls or eliminates the joint child's coverage.

(d) A joint child enrolled in health care coverage under a qualified medical child support order, including a national

medical support notice, under this section is a dependent and a qualified beneficiary under the Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA), Public Law 99-272. Upon expiration of the order, the joint child is entitled to the opportunity to elect continued coverage that is available under the health plan. The employer or union must provide notice to the parties and the public authority, if it provides support services, within ten days of the termination date.

(e) If the public authority provides support enforcement services and a plan administrator reports to the public authority that there is more than one coverage option available under the health plan, the public authority, in consultation with the parent with whom the joint child resides, must promptly select coverage from the available options.

Subd. 12. [SPOUSAL OR FORMER SPOUSAL COVERAGE.] The court must require the parent with whom the joint child does not reside to provide dependent health care coverage for the benefit of the parent with whom the joint child resides if the parent is ordered to provide dependent health care coverage for the parties' joint child and adding the other parent to the coverage results in no additional premium cost.

Subd. 13. [DISCLOSURE OF INFORMATION.] (a) If the public authority provides support enforcement services, the parties must provide the public authority with the following information:

(1) information relating to dependent health care coverage or public coverage available for the benefit of the joint child for whom support is sought, including all information required to be included in a medical support order under this section;

(2) verification that application for court-ordered health care coverage was made within 30 days of the court's order; and

(3) the reason that a joint child is not enrolled in court-ordered health care coverage, if a joint child is not enrolled in coverage or subsequently loses coverage.

(b) Upon request from the public authority under section 256.978, an employer, union, or plan administrator, including an employer subject to the federal Employee Retirement Income

Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a), must provide the public authority the following information:

(1) information relating to dependent health care coverage available to a party for the benefit of the joint child for whom support is sought, including all information required to be included in a medical support order under this section; and

(2) information that will enable the public authority to determine whether a health plan is appropriate for a joint child, including, but not limited to, all available plan options, any geographic service restrictions, and the location of service providers.

(c) The employer, union, or plan administrator must not release information regarding one party to the other party. The employer, union, or plan administrator must provide both parties with insurance identification cards and all necessary written information to enable the parties to utilize the insurance benefits for the covered dependent.

(d) The public authority is authorized to release to a party's employer, union, or health plan information necessary to verify availability of dependent health care coverage, or to establish, modify, or enforce medical support.

(e) An employee must disclose to an employer if medical support is required to be withheld under this section and the employer must begin withholding according to the terms of the order and under section 518.6111. If an employee discloses an obligation to obtain health care coverage and coverage is available through the employer, the employer must make all application processes known to the individual and enroll the employee and dependent in the plan.

Subd. 14. [CHILD SUPPORT ENFORCEMENT SERVICES.] The public authority must take necessary steps to establish and enforce an order for medical support if the joint child receives public assistance or a party completes an application for services from the public authority under section 518.551, subdivision 7.

Subd. 15. [ENFORCEMENT.] (a) Remedies available for

collecting and enforcing child support apply to medical support.

(b) For the purpose of enforcement, the following are additional support:

(1) the costs of individual or group health or hospitalization coverage;

(2) dental coverage;

(3) medical costs ordered by the court to be paid by either party, including health and dental insurance premiums paid by the obligee because of the obligor's failure to obtain coverage as ordered; and

(4) liabilities established under this subdivision.

(c) A party who fails to carry court-ordered dependent health care coverage is liable for the joint child's uninsured medical expenses unless a court order provides otherwise. A party's failure to carry court-ordered coverage, or to provide other medical support as ordered, is a basis for modification of a support order under section 518.64, subdivision 2.

(d) Payments by the health carrier or employer for services rendered to the dependents that are directed to a party not owed reimbursement must be endorsed over to and forwarded to the vendor or appropriate party or the public authority. A party retaining insurance reimbursement not owed to the party is liable for the amount of the reimbursement.

Subd. 16. [INCOME WITHHOLDING; OFFSET.] (a) If a party owes no joint child support obligation for a child and is an obligor ordered to contribute to the other party's cost for carrying health care coverage for the joint child, the obligor is subject to an offset under subdivision 5 or income withholding under section 518.6111.

(b) If a party's court-ordered health care coverage for the joint child terminates and the joint child is not enrolled in other health care coverage or public coverage, and a modification motion is not pending, the public authority may remove the offset to a party's child support obligation or terminate income withholding instituted against a party under section 518.6111. The public authority must provide notice to

the parties of the action.

(c) A party may contest the public authority's action to remove the offset to the child support obligation or terminate income withholding if the party makes a written request for a hearing within 30 days after receiving written notice. If a party makes a timely request for a hearing, the public authority must schedule a hearing and send written notice of the hearing to the parties by mail to the parties' last known addresses at least 14 days before the hearing. The hearing must be conducted in district court or in the expedited child support process if section 484.702 applies. The district court or child support magistrate must determine whether removing the offset or terminating income withholding is appropriate and, if appropriate, the effective date for the removal or termination.

(d) If the party does not request a hearing, the district court or child support magistrate must order the offset or income withholding termination effective the first day of the month following termination of the joint child's health care coverage.

Subd. 17. [COLLECTING UNREIMBURSED AND UNINSURED MEDICAL EXPENSES.] (a) A party must initiate a request for reimbursement of unreimbursed and uninsured medical expenses within two years of the date that the party incurred the unreimbursed or uninsured medical expenses. The time period in this paragraph does not apply if the location of the other party is unknown.

(b) A party seeking reimbursement of unreimbursed and uninsured medical expenses must mail a written notice of intent to collect the expenses and a copy of an affidavit of health care expenses to the other party at the other party's last known address.

(c) The written notice must include a statement that the party has 30 days from the date the notice was mailed to (1) pay in full; (2) enter a payment agreement; or (3) file a motion requesting a hearing contesting the matter. If the public authority provides support enforcement services, the written notice also must include a statement that the requesting party

must submit the amount due to the public authority for collection.

(d) The affidavit of health care expenses must itemize and document the joint child's unreimbursed or uninsured medical expenses and include copies of all bills, receipts, and insurance company explanations of benefits.

(e) If the public authority provides support enforcement services, the party seeking reimbursement must send to the public authority a copy of the written notice, the original affidavit, and copies of all bills, receipts, and insurance company explanations of benefits.

(f) If the party does not respond to the request for reimbursement within 30 days, the party seeking reimbursement or public authority, if the public authority provides support enforcement services, must commence an enforcement action against the party under subdivision 18.

(g) The public authority must serve the other party with a notice of intent to enforce unreimbursed and uninsured medical expenses and file an affidavit of service by mail with the district court administrator. The notice must state that, unless the party (1) pays in full; (2) enters into a payment agreement; or (3) files a motion contesting the matter within 14 days of service of the notice, the public authority will commence enforcement of the expenses as medical support arrears under subdivision 18.

(h) If the party files a timely motion for a hearing contesting the requested reimbursement, the contesting party must schedule a hearing in district court or in the expedited child support process if section 484.702 applies. The contesting party must provide the party seeking reimbursement and the public authority, if the public authority provides support enforcement services, with written notice of the hearing at least 14 days before the hearing by mailing notice of the hearing to the public authority and the party at the party's last known address. The party seeking reimbursement must file the original affidavit of health care expenses with the court at

least five days before the hearing. Based upon the evidence presented, the district court or child support magistrate must determine liability for the expenses and order that the liable party is subject to enforcement of the expenses as medical support arrears under subdivision 18.

Subd. 18. [ENFORCING AN ORDER FOR MEDICAL SUPPORT ARREARS.] (a) If a party liable for unreimbursed and uninsured medical expenses owes a child support obligation to the party seeking reimbursement of the expenses, the expenses must be collected as medical support arrears.

(b) If a party liable for unreimbursed and uninsured medical expenses does not owe a child support obligation to the party seeking reimbursement, and the party seeking reimbursement owes the liable party basic support arrears, the liable party's medical support arrears must be deducted from the amount of the basic support arrears.

(c) If a liable party owes medical support arrears after deducting the amount owed from the amount of the child support arrears owed by the party seeking reimbursement, it must be collected as follows:

(1) if the party seeking reimbursement owes a child support obligation to the liable party, the child support obligation must be reduced by 20 percent until the medical support arrears are satisfied;

(2) if the party seeking reimbursement does not owe a child support obligation to the liable party, the liable party's income must be subject to income withholding under section 518.6111 for an amount required under section 518.553 until the medical support arrears are satisfied; or

(3) if the party seeking reimbursement does not owe a child support obligation, and income withholding under section 518.6111 is not available, payment of the medical support arrears must be required under a payment agreement under section 518.553.

(d) If a liable party fails to enter into or comply with a payment agreement, the party seeking reimbursement or the public

authority, if it provides support enforcement services, may schedule a hearing to have a court order payment. The party seeking reimbursement or the public authority must provide the liable party with written notice of the hearing at least 14 days before the hearing.

Sec. 24. [518.72] [CHILD CARE SUPPORT.]

Subdivision 1. [CHILD CARE COSTS.] Unless otherwise agreed to by the parties and approved by the court, the court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly adjusted gross income. Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of a joint child. The Department of Human Services shall develop tables to calculate the applicable credit based upon the custodial parent's adjusted gross income.

Subd. 2. [LOW-INCOME OBLIGOR.] (a) If the obligor's adjusted gross income meets the income eligibility requirements for child care assistance under the basic sliding fee program under chapter 119B, the court must order the obligor to pay the lesser of the following amounts:

(1) the amount of the obligor's monthly co-payment for child care assistance under the basic sliding fee schedule established by the commissioner of education under chapter 119B, based on an obligor's monthly adjusted gross income and the size of the obligor's household provided that the obligee is actually receiving child care assistance under the basic sliding fee program. For purposes of this subdivision, the obligor's household includes the obligor and the number of joint children for whom child support is being ordered; or

(2) the amount of the obligor's child care obligation under subdivision 1.

(b) The commissioner of human services must publish a table with the child care assistance basic sliding fee amounts and update the table for changes to the basic sliding fee schedule by July 1 of each year.

Subd. 3. [DETERMINING COSTS.] (a) The court must require verification of employment or school attendance and documentation of child care expenses from the obligee and the public authority, if applicable.

(b) If child care expenses fluctuate during the year because of the obligee's seasonal employment or school attendance or extended periods of parenting time with the obligor, the court must determine child care expenses based on an average monthly cost.

(c) 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.

(d) The court may allow the parent with whom the joint child does not reside to care for the joint child while the parent with whom the joint child resides is working or attending school, as provided in section 518.175, subdivision 8. Allowing the parent with whom the joint child does not reside to care for the joint child under section 518.175, subdivision 8, is not a reason to deviate from the guidelines.

Subd. 4. [CHANGE IN CHILD CARE.] (a) When a court order provides for child care expenses and the public authority provides child support enforcement services, the public authority must suspend collecting the amount allocated for child care expenses when:

(1) either party informs the public authority that no child care costs are being incurred; and

(2) the public authority verifies the accuracy of the information with the other party.

The public authority will resume collecting child care expenses when either party provides information that child care costs have resumed.

(b) If the parties provide conflicting information to the public authority regarding whether child care expenses are being incurred, the public authority will continue or resume collecting child care expenses. Either party, by motion to the court, may challenge the suspension or resumption of the

collection of child care expenses. If the public authority suspends collection activities for the amount allocated for child care expenses, all other provisions of the court order remain in effect.

(c) In cases where there is a substantial increase or decrease in child care expenses, the parties may modify the order under section 518.64.

Sec. 25. [518.722] [PARENTING EXPENSE ADJUSTMENT.]

(a) This section shall apply when the amount of parenting time granted to an obligor is ten percent or greater. Every child support order shall specify the total percent of parenting time granted to each parent.

(b) The obligor shall be entitled to a parenting expense adjustment calculated as follows:

(1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor below:

	Percentage Range of Parenting Time	Adjustment Percentage
(i)	less than 10 percent	no adjustment
(ii)	10 percent to 45 percen	12 percent
(iii)	45.1 percent to 50 percent	presume parenting time is equal

(2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment.

