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Chapter 101 – Family law policy provisions (HF 3204/SF 2759)

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Chapter 101 makes several changes to family law provisions, including parenting time and custody, spousal maintenance, antenuptial and postnuptial agreements, and assisted reproduction.

Article 1 Parenting Time

Section 1 [§257.025; Custody and parenting time disputes] requires the court to consider section 518.175 in all parenting time and custody proceedings and provides that the unmarried status of the parents is not determinative of parenting time.

Section 2 [§518.0011; Public policy statement] provides that the policy of this state is to ensure frequent and substantial contact with the child's parents subject to the best interests of the child; ensure that parents and caregivers provide a safe and nurturing environment; and encourage parents to share the rights and duties of raising their child.

Section 3 [§518.131, subd. 1; Permissible orders] requires the court to consider the child's parenting time with each parent before the pending action commenced. If the child's access to a parent was limited before the pending action commenced, the court must determine the child's custody and parenting time in a manner that supports the child's opportunity to develop a relationship with both parents.

Section 4 [§518.131, subd. 11; Cases given priority for temporary relief] provides that the court must give priority for scheduling and holding an expedited hearing for temporary relief if a party alleges that they have been denied parenting time with a child for at least 14 consecutive days or the party has been unreasonably denied access to necessary financial resources or support during a pending dissolution. The priority hearing must be held within 30 days of the party's request.

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Section 5 [§518.14; Costs and disbursements; attorney fees; collection costs] permits the court to award costs, fees, and disbursements against a party whose unreasonable failure to comply with an order causes the other party to seek relief.

Section 6 [§518.17, subd. 1; Best interests of the child] requires the court in custody determinations to consider the best interests of the child and prohibits the court from preferring one parent over another solely on the basis of the parent's gender. This requirement is stricken in section 7 and moved to this section.

Section 7 [§518.17, subd. 3; Custody order] makes clarifying and conforming changes.

Section 8 [§518.175, subd. 1; General] clarifies that the court must consider danger to the child's mental health and emotional safety in making determinations related to parenting time. This section clarifies that, upon request of either party, an order for parenting time includes a schedule for regular parenting time, including parenting time during school breaks. This section also clarifies the rebuttable presumption under current law that a child receives at least 25 percent of parenting time with each parent.

Section 9 [§518.175, subd. 6; Remedies] requires each party to follow a court's order for custody and parenting time unless the parties agree otherwise in writing. This section defines "court-ordered parenting time" for purposes of this subdivision. The court must fully consider providing compensatory parenting time when a parent has intentionally made court-ordered parenting time unavailable to the other parent. The court must require a party to reimburse the other party for costs incurred as a result of the party's denial of or interference with court-ordered parenting time, provided that the party has the means to reimburse the costs. The court may modify the legal and physical custody of the child as a remedy. This section provides the form for a notice under current law that must be included with parenting time orders.

Article 2 Spousal Maintenance

Section 1 [§518.552, subd. 1; Grounds] modifies what constitutes adequate self-support for purposes of determining maintenance.

Section 2 [§518.552, subd. 2; Amount of maintenance] requires the court to consider the extent to which the standard of living established during the marriage was funded by debt; the earnings seniority, benefits and other employment opportunities forgone by the spouse seeking maintenance to support the other spouse or children; the mental or chemical health of both spouses; and the need and ability of each spouse to prepare for retirement.

Section 3 [§518.552, subd. 3; Duration of maintenance] provides that a maintenance award may be transitional or indefinite. Temporary maintenance awards issued before August 1, 2024, are deemed transitional maintenance and permanent maintenance awards issued before August 1, 2024, are deemed indefinite maintenance. This section creates the following rebuttable presumptions: (1) if the length of the marriage is less than five years, no maintenance should be awarded; (2) if the length of the marriage is at least five years and less than 20 years, transitional maintenance should be awarded for a period no longer than one-half of the length of the marriage if certain factors are met; and (3) if the length of the marriage is for 20 years or more, indefinite maintenance should be awarded if certain factors are met.

Section 4 [§518.552, subd. 5a; Maintenance on death or remarriage] creates a new subdivision that provides that the obligation to pay future maintenance terminates upon the death of either party or the remarriage of the party receiving maintenance, unless other agreed to in writing. This provision is being repealed from current law in section 11 of this article.

Section 5 [§518.552, subd. 5b; Modification] permits the court to modify maintenance in the same way they issue an original maintenance order if one of the circumstances provided is met, including an increase or decrease in income or need for the obligor or obligee, or substantial changes in tax laws affecting maintenance. The modification may be retroactive. This court is not required to hold an evidentiary hearing.

Section 6 [§518.552, subd. 6; Cohabitation] permits modification consistent with the new modification provisions under section 5 of this article when the party receiving maintenance lives with a partner but has not married that partner.

Section 7 [§518.552, subd. 7; Retirement] provides that spousal maintenance may be reduced, suspended, reserved, or terminated if a party retires. This section provides factors for the court to consider when modifying maintenance based on retirement, including whether the retirement is in good faith. A motion to modify maintenance based on retirement may be brought before a party's actual retirement provided that the retirement date is specified.

Section 8 [§518.552, subd. 8; Form] requires the court administrator to make forms for maintenance modifications and contempt of court for maintenance to be accessed by the public.

Section 9 [§518A.39, subd. 1; Authority] makes conforming changes.

Section 10 [§518A.39, subd. 2; Modification] makes conforming changes.

Section 11 [Repealer] makes a conforming change by repealing section 518A.39, subd. 3 (maintenance on death or remarriage) which is moved to section 4 of this article.

Article 3 Antenuptial and Postnuptial Agreements

Section 1 [§519.11; Antenuptial and postnuptial agreements] reorganizes the statute governing antenuptial and postnuptial agreements and makes several substantive changes.

Subdivision 1 [Antenuptial agreement] provides that two individuals may enter into an antenuptial agreement if the agreement meets the procedural and substantive fairness requirements under subd. 1b and 1c. This section provides that an antenuptial agreement may provide for determines rights to marital property