(c) Subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's obligation after parenting expense adjustment.

(d) If the parenting time is equal, the expenses for the children are equally shared, and the adjusted gross incomes of the parents also are equal, no support shall be paid.

(e) If the parenting time is equal but the parents' adjusted gross incomes are not equal, the parent having the greater adjusted gross income shall be obligated for basic child support, calculated as follows:

(1) multiply the combined basic support by 1.5;

(2) prorate the basic child support obligation between the parents, subtract the lower amount from the higher amount and divide the balance in half; and

(3) the resulting figure is the obligation after parenting expense adjustment for the parent with the greater adjusted gross income.

(f) This parenting expense adjustment reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses.

Sec. 26. [518.724] [ABILITY TO PAY; SELF-SUPPORT ADJUSTMENT.]

It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, follow the procedure set out in this section:

(1) calculate the obligor's income available for support by subtracting a monthly self-support reserve equal to the percent of the federal poverty guidelines used to determine the MFIP transitional standard for one person from the obligor's gross income;

(2) compare the obligor's income available for support to the amount of support calculated as per section 518.713, clauses (1) to (15). The amount of child support that is presumed to be correct as defined in section 518.713 is the lesser of these two amounts;

(3) this section does not apply to an incarcerated obligor;

(4) if the obligor's child support is reduced under clause (2), then the court must apply the reduction to the child support obligation in the following order:

(i) medical support obligation;

(ii) child support obligation; and

(iii) basic support obligation; and

(5) [MINIMUM BASIC SUPPORT AMOUNT.] if the obligor's income available for support is less than the self-support reserve,

then the court must order minimum support as follows:

(i) for one or two children, the obligor's basic support obligation is $50 per month;

(ii) for three or four children, the obligor's basic support obligation is $75 per month; and

(iii) for five or more children, the obligor's basic support obligation is $100 per month.

If the court orders the obligor to pay the minimum basic support amount under this paragraph, the obligor is presumed unable to pay child care support and medical support.

If the court finds the obligor receives no income and completely lacks the ability to earn income, the minimum basic support amount under this paragraph does not apply.

Sec. 27. [518.725] [GUIDELINE USED IN CHILD SUPPORT DETERMINATIONS.]

Subdivision 1. [DETERMINATION OF SUPPORT OBLIGATION.] (a) The guideline in this section is a rebuttable presumption and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under chapter 518.

(b) The basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children and the combined adjusted gross income of the parents.

(c) If a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children, and the parent's individual adjusted gross income, not the combined adjusted gross income of the parents.

(d) For combined adjusted gross incomes exceeding $15,000 per month, the presumed basic child support obligations shall be as for parents with combined adjusted gross income of $15,000 per month. A basic child support obligation in excess of this level may be demonstrated for those reasons set forth in section 518.714.

Subd. 2. [BASIC SUPPORT; GUIDELINE.] Unless otherwise agreed to by the parents and approved by the court, when

establishing basic support, the court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly income, as determined under section 518.713. Basic support must be computed using the following guideline:

Parents' Combined Adjusted Gross Income	Number of Children					
	One	Two	Three	Four	Five	Six
$0- $799	$50	$50	$75	$75	$100	$100
800- 899	80	129	149	173	201	233
900- 999	90	145	167	194	226	262
1,000- 1,099	116	161	186	216	251	291
1,100- 1,199	145	205	237	275	320	370
1,200- 1,299	177	254	294	341	396	459
1,300- 1,399	212	309	356	414	480	557
1,400- 1,499	251	368	425	493	573	664
1,500- 1,599	292	433	500	580	673	780
1,600- 1,699	337	502	580	673	781	905
1,700- 1,799	385	577	666	773	897	1,040
1,800- 1,899	436	657	758	880	1,021	1,183
1,900- 1,999	490	742	856	994	1,152	1,336
2,000- 2,099	516	832	960	1,114	1,292	1,498
2,100- 2,199	528	851	981	1,139	1,320	1,531
2,200- 2,299	538	867	1,000	1,160	1,346	1,561
2,300- 2,399	546	881	1,016	1,179	1,367	1,586
2,400- 2,499	554	893	1,029	1,195	1,385	1,608
2,500- 2,599	560	903	1,040	1,208	1,400	1,625
2,600- 2,699	570	920	1,060	1,230	1,426	1,655
2,700- 2,799	580	936	1,078	1,251	1,450	1,683
2,800- 2,899	589	950	1,094	1,270	1,472	1,707
2,900- 2,999	596	963	1,109	1,287	1,492	1,730
3,000- 3,099	603	975	1,122	1,302	1,509	1,749
3,100- 3,199	613	991	1,141	1,324	1,535	1,779
3,200- 3,299	623	1,007	1,158	1,344	1,558	1,807
3,300- 3,399	632	1,021	1,175	1,363	1,581	1,833
3,400- 3,499	640	1,034	1,190	1,380	1,601	1,857
3,500- 3,599	648	1,047	1,204	1,397	1,621	1,880

1	3,600- 3,699	657	1,062	1,223	1,418	1,646	1,909
2	3,700- 3,799	667	1,077	1,240	1,439	1,670	1,937
3	3,800- 3,899	676	1,018	1,257	1,459	1,693	1,963
4	3,900- 3,999	684	1,104	1,273	1,478	1,715	1,988
5	4,000- 4,099	692	1,116	1,288	1,496	1,736	2,012
6	4,100- 4,199	701	1,132	1,305	1,516	1,759	2,039
7	4,200- 4,299	710	1,147	1,322	1,536	1,781	2,064
8	4,300- 4,399	718	1,161	1,338	1,554	1,802	2,088
9	4,400- 4,499	726	1,175	1,353	1,572	1,822	2,111
10	4,500- 4,599	734	1,184	1,368	1,589	1,841	2,133
11	4,600- 4,699	743	1,200	1,386	1,608	1,864	2,160
12	4,700- 4,799	753	1,215	1,402	1,627	1,887	2,186
13	4,800- 4,899	762	1,231	1,419	1,645	1,908	2,212
14	4,900- 4,999	771	1,246	1,435	1,663	1,930	2,236
15	5,000- 5,099	780	1,260	1,450	1,680	1,950	2,260
16	5,100- 5,199	788	1,275	1,468	1,701	1,975	2,289
17	5,200- 5,299	797	1,290	1,485	1,722	1,999	2,317
18	5,300- 5,399	805	1,304	1,502	1,743	2,022	2,345
19	5,400- 5,499	812	1,318	1,518	1,763	2,046	2,372
20	5,500- 5,599	820	1,331	1,535	1,782	2,068	2,398
21	5,600- 5,699	829	1,346	1,551	1,801	2,090	2,424
22	5,700- 5,799	838	1,357	1,568	1,819	2,111	2,449
23	5,800- 5,899	847	1,376	1,583	1,837	2,132	2,473
24	5,900- 5,999	856	1,390	1,599	1,855	2,152	2,497
25	6,000- 6,099	864	1,404	1,614	1,872	2,172	2,520
26	6,100- 6,199	874	1,419	1,631	1,892	2,195	2,546
27	6,200- 6,299	883	1,433	1,645	1,912	2,217	2,572
28	6,300- 6,399	892	1,448	1,664	1,932	2,239	2,597
29	6,400- 6,499	901	1,462	1,682	1,951	2,260	2,621
30	6,500- 6,599	910	1,476	1,697	1,970	2,282	2,646
31	6,600- 6,699	919	1,490	1,713	1,989	2,305	2,673
32	6,700- 6,799	927	1,505	1,730	2,009	2,328	2,700
33	6,800- 6,899	936	1,519	1,746	2,028	2,350	2,727
34	6,900- 6,999	944	1,533	1,762	2,047	2,379	2,753
35	7,000- 7,099	952	1,547	1,778	2,065	2,394	2,779
36	7,100- 7,199	961	1,561	1,795	2,085	2,417	2,805

1	7,200- 7,299	971	1,574	1,812	2,104	2,439	2,830
2	7,300- 7,399	980	1,587	1,828	2,123	2,462	2,854
3	7,400- 7,499	989	1,600	1,844	2,142	2,483	2,879
4	7,500- 7,599	998	1,613	1,860	2,160	2,505	2,903
5	7,600- 7,699	1,006	1,628	1,877	2,180	2,528	2,929
6	7,700- 7,799	1,015	1,643	1,894	2,199	2,550	2,955
7	7,800- 7,899	1,023	1,658	1,911	2,218	2,572	2,981
8	7,900- 7,999	1,032	1,673	1,928	2,237	2,594	3,007
9	8,000- 8,099	1,040	1,688	1,944	2,256	2,616	3,032
10	8,100- 8,199	1,048	1,703	1,960	2,274	2,637	3,057
11	8,200- 8,299	1,056	1,717	1,976	2,293	2,658	3,082
12	8,300- 8,399	1,064	1,731	1,992	2,311	2,679	3,106
13	8,400- 8,499	1,072	1,746	2,008	2,328	2,700	3,130
14	8,500- 8,599	1,080	1,760	2,023	2,346	2,720	3,154
15	8,600- 8,699	1,092	1,780	2,047	2,374	2,752	3,191
16	8,700- 8,799	1,105	1,801	2,071	2,401	2,784	3,228
17	8,800- 8,899	1,118	1,822	2,094	2,429	2,816	3,265
18	8,900- 8,999	1,130	1,842	2,118	2,456	2,848	3,302
19	9,000- 9,099	1,143	1,863	2,142	2,484	2,880	3,339
20	9,100- 9,199	1,156	1,884	2,166	2,512	2,912	3,376
21	9,200- 9,299	1,168	1,904	2,190	2,539	2,944	3,413
22	9,300- 9,399	1,181	1,925	2,213	2,567	2,976	3,450
23	9,400- 9,499	1,194	1,946	2,237	2,594	3,008	3,487
24	9,500- 9,599	1,207	1,967	2,261	2,622	3,040	3,525
25	9,600- 9,699	1,219	1,987	2,285	2,650	3,072	3,562
26	9,700- 9,799	1,232	2,008	2,309	2,677	3,104	3,599
27	9,800- 9,899	1,245	2,029	2,332	2,705	3,136	3,636
28	9,900- 9,999	1,257	2,049	2,356	2,732	3,168	3,673
29	10,000-10,099	1,270	2,070	2,380	2,760	3,200	3,710
30	10,100-10,199	1,283	2,091	2,404	2,788	3,232	3,747
31	10,200-10,299	1,295	2,111	2,428	2,815	3,264	3,784
32	10,300-10,399	1,308	2,132	2,451	2,843	3,296	3,821
33	10,400-10,499	1,321	2,153	2,475	2,870	3,328	3,858
34	10,500-10,599	1,334	2,174	2,499	2,898	3,360	3,896
35	10,600-10,699	1,346	2,194	2,523	2,926	3,392	3,933
36	10,700-10,799	1,359	2,215	2,547	2,953	3,424	3,970

1	10,800-10,899	1,372	2,236	2,570	2,981	3,456	4,007
2	10,900-10,999	1,384	2,256	2,594	3,008	3,488	4,044
3	11,000-11,099	1,397	2,277	2,618	3,036	3,520	4,081
4	11,100-11,199	1,410	2,298	2,642	3,064	3,552	4,118
5	11,200-11,299	1,422	2,318	2,666	3,091	3,584	4,155
6	11,300-11,399	1,435	2,339	2,689	3,119	3,616	4,192
7	11,400-11,499	1,448	2,360	2,713	3,146	3,648	4,229
8	11,500-11,599	1,461	2,381	2,737	3,174	3,680	4,267
9	11,600-11,699	1,473	2,401	2,761	3,202	3,712	4,304
10	11,700-11,799	1,486	2,422	2,785	3,229	3,744	4,341
11	11,800-11,899	1,499	2,443	2,808	3,257	3,776	4,378
12	11,900-11,999	1,511	2,463	2,832	3,284	3,808	4,415
13	12,000-12,099	1,524	2,484	2,856	3,312	3,840	4,452
14	12,100-12,199	1,537	2,505	2,880	3,340	3,872	4,489
15	12,200-12,299	1,549	2,525	2,904	3,367	3,904	4,526
16	12,300-12,399	1,562	2,546	2,927	3,395	3,936	4,563
17	12,400-12,499	1,575	2,567	2,951	3,422	3,968	4,600
18	12,500-12,599	1,588	2,588	2,975	3,450	4,000	4,638
19	12,600-12,699	1,600	2,608	2,999	3,478	4,032	4,675
20	12,700-12,799	1,613	2,629	3,023	3,505	4,064	4,712
21	12,800-12,899	1,626	2,650	3,046	3,533	4,096	4,749
22	12,900-12,999	1,638	2,670	3,070	3,560	4,128	4,786
23	13,000-13,099	1,651	2,691	3,094	3,588	4,160	4,823
24	13,100-13,199	1,664	2,712	3,118	3,616	4,192	4,860
25	13,200-13,299	1,676	2,732	3,142	3,643	4,224	4,897
26	13,300-13,399	1,689	2,753	3,165	3,671	4,256	4,934
27	13,400-13,499	1,702	2,774	3,189	3,698	4,288	4,971
28	13,500-13,599	1,715	2,795	3,213	3,726	4,320	5,009
29	13,600-13,699	1,727	2,815	3,237	3,754	4,352	5,046
30	13,700-13,799	1,740	2,836	3,261	3,781	4,384	5,083
31	13,800-13,899	1,753	2,857	3,284	3,809	4,416	5,120
32	13,900-13,999	1,765	2,877	3,308	3,836	4,448	5,157
33	14,000-14,009	1,778	2,898	3,332	3,864	4,480	5,194
34	14,100-14,199	1,791	2,919	3,356	3,892	4,512	5,231
35	14,200-14,299	1,803	2,939	3,380	3,919	4,544	5,268
36	14,300-14,399	1,816	2,960	3,403	3,947	4,576	5,305

14,400-14,499	1,829	2,981	3,427	3,974	4,608	5,342
14,500-14,599	1,842	3,002	3,451	4,002	4,640	5,380
14,600-14,699	1,854	3,022	3,475	4,030	4,672	5,417
14,700-14,799	1,867	3,043	3,499	4,057	4,704	5,454
14,800-14,899	1,880	3,064	3,522	4,085	4,736	5,491
14,900-14,999	1,892	3,084	3,546	4,112	4,768	5,528
15,000, or the amount in effect under subd. 4	1,905	3,105	3,570	4,140	4,800	5,565

Subd. 3. [INCOME CAP ON DETERMINING BASIC SUPPORT.] (a) The basic support obligation for parents with a combined monthly income in excess of the income limit currently in effect under subdivision 1 must be the same dollar amount as provided for parties with a combined monthly income equal to the income limit in effect under subdivision 1.

(b) A court may order a basic support obligation in a child support order in an amount that exceeds the income limit in subdivision 1 if it finds that a child has a disability or other substantial, demonstrated need for the additional support and that the additional support will directly benefit the child.

(c) The dollar amount for the cap in subdivision 1 must be adjusted on July 1 of every even-numbered year to reflect cost-of-living changes. The Supreme Court must select the index for the adjustment from the indices listed in section 518.641, subdivision 1. The state court administrator must make the changes in the dollar amounts 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.

Subd. 4. [MORE THAN SIX CHILDREN.] If a child support proceeding involves more than six children, the court may derive a support order without specifically following the guidelines. However, the court must consider the basic principles encompassed by the guidelines and must consider both parents' needs, resources, and circumstances.

Subd. 5. [REPORT TO LEGISLATURE.] No later than 2006 and every four years after that, the commissioner of human services

shall conduct a review of the child support guidelines.

Subd. 6. [FINDINGS; DEVIATION.] The guidelines in this section are a rebuttable presumption and shall be used in all cases when establishing or modifying child support. If the court does not deviate 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 section 518.714 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 256.741, the court may deviate downward only as provided in subdivision 7 of that section. 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 required documentation of earnings.

Sec. 28. [518.729] [WORKSHEET.]

The commissioner of human services must create and publish a worksheet to assist in calculating child support under sections 518.712 to 518.729. The worksheet must not impose substantive requirements other than requirements contained in sections 518.712 to 518.729. The commissioner must update the worksheet by July 1 of each year. The commissioner must make an interactive version of the worksheet available on the Department of Human Services Web site.

Sec. 29. [STUDY OF ECONOMIC IMPACT OF CHILD SUPPORT

GUIDELINES.]

The commissioner of human services shall contract with a private provider to conduct an economic analysis of the child support guidelines contained in this act to evaluate whether the guidelines fairly represent the cost of raising children for the respective parental income levels, excluding medical support, child care, and education costs.

The results of the study shall be completed by no later than January 30, 2006. The private provider must have experience in evaluating or establishing child support guidelines, using the income shares approach, in other states.

Sec. 30. [REVISOR'S INSTRUCTION.]

The revisor of statutes shall renumber the provisions of Minnesota Statutes listed in column A to the references listed in column B. The revisor shall also make necessary cross-reference changes in Minnesota Statutes and Minnesota Rules consistent with the renumbering.

Column A	Column B
518.5513	518.741
518.553	518.743
518.57	518.745
518.575	518.747
518.585	518.749
518.5851	518.751
518.5852	518.752
518.5853	518.753
518.6111	518.755
518.612	518.757
518.614	518.759
518.615	518.761
518.616	518.763
518.617	518.765
518.618	518.767
518.6195	518.769
518.6196	518.770
518.641	518.771

518.642 518.773

Sec. 31. [APPROPRIATIONS.]

$..... is appropriated in fiscal year 2006 and $..... is appropriated in fiscal year 2007 from the general fund to the commissioner of human services to fund implementation of this act and to reimburse counties for their implementation costs. The commissioner of human services shall distribute funds to the counties for their costs of implementation based upon their total county IV-D caseload. The appropriation base in fiscal year 2008 for grants to counties shall be $.....

$..... is appropriated in fiscal year 2007 from the general fund to the supreme court administrator to fund implementation of this act. This is a onetime appropriation.

Sec. 32. [REPEALER.]

Minnesota Statutes 2004, sections 518.171; 518.54, subdivisions 2, 4, and 4a; and 518.551, subdivisions 1, 5a, 5c, and 5f, are repealed.

Sec. 33. [EFFECTIVE DATE.]

This act is effective January 1, 2007, and applies to orders adopted or modified after that date."

Delete the title and insert:

"A bill for an act relating to civil law; reforming law relating to child support; establishing criteria for support obligations; defining parents' rights and responsibilities; appropriating money; amending Minnesota Statutes 2004, sections 518.005, by adding a subdivision; 518.54, subdivisions 7, 8; 518.55, subdivision 4; 518.551, subdivisions 5, 5b; 518.62; 518.64, subdivision 2, by adding subdivisions; 518.68, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 518; repealing Minnesota Statutes 2004, sections 518.171; 518.54, subdivisions 2, 4, 4a; 518.551, subdivisions 1, 5a, 5c, 5f."

And when so amended the bill do pass and be re-referred to the Committee on Finance. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 7, 2005.....
(Date of Committee recommendation)

Senator ..... moves to amend S.F. No. 1900 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 256.9791, is amended to read:

256.9791 [MEDICAL SUPPORT BONUS INCENTIVES.]

Subdivision 1. [BONUS INCENTIVE.] (a) A bonus incentive program is created to increase the identification and enforcement by county agencies of dependent health ~~insurance~~ coverage for ~~persons who are receiving medical assistance under section 256B.055 and~~ children and family units for whom the county agency is providing child support enforcement services.

(b) The bonus shall be awarded to a county child support agency for each ~~person~~ child for whom coverage is identified and enforced by the child support enforcement program when ~~the obligor is under~~ a court order to provide dependent health ~~insurance~~ coverage is in effect.

(c) Bonus incentive funds under this section must be reinvested in the county child support enforcement program and a county may not reduce funding of the child support enforcement program by the amount of the bonus earned.

Subd. 2. [DEFINITIONS.] For the purpose of this section, the following definitions apply.

(a) "Case" means a family unit ~~that is receiving medical assistance under section 256B.055 and~~ for whom the county agency is providing child support enforcement services.

(b) "Commissioner" means the commissioner of the Department of Human Services.

(c) "County agency" means the county child support enforcement agency.

(d) "Coverage" means initial dependent health insurance benefits for a case or ~~individual member~~ child of a case, or medical assistance under section 256B.055 and MinnesotaCare under section 256L.07.

(e) "Enforce" or "enforcement" means obtaining proof of current or future dependent health ~~insurance~~ coverage through an overt act by the county agency.

(f) "Enforceable order" means a child support court order containing the statutory language in section ~~518.171~~ 518.1711 or other language ordering ~~an obligor~~ a parent to provide dependent health ~~insurance~~ coverage.

~~(g) "Identify" or "identification" means obtaining proof of dependent health insurance coverage through an overt act by the county agency.~~

Subd. 3. [ELIGIBILITY; REPORTING REQUIREMENTS.] (a) In order for a county to be eligible to claim a bonus incentive payment, the county agency must provide the required information for each ~~public assistance~~ case no later than June 30 of each year to determine eligibility. The public authority shall use the information to establish for each county the number of cases in which (1) the court has established an obligation for coverage ~~by the obligor~~, and (2) coverage was in effect as of June 30.

(b) A county that fails to provide the required information by June 30 of each fiscal year is not eligible for any bonus payments under this section for that fiscal year.

Subd. 4. [RATE OF BONUS INCENTIVE.] The rate of the bonus incentive shall be determined according to paragraph (a).

(a) When a county agency has ~~identified or~~ enforced coverage, the county shall receive $50 for each ~~additional person~~ child for whom coverage is ~~identified or~~ enforced.

(b) Bonus payments according to paragraph (a) are limited to one bonus for each ~~covered person~~ child each time the county agency ~~identifies or~~ enforces previously unidentified health ~~insurance~~ coverage and apply only to coverage ~~identified or~~ enforced after July 1, 1990.

Subd. 5. [CLAIMS FOR BONUS INCENTIVE.] (a) Beginning July 1, 1990, county agencies shall file a claim for a medical support bonus payment by reporting to the commissioner the following information for each case where dependent health ~~insurance~~ coverage is ~~identified or~~ enforced as a result of an overt act of the county agency:

(1) child support enforcement system case number or county

specific case number;

(2) names and dates of birth for each ~~person~~ child covered; and

(3) the effective date of coverage.

(b) The report must be made upon enrollment in coverage but no later than September 30 for coverage identified or established during the preceding fiscal year.

(c) The county agency making the initial contact resulting in the establishment of coverage is the county agency entitled to claim the bonus incentive even if the case is transferred to another county agency prior to the time coverage is established.

(d) Disputed claims must be submitted to the commissioner and the commissioner's decision is final.

Subd. 6. [DISTRIBUTION.] (a) Bonus incentives must be issued to the county agency quarterly, within 45 days after the last day of each quarter for which a bonus incentive is being claimed, and must be paid up to the limit of the appropriation in the order in which claims are received.

(b) Total bonus incentives must be computed by multiplying the number of ~~persons~~ children included in claims submitted ~~in accordance with~~ under this section by the applicable bonus payment as determined in subdivision 4.

(c) The county agency must repay any bonus erroneously issued.

(d) A county agency must maintain a record of bonus incentives claimed and received for each quarter.

Sec. 2. Minnesota Statutes 2004, section 256L.04, is amended by adding a subdivision to read:

Subd. 14. [COURT-ORDERED APPLICATIONS.] Notwithstanding subdivision 7a, a child or parent ordered to apply for public health care coverage under section 518.1711, subdivision 4, paragraph (e), must be enrolled regardless of the income limit eligibility.

Sec. 3. Minnesota Statutes 2004, section 256L.15, subdivision 2, is amended to read:

Subd. 2. [SLIDING FEE SCALE TO DETERMINE PERCENTAGE OF

GROSS INDIVIDUAL OR FAMILY INCOME.] (a) The commissioner shall establish a sliding fee scale to determine the percentage of gross individual or family income that households at different income levels must pay to obtain coverage through the MinnesotaCare program. The sliding fee scale must be based on the enrollee's gross individual or family income. The sliding fee scale must contain separate tables based on enrollment of one, two, or three or more persons. The sliding fee scale begins with a premium of 1.5 percent of gross individual or family income for individuals or families with incomes below the limits for the medical assistance program for families and children in effect on January 1, 1999, and proceeds through the following evenly spaced steps: 1.8, 2.3, 3.1, 3.8, 4.8, 5.9, 7.4, and 8.8 percent. These percentages are matched to evenly spaced income steps ranging from the medical assistance income limit for families and children in effect on January 1, 1999, to 275 percent of the federal poverty guidelines for the applicable family size, up to a family size of five. The sliding fee scale for a family of five must be used for families of more than five. Effective October 1, 2003, the commissioner shall increase each percentage by 0.5 percentage points for enrollees with income greater than 100 percent but not exceeding 200 percent of the federal poverty guidelines and shall increase each percentage by 1.0 percentage points for families and children with incomes greater than 200 percent of the federal poverty guidelines. The sliding fee scale and percentages are not subject to the provisions of chapter 14. If a family or individual reports increased income after enrollment, premiums shall not be adjusted until eligibility renewal.

(b)(1) Enrolled families whose gross annual income increases above 275 percent of the federal poverty guideline shall pay the maximum premium. This clause expires effective February 1, 2004.

(2) Effective February 1, 2004, children in families whose gross income is above 275 percent of the federal poverty guidelines shall pay the maximum premium.

(3) The maximum premium is defined as a base charge for one, two, or three or more enrollees so that if all MinnesotaCare cases paid the maximum premium, the total revenue would equal the total cost of MinnesotaCare medical coverage and administration. In this calculation, administrative costs shall be assumed to equal ten percent of the total. The costs of medical coverage for pregnant women and children under age two and the enrollees in these groups shall be excluded from the total. The maximum premium for two enrollees shall be twice the maximum premium for one, and the maximum premium for three or more enrollees shall be three times the maximum premium for one.

(c) The parent who enrolls a child under section 256L.04, subdivision 14, who has income in excess of the income eligibility shall pay the maximum premium.

Sec. 4. [518.1711] [MEDICAL SUPPORT.]

Subdivision 1. [DEFINITIONS.] (a) The definitions in this subdivision apply to this section and sections 518.54 to 518.66.

(b) "Health care coverage" means health care benefits that are provided by a health plan. Health care coverage does not include any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L.

(c) "Health carrier" means a carrier as defined in sections 62A.011, subdivision 2, and 62L.02, subdivision 16.

(d) "Health plan" means a plan meeting the definition in section 62A.011, subdivision 3, or a policy, contract, or certificate issued by a community integrated service network licensed under chapter 62N and includes plans: (1) provided on an individual and group basis; (2) provided by an employer or union; (3) purchased in the private market; (4) available to a person eligible to carry insurance for the child; and (5) provided through a health plan governed under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a).

"Health plan" includes a plan providing for dependent-only, dental, or vision coverage and a plan provided through a party's spouse or parent.

(e) "Medical support" means providing health care coverage for a child by carrying health care coverage for the child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the child and includes an amount ordered under subdivision 4, paragraph (e).

(f) "National medical support notice" is an administrative notice issued by the public authority to enforce medical support provisions of a support order under the Code of Federal Regulations.

(g) "Public coverage" means health care benefits provided by any form of medical assistance under chapter 256B or MinnesotaCare under chapter 256L.

(h) "Uninsured medical expenses" means a child's reasonable and necessary health-related expenses if the child is not covered by a health plan or public coverage when the expenses are incurred.

(i) "Unreimbursed medical expenses" means a child's reasonable and necessary health-related expenses if a child is covered by a health plan or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to, deductibles, copayments, and expenses for orthodontia, prescription eye glasses and contact lenses, and over-the-counter medicine.

Subd. 2. [ORDER.] (a) A completed national medical support notice issued by the public authority or a court order that complies with this section is a qualified medical child support order under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a).

(b) Every order addressing child support must state:

(1) the names, last known addresses, and Social Security numbers of the parents and the child that is a subject of the order unless the court prohibits the inclusion of an address or Social Security number and orders the parent to provide the

address and Social Security number to the administrator of the health plan; and

(2) whether appropriate health care coverage for the child is available and, if so state:

(i) which party must carry health care coverage;

(ii) the cost of premiums and how the cost is allocated between the parties;

(iii) how unreimbursed expenses will be allocated to and collected by the parties; and

(iv) the circumstances, if any, under which the obligation to provide health care coverage for the child will shift from one party to the other; or

(3) if appropriate health care coverage is not available for the child, whether a contribution for medical support is required; and

(4) whether the amount ordered for medical support is subject to a cost-of-living adjustment under section 518.641.

Subd. 3. [DETERMINATION OF APPROPRIATE COVERAGE.] (a) In determining whether a party has appropriate health care coverage for the child, the court must evaluate the health plan using the following factors:

(1) accessible coverage. Dependent health care coverage is accessible if the covered child can obtain services from a health plan provider with reasonable effort by the custodial parent. Health care coverage is presumed accessible if:

(i) primary care coverage is available within 30 minutes or 30 miles of the child's residence and specialty care coverage is available within 60 minutes or 60 miles of the child's residence;

(ii) the coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and

(iii) no preexisting conditions exist to delay coverage unduly;

(2) comprehensive coverage. Dependent health care coverage is comprehensive if it includes, at a minimum, medical and

hospital coverage and provides for preventive, emergency, acute, and chronic care. If both parties have health care coverage that meets the minimum requirements, the court must determine which health care coverage is more comprehensive by considering whether the coverage includes:

(i) basic dental coverage;

(ii) orthodontics;

(iii) eyeglasses;

(iv) contact lenses;

(v) mental health services; or

(vi) substance abuse treatment;

(3) affordable coverage. Dependent health care coverage is affordable if a party's gross income adjusted for child support is 150 percent of the federal poverty guidelines or more and the party's contribution to the health care coverage premium does not exceed five percent of the party's income available for child support. If a party's gross income adjusted for child support is less than 150 percent of the federal poverty guidelines, it is presumed that the party is unable to contribute to the cost of health care coverage unless health care is available at no or low cost to that party; and

(4) the child's special medical needs, if any.

Subd. 4. [COVERAGE.] (a) If a child is presently enrolled in health care coverage, the court must order that the parent who currently has the child enrolled continue that enrollment unless the parties agree otherwise or a party requests a change in coverage and the court determines that other health care coverage is more appropriate.

(b) If a child is not presently enrolled in health care coverage, upon motion of a party or the public authority, the court must determine whether one or both parties have appropriate health care coverage for the child and order the party with appropriate health care coverage available to carry the coverage for the child.

(c) If only one party has appropriate health care coverage available, the court must order that party to carry the coverage

for the child.

(d) If both parties have appropriate health care coverage available, the court must order the parent with whom the child resides to carry the coverage for the child, unless:

(1) either party expresses a preference for coverage available through the parent with whom the child does not reside;

(2) the parent with whom the child does not reside is already carrying dependent health care coverage for other children and the cost of contributing to the premiums of the coverage of the parent with whom the child resides would cause the other parent extreme hardship; or

(3) both parents agree to provide coverage and agree on the allocation of costs.

If the exception in clause (1) or (2) applies, the court must determine which party has the most appropriate coverage available based on the best interests of the child and order that party to carry coverage for the child.

(e) If neither party has appropriate health care coverage available, the court must order the parent with whom the child does not reside to contribute toward the cost of public coverage for the child or the child's uninsured medical expenses in an amount equal to the lesser of either:

(1) five percent of income available for child support; or

(2) the monthly amount the parent with whom the child does not reside would pay for the child's premiums based on the parent's income that is available for child support for a household size equal to the parent plus the child who is a subject of the order as indicated by the MinnesotaCare sliding fee scale under chapter 256L. The court may order the parent with whom the child resides to apply for public coverage for the child.

Subd. 5. [CALCULATING MEDICAL SUPPORT.] The court must calculate the cost of medical support under section 518.5416, subdivision 6.

Subd. 6. [ALLOCATING MEDICAL SUPPORT COSTS.] (a) If the

party ordered to carry health care coverage for the child already carries dependent health care coverage for other dependents and would incur no additional premium costs to add the child to the existing coverage, the court must not order the other party to contribute to the premium costs for coverage of the child.

(b) If a party ordered to carry health care coverage for the child does not already carry dependent health care coverage but has other dependents who may be added to the ordered coverage, the full premium costs of the dependent health care coverage must be allocated between the parties in proportion to the party's share of the parties' combined income available for child support, unless the parties agree otherwise.

(c) If a party ordered to carry health care coverage for the child is required to enroll in a health plan so that the child can be enrolled in dependent health care coverage under the plan, the court must allocate the costs of the dependent health care coverage between the parties. The costs of the health care coverage for the party ordered to carry the coverage for the child must not be allocated between the parties.

Subd. 7. [NOTICE TO EMPLOYER BY PUBLIC AUTHORITY OR COURT.] (a) A copy of the national medical support notice or notice of medical withholding must be forwarded by the public authority to the employer within two business days after the date an employee is entered into the work reporting system under section 256.998.

(b) If a party is ordered to carry health care coverage for the child and the public authority provides support enforcement services, the public authority must forward a copy of the national medical support notice or notice of medical withholding to the party's employer or union and to the health carrier when the conditions under paragraph (d) are met or when ordered by the court.

(c) If the public authority does not provide support enforcement services, the party seeking to enforce the order may forward a copy of the court order for health care coverage for

the child to the employer or union of the party ordered to carry coverage and to the health carrier when the conditions under paragraph (d) are met or when ordered by the court.

(d) A copy of the national medical support notice or court order for health care coverage must be forwarded to the employer under paragraphs (b) and (c) if:

(1) the party ordered to carry health care coverage for the child fails to provide written proof to the other party or the public authority, within 30 days of the effective date of the court order, that health care coverage has been obtained for the child;

(2) the other party or the public authority gives written notice to the party ordered to carry health care coverage for the child of intent to enforce medical support. The other party or public authority must mail the written notice to the last known address of the party ordered to carry health care coverage for the child; and

(3) the party ordered to carry health care coverage for the child fails, within 15 days after the date on which the written notice under clause (2) was mailed, to provide written proof to the other party or the public authority that health care coverage has been obtained for the child.

Subd. 8. [EFFECT OF ORDER.] (a) A new employer or union of a party who is ordered to provide health care coverage for the child must enroll the child in the party's health plan upon receipt of a national medical support notice or court order.

(b) If a health plan administrator receives a completed national medical support notice, the plan administrator must notify the public authority within 40 business days after the date of the notice of the following:

(1) whether coverage is available to the child under the terms of the health plan;

(2) whether the child is covered under the health plan;

(3) the effective date of the child's coverage under the health plan; and

(4) what steps, if any, are required to effectuate the

child's coverage under the health plan.

(c) The plan administrator must also provide the public authority and the parties with a notice of enrollment of the child, description of the coverage, and any documents necessary to effectuate coverage.

Subd. 9. [CONTESTING ENROLLMENT.] (a) A party may contest the enrollment of a child in a health plan on the limited grounds that the enrollment is improper due to mistake of fact or that the enrollment meets the requirements of section 518.64, subdivision 2. If the party chooses to contest the enrollment, the party must do so no later than 15 days after the employer notifies the party of the enrollment by doing the following:

(1) filing a request for hearing according to section 484.702;

(2) serving a copy of the request for hearing upon the public authority and the other party; and

(3) securing a date for the matter to be heard no later than 45 days after the notice of enrollment.

(b) The enrollment must remain in place while the party contests the enrollment.

Subd. 10. [EMPLOYER AND UNION REQUIREMENTS.] (a) An employer must send the national medical support notice to its health plan within 20 business days after the date on the national medical support notice.

(b) An employer or union that is included under the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a), may not deny enrollment based on exclusionary clauses described in section 62A.048.

(c) Upon application of the party, or if a court orders a party to carry health insurance coverage for a child, the employer or union and its health plan must enroll the child as a beneficiary in the health plan and withhold any required premiums from the income or wages of the party ordered to carry health care coverage for the child.

(d) If more than one plan is offered by the employer or union and the national medical support notice or court order

does not specify the plan to be carried, the plan administrator must notify the parents and the public authority.

(e) If the party ordered to carry health care coverage for the child is not enrolled in the health plan, the employer or union must also enroll the party in the chosen plan if enrollment of the party is necessary to obtain dependent health care coverage under the plan.

(f) Enrollment of dependents and, if necessary, the party ordered to carry health care coverage for the child must be immediate and not dependent upon open enrollment periods. Enrollment is not subject to the underwriting policies under section 62A.048.

(g) Failure of the party ordered to carry health care coverage for the child to execute any documents necessary to enroll the dependent in the health plan does not affect the obligation of the employer or union and health plan to enroll the dependent in a plan. Information and authorization provided by the public authority, or by a party or guardian, is valid for the purposes of meeting enrollment requirements of the health plan.

Subd. 11. [EMPLOYER LIABILITY.] An employer or union that willfully fails to comply with the order is liable for any uninsured medical expenses incurred by the dependents while the dependents were eligible to be enrolled in the health plan and for any other premium costs incurred because the employer or union willfully failed to comply with the order. An employer or union that fails to comply with the order is subject to a finding of contempt and a $250 civil penalty under section 518.615 and is also subject to a civil penalty of $500 to be paid to the party entitled to reimbursement or the public authority. Penalties paid to the public authority are designated for child support enforcement services.

Subd. 12. [DISENROLLMENT; CONTINUATION OF COVERAGE; OPTIONS IN COVERAGE.] (a) A child for whom a party is required to provide health care coverage under this section must be covered as a dependent of the party until the child is

emancipated, until further order of the court, or as consistent with the terms of the coverage.

(b) The health carrier or employer or union may not disenroll or eliminate coverage for the child unless:

(1) the health carrier, employer, or union is provided satisfactory written evidence that the court order is no longer in effect;

(2) the child is or will be enrolled in comparable health care coverage through another health plan that will take effect no later than the effective date of the disenrollment;

(3) the employee is no longer eligible for dependent coverage; or

(4) the required premium has not been paid by or on behalf of the child.

(c) If disenrollment or elimination of coverage of a child under this subdivision is based upon nonpayment of premiums, the health plan must provide 30 days' written notice to the child's parents and the public authority, if the public authority is providing support enforcement services, prior to the disenrollment or elimination of coverage.

(d) A child enrolled in health care coverage under a qualified medical child support order, including a national medical support notice, under this section is a dependent and a qualified beneficiary under the Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA), Public Law 99-272. Upon expiration of the order, the child is entitled to the opportunity to elect continued coverage that is available under the health plan. Notice must be provided by the employer or union to the parties and the public authority, if it provides child support services, within ten days of the termination date.

(e) If the public authority provides support enforcement services and a plan administrator reports to the public authority that there is more than one coverage option available under the health plan, the public authority, in consultation with the custodial parent, must promptly select coverage from the available options. If the custodial parent fails to

cooperate in a reasonable period of time, the public authority must select the coverage from the available health plan options.

Subd. 13. [SPOUSAL OR FORMER SPOUSAL COVERAGE.] The court must require a noncustodial parent to provide dependent health care coverage for the benefit of a custodial parent if the noncustodial parent is ordered to provide dependent health care coverage for the parties' child and adding the custodial parent to the coverage results in no additional premium cost to the noncustodial parent.

Subd. 14. [PLAN REIMBURSEMENT.] The signature of a parent of the insured child is a valid authorization to a health plan for purposes of processing an insurance reimbursement payment to the provider of the medical services or to the parent if medical services have been prepaid by that parent.

Subd. 15. [CORRESPONDENCE AND NOTICE.] The health plan must send copies of all correspondence regarding the health care coverage to both parents.

Subd. 16. [DISCLOSURE OF INFORMATION.] (a) Parties must provide the public authority with the following information when support enforcement services are provided:

(1) information relating to dependent health care coverage or public coverage available for the benefit of the child for whom support is sought, including all information required to be included in a medical support order under this section;

(2) verification that application for court-ordered health care coverage was made within 30 days of the court's order; and

(3) the reason that a child is not enrolled in court-ordered health care coverage, if a child is not enrolled in coverage or subsequently loses coverage.

(b) Upon request from the public authority under section 256.978, an employer, union, or plan administrator, including an employer subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1169(a), must provide the public authority the following information:

(1) information relating to dependent health care coverage

available to a party for the benefit of the child for whom support is sought, including all information required to be included in a medical support order under this section; and

(2) information that will enable the public authority to determine whether a health plan is appropriate for a child, including, but not limited to, all available plan options, any geographic service restrictions, and the location of service providers.

(c) The employer, union, or plan administrator must not release information regarding one party to the other party. The employer, union, or health plan must provide both parties with insurance identification cards and all necessary written information to enable the parties to utilize the insurance benefits for the covered dependents.

(d) The public authority is authorized to release to a party's employer, union, or health plan information necessary to obtain or enforce medical support.

(e) An employee must disclose to an employer if medical support is required to be withheld under this section and the employer must begin withholding according to the terms of the order and under section 518.6111. If an employee discloses an obligation to obtain health care coverage and coverage is available through the employer, the employer must make all application processes known to the individual and enroll the employee and dependent in the plan under subdivision 10.

Subd. 17. [APPLICATION FOR IV-D SERVICES.] The public authority must take necessary steps to establish and enforce an order for medical support if the child receives public assistance or a party completes an application for services from the public authority.

Subd. 18. [ENFORCEMENT.] (a) Remedies available for the collection and enforcement of child support apply to medical support. For the purpose of enforcement, the costs of individual or group health or hospitalization coverage, dental coverage, all medical costs ordered by the court to be paid by either party, including health and dental insurance premiums

paid by the obligee because of the obligor's failure to obtain coverage as ordered, or liabilities established under this subdivision, are additional support.

(b) If a party owes a basic support obligation for a child and is ordered to carry health care coverage for the child, and the other party is ordered to contribute to the carrying party's cost for coverage, the carrying party's basic support payment must be reduced by the amount of the contributing party's contribution.

(c) If a party owes a basic support obligation for a child and is ordered to contribute to the other party's cost for carrying health care coverage for the child, the contributing party's basic support payment must be increased by the amount of the contribution.

(d) If a party owes no basic support obligation for a child and is ordered to contribute to the other party's cost for carrying health care coverage for the child, the contributing party is subject to income withholding under section 518.6111 for the amount of the contribution to the carrying party's cost for health care coverage for the child.

(e) If a party's court-ordered health care coverage for the child terminates and the child is not enrolled in other health care coverage or public coverage, and a modification motion is not pending, the public authority may remove the offset to the basic support obligation or terminate income withholding instituted against a parent with whom the child resides under section 518.6111, and must provide notice to the parties.

(f) A party may contest the action of the public authority to remove the offset to the basic support obligation or terminate income withholding if the party makes a written request for a hearing within 30 days after receiving written notice. If a party makes a timely request for a hearing, the public authority must schedule a hearing and give written notice of the hearing to the parties at least 14 days before the hearing. The written notice of the hearing must be sent by mail to the parties' last known addresses. The hearing must be

conducted in district court or in the expedited child support process if section 484.702 applies. The district court or child support magistrate must determine whether removal of the offset or termination of income withholding is appropriate and, if appropriate, the effective date for the removal or termination. If the party does not request a hearing, the court must order the offset or termination effective the first day of the month following termination of the child's health care coverage.

(g) A party who fails to carry court-ordered dependent health care coverage is liable for the child's uninsured medical expenses unless a court order provides otherwise. A party's failure to carry court-ordered coverage, or to provide other medical support as ordered, is a basis for modification of a support order under section 518.64.

(h) Payments by the health carrier or employer for services rendered to the dependents that are directed to a party not owed reimbursement must be endorsed over to and forwarded to the vendor or appropriate party or the public authority. A party retaining insurance reimbursement not owed to the party is liable for the amount of the reimbursement.

Subd. 19. [COLLECTING UNREIMBURSED AND UNINSURED MEDICAL EXPENSES.] (a) A request for reimbursement of unreimbursed and uninsured medical expenses must be initiated within two years of the date that the unreimbursed or uninsured medical expenses were incurred. The time period in this paragraph does not apply if the location of the other parent is unknown.

(b) A party seeking reimbursement of unreimbursed and uninsured medical expenses must mail written notice of intent to collect the expenses and an affidavit of health care expenses to the other party at the party's last known address. The affidavit of health care expenses must itemize and document the child's unreimbursed or uninsured medical expenses. A copy of the bills, receipts, and the insurance company's explanation of the benefits must be attached to the affidavit. The written notice must include a statement that the party has 30 days from the date of mailing the notice to pay in full, enter a payment

agreement, or file a motion requesting a hearing contesting the matter. If the public authority provides support enforcement services, the written notice also must include a statement that the requesting party must submit the amount due to the public authority for collection.

(c) If, after 30 days, the other party has not paid in full, the parties are unable to enter a payment agreement, or the other party has not filed a motion contesting the matter, and:

(1) if the public authority provides support enforcement services, the requesting party must send the original affidavit, a copy of the written notice, and copies of the bills, receipts, and the insurance company's explanation of the benefits to the public authority. The public authority must serve the other party with a notice of intent to enforce unreimbursed and uninsured medical expenses and file an affidavit of service by mail with the district court administrator. The notice must provide that unless the other party pays in full, enters into a payment agreement, or files a motion contesting the matter within 14 days of service of the notice, the public authority will commence enforcement under subdivision 20; or

(2) if the public authority does not provide support enforcement services, the requesting party may move the court for enforcement.

(d) If the party who receives notice under paragraph (b) or (c), clause (1), files a timely motion for a hearing contesting the requested reimbursement, a hearing must be scheduled in district court or in the expedited child support process if section 484.702 applies. The contesting party must provide the party seeking reimbursement and the public authority, if the public authority provides support enforcement services, with written notice of the hearing at least 14 days before the hearing by mailing notice of the hearing to the public authority and the party at the party's last known address. The party seeking reimbursement must file the original affidavit of health care expenses with the court at least five days before the

hearing. Based upon the evidence presented, the court must determine liability for the expenses and order that the liable party is subject to enforcement of the expenses as medical support arrears under subdivision 20.

Subd. 20. [ENFORCING AN ORDER FOR MEDICAL SUPPORT ARREARS.] (a) If a party liable for unreimbursed and uninsured medical expenses under subdivision 19 owes a basic support obligation to the party seeking reimbursement of the expenses, the expenses must be collected as medical support arrears as follows:

(1) if income withholding under section 518.6111 is available, medical support arrears must be withheld from a liable party's income or wages under section 518.6111, subdivision 10; or

(2) if income withholding under section 518.6111 is not available, a liable party must pay medical support arrears under the terms of a payment agreement under section 518.553. If a liable party fails to enter into or comply with a payment agreement, the party seeking reimbursement or the public authority, if it provides support enforcement services, may schedule a hearing to have a court order payment. The party seeking reimbursement or the public authority must provide the liable party with written notice of the hearing at least 14 days before the hearing.

(b) If a party liable for unreimbursed and uninsured medical expenses does not owe a basic support obligation to the party seeking reimbursement, and the party seeking reimbursement owes the liable party child support arrears, the liable party's medical support arrears under subdivision 19 must be deducted from the amount of the child support arrears. If a liable party owes medical support arrears after deducting the amount owed from the amount of the child support arrears owed by the party seeking reimbursement, it must be collected as follows:

(1) if the party seeking reimbursement owes a basic support obligation to the liable party, the basic support obligation must be reduced by 20 percent until the medical support arrears

are satisfied;

(2) if the party seeking reimbursement does not owe a basic support obligation to the liable party, the liable party's income must be subject to income withholding under section 518.6111 for an amount required under section 518.553 until the medical support arrears are satisfied; or

(3) if the party seeking reimbursement does not owe a basic support obligation, and income withholding under section 518.6111 is not available, payment of the medical support arrears must be required under a payment agreement under section 518.553.

Sec. 5. Minnesota Statutes 2004, section 518.54, subdivision 1, is amended to read:

Subdivision 1. [TERMS.] For the purposes of sections 518.1711 and 518.54 to 518.66, the terms defined in this section ~~shall~~ have the meanings ~~respectively ascribed to~~ given them.

Sec. 6. Minnesota Statutes 2004, section 518.54, subdivision 4a, is amended to read:

Subd. 4a. [SUPPORT ORDER.] (a) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides ~~for monetary~~:

(1) basic support~~,~~;

(2) child care~~,~~ support;

(3) medical support, including expenses for confinement and pregnancy, arrearages, or reimbursement~~,~~; and ~~that~~

(4) may include related costs and fees, interest and penalties, income withholding, and other relief. ~~This~~

(b) The definition in paragraph (a) applies to orders issued under this chapter and chapters 256, 257, ~~and~~ 393, 518B, 518C, and 588.

Sec. 7. Minnesota Statutes 2004, section 518.54, is amended by adding a subdivision to read:

Subd. 4b. [BASIC SUPPORT.] "Basic support" means the dollar amount ordered to be paid by the obligor for the cost of a child's housing, food, clothing, transportation, education, and other expenses, including, but not limited to, personal care items, entertainment, and reading materials. Basic support does not include monetary contributions for a child's private school tuition, child care expenses, and medical and dental expenses.

Sec. 8. Minnesota Statutes 2004, section 518.54, is amended by adding a subdivision to read:

Subd. 4c. [CHILD CARE SUPPORT.] "Child care support" means the dollar amount ordered to be paid by the obligor for work-related and education-related child care costs.

Sec. 9. Minnesota Statutes 2004, 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, unemployment benefits, 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~~, in-kind payments received by the parties in the course of employment, self-employment, or operation of a business if the payments reduce the parties' living expenses, and all wages earned by a parent who receives an MFIP cash grant under chapter 256J. Income does not include maintenance ordered under chapters 518 and 518B.

Sec. 10. Minnesota Statutes 2004, section 518.54, is amended by adding a subdivision to read:

Subd. 6a. [GROSS INCOME ADJUSTED FOR CHILD SUPPORT.] "Gross income adjusted for child support" under section 518.5416, means income minus deductions, if applicable, for (1) ordinary and necessary business expenses from self-employment and (2) other child support or maintenance orders, not including orders for support or maintenance debt or arrears.

Sec. 11. Minnesota Statutes 2004, section 518.54, is

amended by adding a subdivision to read:

Subd. 6b. [INCOME AVAILABLE FOR CHILD SUPPORT.] "Income available for child support" means a parent's gross income adjusted for child support minus a deduction under subdivision 6c for any other legally dependent child.

Sec. 12. Minnesota Statutes 2004, section 518.54, is amended by adding a subdivision to read:

Subd. 6c. [OTHER LEGALLY DEPENDENT CHILD.] (a) "Other legally dependent child" means a child:

(1) whom the parent has the legal duty to support;

(2) who is not a subject of the action for child support;

(3) for whom the parent is not ordered to pay child support; and

(4) for whom no other person has court-ordered sole physical custody.

(b) The court must deduct an amount from a parent's income for a legally dependent child. The amount deducted from income for each legally dependent child must be computed using the following method:

(1) determine 120 percent of the federal poverty guidelines for a family size equal to two parents plus each legally dependent child;

(2) divide the amount determined under clause (1) by the family size determined under clause (1);

(3) multiply the amount calculated under clause (2) by the number of legally dependent children; and

(4) divide the amount calculated under clause (3) by two to determine the deduction amount for one parent. The amount determined for one parent must be divided by 12 to determine the amount of the deduction from a parent's monthly income.

(c) The commissioner of human services must publish a table listing the amount of the deduction for each legally dependent child by family size and must update the table for changes to the federal poverty guidelines by July 1 of each year.

Sec. 13. Minnesota Statutes 2004, section 518.54, subdivision 8, is amended to read:

Subd. 8. [OBLIGOR.] "Obligor" means a person ~~obligated~~ ordered 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~~ 518.5416 unless the court makes specific written findings to overcome this presumption. For purposes of ordering medical support under section 518.1711, an obligor may include a custodial parent.

Sec. 14. [518.5411] [CHILD SUPPORT ORDERS.]

Subdivision 1. [ORDER.] After receipt of the notice of proceedings for dissolution, legal separation, determination of parentage, or custody of a child, the court must enter a support order as provided in section 518.5416. The support order must contain the amounts ordered, if any, for basic support, child care support, and medical support. The court may order either or both parents owing a duty of support to pay an amount reasonable or necessary for the child's support. The court may not consider marital misconduct in setting support.

Subd. 2. [AGREEMENTS.] The court must review a child support stipulation of the parties to ensure it serves the best interests of the child. The court may refuse to accept or may alter an agreement that does not conform with the requirements of section 518.5416 or that is otherwise not in the best interests of the child.

Subd. 3. [SPECIFIC DOLLAR AMOUNT.] The court must order child support in a specific dollar amount. A support order may be 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.

Sec. 15. [518.5412] [EXCHANGE OF INFORMATION.]

Subdivision 1. [DOCUMENTATION.] The parties must timely serve and file documentation of earnings and income. Documentation of earnings and income 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, unemployment benefits statements, workers' compensation statements, and all other documents providing verification of income received over a longer period than the most recent three months.

Subd. 2. [TAX RETURNS.] At any time after an action seeking support has been commenced or when a support order is in effect, a party or the public authority may require the other party to provide a copy of the party's most recent federal tax returns that were filed with the Internal Revenue Service. The party must provide a copy of the tax returns within 30 days of receipt of the request unless the request is not made in good faith. In the absence of good cause, a request under this subdivision may not be made more than once every two years.

Subd. 3. [NOTICE TO PUBLIC AUTHORITY.] The petitioner must notify the public authority of all proceedings for dissolution, legal separation, determination of parentage, or custody of a child if either party is receiving public assistance or applies for it after the commencement of the proceeding. The notice must contain the full names, Social Security numbers, and birth dates of the parties to the proceeding.

Subd. 4. [FAILURE OF NOTICE.] If the court in a dissolution, legal separation, or determination of parentage proceeding, finds before issuing the order for judgment and decree that notification has not been given to the public authority, the court must set support according to the guidelines in sections 518.5413 to 518.5416. In proceedings in which notification has not been made under this section and in which the public authority determines that the support ordered is lower than required by the guidelines in sections 518.5413 to 518.5416, the public authority must move the court for a redetermination of the support payments ordered so that the support payments comply with the guidelines.

Sec. 16. [518.5413] [INCOME.]

Subdivision 1. [SOURCES.] Sources of income include

"income" as defined in section 518.54, subdivision 6.

Subd. 2. [EXCLUSIONS.] Benefits received from public assistance programs that are not income under this section include, but are not limited to:

(1) benefits under title IV-A of the Social Security Act;

(2) supplemental security income under Title XVI of the Social Security Act;

(3) MFIP under chapter 256J;

(4) any form of general assistance and aid under chapter 256D;

(5) any form of medical assistance under chapter 256B;

(6) MinnesotaCare under chapter 256L;

(7) child care assistance provided through the child care fund under chapter 119B;

(8) food stamps;

(9) Section 8 certificates and vouchers programs; and

(10) earned income tax credits and working family credits.

Subd. 3. [INCOME OF OTHERS.] Income of a party's spouse or other household member is not income under this section.

Subd. 4. [OVERTIME.] (a) Income does not include compensation received by a party for employment in excess of a 40-hour work week if:

(1) the excess employment began after the filing of the petition for dissolution but is an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the action to establish or modify support;

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

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

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

(b) The court may presume that a party with seasonal or intermittent income who works periods in excess of a 40-hour work week, but who works a substantially normal number of hours

over the course of a year, is working within the normal range of hours worked.

Subd. 5. [CHILD SUPPORT FOR OTHER LEGALLY DEPENDENT CHILD.] Child support received for any other legally dependent child is not income under this section.

Subd. 6. [SELF-EMPLOYMENT; INDEPENDENT CONTRACTORS.] Self-employed persons or independent contractors may deduct ordinary and necessary expenses when calculating gross income adjusted for child support under this section. Ordinary and necessary expenses include what would otherwise be the employer's share of the contributions under the Federal Insurance Contributions Act (FICA), United States Code, title 26, subtitle C, chapter 21, subchapter A, sections 3101 to 3126. 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. Income available for child support under this section may be different from taxable income.

Sec. 17. [518.5414] [IMPUTED INCOME.]

Subdivision 1. [DEFINITION.] "Imputed income" means the estimated earning ability of a parent based on the parent's prior earnings history, education, and job skills and on the availability of jobs within the community for an individual with the parent's qualifications.

Subd. 2. [NONAPPEARANCE OF A PARTY.] 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 must set income for that parent based on credible evidence before the court or under subdivision 3. 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 Department of

Employment and Economic Development under section 268.044.

Subd. 3. [VOLUNTARY UNEMPLOYMENT OR UNDEREMPLOYMENT.] (a) 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, support must be calculated based on a determination of imputed income.

(b) A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that:

(1) the unemployment or underemployment is temporary and will ultimately lead to an increase in income;

(2) the unemployment or underemployment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child;

(3) the parent is a recipient of public assistance as defined under section 256.741, subdivision 1; or

(4) the parent is physically or mentally incapacitated.

Subd. 4. [INSUFFICIENT INFORMATION.] If there is insufficient information to determine actual income or to impute income under subdivision 2 or 3, the court may calculate 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.

Subd. 5. [PARENT PROVIDING AT-HOME CARE TO CHILD.] The court must consider the following factors when determining whether a parent is voluntarily unemployed or underemployed when the parent stays at home to care for a child who is a subject of the order for child support:

(1) the parties' parenting and child care arrangement prior to the action for child support;

(2) the stay-at-home parent's employment history, including recency of employment and earnings, as well as the availability of jobs within the community for an individual with the parent's qualifications;

(3) the relationship between the employment-related expenses, including child care, cost for transportation,

suitable clothing, and other items required for the parent to be employed, and the income that the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;

(4) the age and health of the child, including whether the child is physically or mentally disabled; and

(5) the availability of appropriate child care providers.

Sec. 18. [518.5415] [PRESUMPTIVE CHILD SUPPORT ORDERS; GENERAL.]

Subdivision 1. [REBUTTABLE PRESUMPTION.] The guidelines in sections 518.5413 to 518.5416 are a rebuttable presumption and must be used in all cases when establishing or modifying child support.

Subd. 2. [BASIC SUPPORT INCOME LIMIT.] The dollar amount of the income limit in the basic support schedule in subdivision 4 must be adjusted on July 1 of every even-numbered year to reflect cost-of-living changes. The commissioner of human services must select the index for the adjustment from the indices listed in section 518.641. The commissioner of human services must make the changes in the dollar amount required by this subdivision available to courts and the public on or before April 30 of the year in which the amount is to change.

Subd. 3. [CHILD'S INSURANCE BENEFIT.] In establishing or modifying child support, if a child receives a child's insurance benefit under United States Code, title 42, section 402, because the obligor is entitled to old age or disability insurance benefits, the amount of support ordered must be offset by the amount of the child's benefit. The court must make findings regarding the obligor's income from all sources, the child support amount calculated under section 518.5416, the amount of the child's benefit, and the obligor's child support obligation. A benefit received by the child in a given month in excess of the child support obligation must not be treated as an arrearage payment or a future payment.

Sec. 19. [518.5416] [CALCULATING CHILD SUPPORT.]

Subdivision 1. [WORKSHEET.] The commissioner of human

services must create a worksheet for calculation of child support under this section. The worksheet must incorporate the methodology for calculating child support as provided in this section. The commissioner must produce and include with the worksheet all tables or charts necessary for determining basic support, child care support, and medical support, and the deduction for any other legally dependent child. The commissioner must update the worksheet and accompanying tables or charts on July 1 of each year.

Subd. 2. [CALCULATING GROSS INCOME ADJUSTED FOR CHILD SUPPORT.] Monthly gross income adjusted for child support must be calculated for both the obligor and obligee under section 518.54, subdivision 6a.

Subd. 3. [CALCULATING SHARED RESPONSIBILITY.] (a) The court must calculate the amount of the obligor's and obligee's proportionate share of income available for child support by dividing each party's income available for child support under section 518.54, subdivision 6b, by the sum of the obligor's and obligee's income available for child support under section 518.54, subdivision 6b.

(b) The obligor's and obligee's shared responsibility for basic support is based upon the sum of each party's income available for child support under section 518.54, subdivision 6b, and the number of children who are parties to the action for child support. The amount of the obligor's and obligee's shared responsibility for basic support is determined using the schedule of basic support under subdivision 4. If the sum total of the obligor's and obligee's monthly income available for child support falls between two income levels in the schedule, the court must use the support amount for the lower income level.

(c) The court must calculate the obligor's and obligee's proportionate responsibility for basic support by multiplying each party's proportionate share of income available for child support under paragraph (a) by the amount of the obligor's and obligee's shared responsibility for basic support under paragraph (b).

(d) The court must order basic support in the amount of the obligor's proportionate responsibility for basic support under paragraph (c). It is presumed that the obligee spends the amount of the obligee's proportionate responsibility for child support under paragraph (c) directly on the child.

(e) If the sum total of the obligor's and obligee's income available for child support exceeds the income limit in effect under section 518.5415, subdivision 3, the court must order basic support in an amount at least equal to the income limit in effect.

Subd. 4. [BASIC SUPPORT; SCHEDULE.] (a) Unless otherwise agreed to by the parents and approved by the court, the court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly income, as determined under subdivision 3.

(b) For parents with a combined monthly income less than or equal to 100 percent of the federal poverty guidelines amount for two people, the commissioner of human services must determine the percentages in this paragraph by taking two times the minimum basic support amount under subdivision 11 divided by 100 percent of the federal poverty guidelines amount for two people. For all other parents, basic support must be computed using the following schedule, prepared based on 2001 United States Department of Agriculture expenditure data:

Parents' Combined Monthly Income	Number of Children					
	One	Two	Three	Four	Five	Six
Below $1,000	10.0%	16.1%	18.6%	21.6%	25.1%	29.1%
$1,000 - $1,499	10.0%	16.1%	18.6%	21.6%	25.1%	29.1%
$1,500 - $1,999	19.4%	31.3%	36.2%	42.0%	48.7%	56.5%
$2,000 - $2,499	28.7%	46.3%	53.5%	62.1%	72.0%	83.5%
$2,500 - $2,999	25.0%	40.3%	46.5%	53.9%	62.6%	72.6%
$3,000 - $3,499	22.5%	36.3%	41.9%	48.6%	56.4%	65.4%
$3,500 - $3,999	20.7%	33.4%	38.5%	44.7%	51.8%	60.1%
$4,000 - $4,499	19.4%	31.2%	36.1%	41.9%	48.6%	56.3%

$4,500 - $4,999	18.3%	29.6%	34.1%	39.6%	45.9%	53.2%
$5,000 - $5,499	17.5%	28.2%	32.6%	37.8%	43.9%	50.9%
$5,500 - $5,999	16.8%	27.1%	31.3%	36.3%	42.1%	48.9%
$6,000 - $6,499	16.2%	26.2%	30.2%	35.0%	40.6%	47.1%
$6,500 - $6,999	15.8%	25.4%	29.3%	34.0%	39.4%	45.7%
$7,000 - $7,499	15.4%	24.8%	28.6%	33.2%	38.5%	44.6%
$7,500 - $7,999	15.0%	24.2%	27.9%	32.4%	37.5%	43.5%
$8,000 - $8,499	14.7%	23.7%	27.3%	31.7%	36.7%	42.6%
$8,500 - $8,999	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$9,000 - $9,499	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$9,500 - $9,999	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$10,000 - $10,499	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$10,500 - $10,999	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$11,000 - $11,499	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$11,500 - $11,999	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$12,000 - $12,499	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$12,500 - $12,999	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$13,000 - $13,499	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$13,500 - $13,999	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$14,000 - $14,499	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$14,500 - $14,999	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%
$15,000 or higher	14.4%	23.3%	26.8%	31.1%	36.1%	41.8%

(c) The commissioner of human services must compute and publish a schedule of basic support amounts calculated using the percentages in paragraph (b). The schedule must show basic support amounts for combined monthly income increments of not more than $100. The commissioner must determine the percentages for each income increment by interpolating between the percentages in paragraph (b). The commissioner may disregard a fractional part of a dollar unless it amounts to 50 cents or more, in which case the commissioner may increase the amount by $1.

Subd. 5. [SEPARATE HOUSEHOLD ADJUSTMENT.] After determining each parent's basic support under subdivision 1, the court must reduce the basic support of each parent by ten

percent for one child, 15 percent for two children, and 20 percent for three or more children for whom child support is ordered.

Subd. 6. [CHILD CARE SUPPORT; CHILD CARE COSTS.] Unless otherwise agreed to by the parties and approved by the court, the court must order that the child care costs be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly income, as determined under subdivision 3.

Subd. 7. [CHILD CARE SUPPORT; LOW-INCOME OBLIGOR.] (a) If the obligor's income as determined under section 518.54, subdivision 6b, meets the income eligibility requirements for child care assistance under the basic sliding fee program under chapter 119B, the court must order the obligor to pay the lesser of the following amounts:

(1) the amount of the obligor's monthly co-payment for child care assistance under the basic sliding fee schedule established by the commissioner of education under chapter 119B, based on an obligor's monthly gross income as determined under section 518.54, subdivision 6b, and the size of the obligor's household. For purposes of this subdivision, the obligor's household includes the obligor and the number of children for whom child support is being ordered; or

(2) the amount of the obligor's child care obligation under subdivision 6.

(b) The commissioner of human services must publish a table with the child care assistance basic sliding fee amounts and update the table for changes to the basic sliding fee schedule by July 1 of each year.

(c) The court must require verification of employment or school attendance and documentation of child care expenses from the obligee and the public authority, if applicable.

(d) If child care expenses fluctuate during the year because of the obligee's seasonal employment or school attendance or extended periods of parenting time with the obligor, the court must determine child care expenses based on

an average monthly cost.

(e) 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.

(f) The court may allow the parent with whom the child does not reside to care for the child while the parent with whom the child resides is working or attending school, as provided in section 518.175, subdivision 8. Allowing the parent with whom the child does not reside to care for the child under section 518.175, subdivision 8, is not a reason to deviate from the guidelines.

Subd. 8. [CHANGE IN CHILD CARE.] (a) When a court order provides for child care expenses and the public authority provides child support enforcement services, the public authority must suspend collecting the amount allocated for child care expenses when:

(1) either party informs the public authority that no child care costs are being incurred; and

(2) the public authority verifies the accuracy of the information. The public authority will resume collecting child care expenses when either party provides information that child care costs have resumed.

(b) If the parties provide conflicting information to the public authority regarding whether child care expenses are being incurred, the public authority will continue or resume collecting child care expenses. Either party, by motion to the court, may challenge the suspension or resumption of the collection of child care expenses. If the public authority suspends collection activities for the amount allocated for child care expenses, all other provisions of the court order remain in effect.

(c) In cases where there is a substantial increase or decrease in child care expenses, the parties may modify the order under section 518.64.

Subd. 9. [MEDICAL SUPPORT.] (a) In ordering medical support under this section, the court must comply with section

518.1711.

(b) If the obligor's gross income adjusted for child support is equal to or greater than 150 percent of the federal poverty guidelines per month, and if the obligor or obligee, or both, have appropriate health care coverage, the court must calculate medical support as follows:

(1) the court must determine the cost of the child's health care coverage;

(2) unless the child is receiving medical assistance under chapter 256B or MinnesotaCare under chapter 256L, the court must determine the obligor's and obligee's proportionate responsibility for medical support by multiplying the amount under clause (1) by the amount of the obligor's and obligee's proportionate responsibility for child support under subdivision 4, paragraph (c); and

(3) the court must order the obligor and obligee to pay for the child's uninsured and unreimbursed medical expenses by multiplying the amount of the expenses by the amount of the obligor's and obligee's proportionate responsibility for child support under subdivision 4, paragraph (c).

(c) If a party's obligation for the health care coverage premiums is greater than five percent of the party's income available for child support under subdivision 4, paragraph (b), the court may order the other party to contribute more for the cost of the premiums, if doing so would not result in extreme hardship to that party. If an additional contribution causes a party extreme hardship, the court must order the obligor to contribute the lesser of the two amounts under paragraph (d).

(d) If the obligor's gross income adjusted for child support is equal to or greater than 150 percent of the federal poverty guidelines per month, and if the obligor or obligee does not have appropriate health care coverage under section 518.1711, subdivision 3, the court must order the obligor to pay the lesser of the following amounts for medical support:

(1) the monthly amount the obligor would pay for the child's premiums for a household size equal to the obligor plus

the child who is a subject of the order for child support under the MinnesotaCare program's sliding fee scale that is established by the commissioner of human services under chapter 256L, if the obligor's income available for child support under subdivision 4, paragraph (a), meets the income eligibility requirements for the MinnesotaCare program under chapter 256L. The obligor's monthly premium payment must not exceed five percent of the obligor's income available for child support under subdivision 4, paragraph (a); or

(2) five percent of the obligor's monthly income available for child support under subdivision 4, paragraph (a), if the obligor's income available for child support does not meet the eligibility requirements for the MinnesotaCare program under chapter 256L.

Subd. 10. [SELF-SUPPORT ADJUSTMENT.] (a) If the sum of the obligor's basic support, child care support, and medical support obligation leaves the obligor with remaining income in an amount less than 120 percent of the federal poverty guidelines for one person, the court must reduce the obligor's child support obligation by an amount equal to the lesser of:

(1) the difference between the obligor's remaining income and 120 percent of the federal poverty guidelines amount; or

(2) the obligor's total child support obligation. If the self-support adjustment results in an order amount less than $50 per month for one or two children or $75 per month for three or more children, the court must order basic support under subdivision 2.

(b) The court must apply the reduction to the obligor's child support obligation in the following order:

(1) medical support obligation;

(2) child care support obligation; and

(3) basic support obligation.

Subd. 11. [MINIMUM BASIC SUPPORT AMOUNT.] (a) If the reduction under subdivision 10 equals the sum of the obligor's basic support, child care support, and medical support obligation, the court must order support as follows:

(1) for one or two children, the obligor's basic support obligation is $50 per month; or

(2) for three or more children, the obligor's basic support obligation is $75 per month.

(b) If the court orders the obligor to pay the minimum basic support amount under this subdivision, the obligor is presumed unable to pay child care support and medical support.

(c) If the court finds that an obligor receives no income and completely lacks the ability to earn income, the minimum basic support amount under this subdivision does not apply.

Subd. 12. [SUBSTANTIAL UNFAIRNESS TEST.] (a) If the obligee receives public assistance as defined under section 256.741, subdivision 1, or if the obligee's monthly gross income adjusted for child support is equal to or greater than 120 percent of the federal poverty guidelines for a family size equal to the obligee plus the number of children who are subjects of the order for child support, the court may reduce the obligor's child support obligation by the amount calculated as follows:

(1) calculate the sum of the obligor's proportionate responsibility for basic support, child care support, and medical support;

(2) subtract the amount calculated under clause (1) from the obligor's monthly gross income adjusted for child support under subdivision 2; and

(3) if the amount calculated under clause (2) is less than 120 percent of the federal poverty guidelines for one person, subtract the amount from 120 percent of the federal poverty guidelines for one person and reduce the support order as provided in paragraph (b).

(b) In reducing the amount of the obligor's child support obligation, the court must subtract the amount calculated under paragraph (a), clause (3), from the obligor's medical support obligation. If the obligor's medical support obligation is less than the amount calculated under paragraph (a), clause (3), the court must then subtract the remaining amount from the obligor's

child care support obligation. The court must then subtract any remaining amount from the obligor's basic support obligation.

(c) The obligor's basic support obligation after reductions under this subdivision must be equal to or greater than the presumptive minimum for basic support under subdivision 11.

Subd. 13. [ORDER FOR COMMUNITY SERVICES.] If the court finds that the obligor earns 120 percent of the federal poverty guidelines or less per month and does not have the ability to provide support under this section, the court may order the obligor to perform community service in addition to paying the presumptive minimum for basic support under subdivision 3. In ordering community service under this subdivision, the court must consider whether the obligor has the physical capability of performing community service and must order community service that is appropriate for the obligor's abilities.

Sec. 20. [518.5417] [DEVIATIONS.]

Subdivision 1. [GENERAL FACTORS.] In addition to the provisions relating to the amount of child support ordered under sections 518.5413 to 518.5416, the court must consider all relevant factors, including the following, in setting or modifying child support or in determining whether to deviate from that amount:

(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 section 518.5413, subdivision 4;

(2) the special needs of the child to be supported, including:

(i) the physical and emotional condition of the child;

(ii) any impairment, limitation, or disability of the child, and the need for special services or education; and

(iii) any special ability or talent of the child and the cost of educating or training that ability or talent;

(3) the standard of living the child would enjoy if the parents were currently living together, recognizing that the parents have separate households;

(4) the age and health of the child and each parent;

(5) the debts and liabilities of the child and each parent as provided in subdivision 2;

(6) each parent's eligibility for or receipt of public assistance as defined under section 256.741, subdivision 1. A court may deviate upward from the amount of child support under the guidelines if a parent does not receive the public assistance that the parent is eligible to receive;

(7) the child's private school tuition costs if the child is enrolled in a private school before a parent brings the action for child support;

(8) the best interests of the child; and

(9) other factors that the court considers relevant.

Subd. 2. [DEBT.] (a) 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 256.741;

(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 must 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.

(b) A schedule prepared under paragraph (a), clause (3), must 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.

(c) Any further departure below the guidelines that is based on a consideration of debts owed to private creditors must

not exceed 18 months in duration, after which the support must increase automatically to the level ordered by the court. Nothing in this section must be construed to prohibit one or more step increases in support to reflect debt retirement during the 18-month period.

(d) If payment of debt is ordered under this section, the payment must be ordered to be in the nature of child support.

Subd. 3. [EVIDENCE.] The court may receive evidence on the factors in this section to determine if the guidelines should be exceeded or modified in a particular case.

Subd. 4. [NO DEVIATION WHEN PAYMENTS ARE ASSIGNED TO THE PUBLIC AUTHORITY EXCEPT FOR EXTREME HARDSHIP.] If the child support payments are assigned to the public authority under section 256.741, 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.

Sec. 21. [518.5418] [WRITTEN FINDINGS.]

Subdivision 1. [WORKSHEET.] The court must attach the completed child support worksheet under section 518.5416 to the child support order.

Subd. 2. [NO DEVIATION.] If the court does not deviate from the guidelines, the court must make written findings concerning the amount of the parties' income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the determination of child support.

Subd. 3. [DEVIATION.] (a) If the court deviates from the guidelines, the court must make written findings giving the amount of child support calculated under the guidelines and the reasons for the deviation, and must specifically address the criteria for deviation under section 518.5417, including how the deviation serves the best interests of the child.

(b) 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 authority

under section 256.741, the court may deviate downward only as provided in section 518.5417, subdivision 4. Nothing in this section prohibits the court from deviating in other cases.

Sec. 22. [518.5421] [ASSIGNMENT.]

Subdivision 1. [GENERAL.] The court must direct that all payments ordered for maintenance and support be made to the public authority so long as the obligee is receiving or has applied for public assistance or has applied for child support and maintenance collection services. One public authority may act on behalf of another public authority. 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 support, maintenance, and collection on judgments. Amounts received by the public authority greater than the amount granted to the obligee must be remitted to the obligee.

Subd. 2. [JUDGMENTS.] The public authority is joined as a party in each case in which rights are assigned under section 256.741, subdivision 2. The court administrator must enter and docket a judgment obtained by operation of law under section 548.091, subdivision 1, in the name of the public authority 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 must grant judgment in favor of, and in the name of, the public authority to the extent that the arrearages are assigned. After filing notice of an assignment with the court administrator, who must enter the notice in the docket, the public authority 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.

Subd. 3. [IV-D CASES.] The public authority is a real party in interest in any IV-D case where there has been an assignment of support. In all other IV-D cases, the public authority has a pecuniary interest, as well as an interest in the welfare of the children involved in those cases. The public

authority may intervene as a matter of right in those cases to ensure that child support orders are obtained and enforced which provide for an appropriate and accurate level of basic support, medical support, and child care support. If the public authority participates in a IV-D case where the action taken by the public authority requires the use of an attorney's services, the public authority must be represented by an attorney consistent with the provisions in section 518.255.

Sec. 23. Minnesota Statutes 2004, section 518.551, subdivision 5c, is amended to read:

Subd. 5c. [~~CHILD-SUPPORT~~ GUIDELINES ~~TO-BE-REVIEWED-EVERY FOUR-YEARS~~ REVIEW.] No later than ~~1994~~ 2008 and every four years after that, the Department of Human Services ~~shall~~ must conduct a review of the child support guidelines.

Sec. 24. Minnesota Statutes 2004, section 518.553, is amended to read:

518.553 [PAYMENT AGREEMENTS.]

In proposing or approving proposed written payment agreements for purposes of ~~section 518.551~~ sections 518.1711 and 518.5416, the court, a child support magistrate, or the public authority shall take into consideration the amount of the arrearages, the amount of the current support order, any pending request for modification, and the earnings of the obligor. For the purpose of section 518.1711, an obligor may include a custodial parent. The court, child support magistrate, or public authority shall consider the individual financial circumstances of each obligor in evaluating the obligor's ability to pay any proposed payment agreement and shall propose a reasonable payment agreement tailored to the individual financial circumstances of each obligor. The court, child support magistrate, or public authority also shall consider a graduated payment plan tailored to the individual financial circumstances of each obligor.

Sec. 25. Minnesota Statutes 2004, section 518.6111, subdivision 1, is amended to read:

Subdivision 1. [DEFINITIONS.] (a) For the purpose of this

section, the following terms have the meanings provided in this subdivision unless otherwise stated.

(b) "Payor of funds" means any person or entity that provides funds to an obligor, including an employer as defined under chapter 24 of the Internal Revenue Code, section 3401(d), an independent contractor, payor of worker's compensation benefits or unemployment benefits, or a financial institution as defined in section 13B.06.

(c) "Business day" means a day on which state offices are open for regular business.

(d) "Arrears" means amounts owed under a support order that are past due.

(e) "Obligor" means a person obligated to pay maintenance or support, and for the purpose of section 518.1711, may include a custodial parent.

Sec. 26. Minnesota Statutes 2004, 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 the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (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~~ 518.1711; 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. Implementation of section 518.5416 is not a basis for modification under this section. The fact that a parent has had additional children after the entry of a child support order is not a basis for modification under this section.

~~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.~~

(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~~ sections 518.5413 to 518.5416, 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~~ 518.1711 are not enforceable by the public authority or ~~the obligee~~ a parent;

(3) health care coverage ordered ~~under section 518.171 is not available to the child for whom the order is established by the parent ordered to provide~~ is no longer appropriate under section 518.1711; 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~~ 518.5416, 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, including interest that accrued ~~pursuant to~~ under section 548.091, 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;

(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;

(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; or

(4) the party seeking modification was institutionalized or incarcerated for an offense other than nonsupport of a child during the period for which retroactive modification is sought and lacked the financial ability to pay the support ordered during that time period. In determining whether to allow the retroactive modification, the court shall consider whether and when a request was made to the public authority for support modification.

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. 27. Minnesota Statutes 2004, section 518.641, subdivision 1, is amended to read:

Subdivision 1. [REQUIREMENT.] (a) An order establishing, modifying, or enforcing maintenance or child support <u>or medical support under section 518.1711</u> shall provide for a biennial adjustment in the amount to be paid based on a change in the cost of living. An order that provides for a cost-of-living

adjustment shall specify the cost-of-living index to be applied and the date on which the cost-of-living adjustment shall become effective. The court may use the Consumer Price Index for all urban consumers, Minneapolis-St. Paul (CPI-U), the Consumer Price Index for wage earners and clerical, Minneapolis-St. Paul (CPI-W), or another cost-of-living index published by the Department of Labor which it specifically finds is more appropriate. Cost-of-living increases under this section shall be compounded. The court may also increase the amount by more than the cost-of-living adjustment by agreement of the parties or by making further findings.

(b) The adjustment becomes effective on the first of May of the year in which it is made, for cases in which payment is made to the public authority. For cases in which payment is not made to the public authority, application for an adjustment may be made in any month but no application for an adjustment may be made sooner than two years after the date of the dissolution decree. A court may waive the requirement of the cost-of-living clause if it expressly finds that the obligor's occupation or income, or both, does not provide for cost-of-living adjustment or that the order for maintenance or child or medical support has a provision such as a step increase that has the effect of a cost-of-living clause. The court may waive a cost-of-living adjustment in a maintenance order if the parties so agree in writing. The commissioner of human services may promulgate rules for child support adjustments under this section ~~in accordance with~~ under the rulemaking provisions of chapter 14. Notice of this statute must comply with section 518.68, subdivision 2.

Sec. 28. Minnesota Statutes 2004, section 518.641, subdivision 3, is amended to read:

Subd. 3. [RESULT OF HEARING.] (a) If, at a hearing ~~pursuant to~~ under this section regarding a maintenance or child support adjustment, the obligor establishes an insufficient cost of living or other increase in income that prevents fulfillment of the adjusted maintenance or child support obligation, the

court or child support magistrate may direct that all or part of the adjustment not take effect. If, at the hearing, the obligor does not establish this insufficient increase in income, the adjustment shall take effect as of the date it would have become effective had no hearing been requested.

(b) If, at a hearing under this section regarding a medical support adjustment, the obligor establishes that the adjustment exceeds the actual cost of the health care coverage, the court may direct that all or part of the adjustment not take effect. If, at the hearing, the obligor does not establish that the adjusted medical support exceeds the actual cost of health care coverage, the adjustment must take effect as of the date it would have become effective had no hearing been requested.

Sec. 29. [REVISOR INSTRUCTION.]

The revisor of statutes must renumber the sections in Minnesota Statutes listed in column A as indicated in column B and correct cross-references to those sections throughout Minnesota Statutes and Minnesota Rules.

A	B
518.551, subd. 5c	518.5419
518.551, subd. 5d	518.5420

The revisor of statutes must change the headnote for Minnesota Statutes, section 518.551, to "ENFORCEMENT."

Sec. 30. [REPEALER.]

Minnesota Statutes 2004, sections 518.171; and 518.551, subdivisions 1, 5, 5a, 5b, 5e, 5f, 6, 7, 9, and 11, are repealed.

Sec. 31. [EFFECTIVE DATE.]

This act is effective July 1, 2006."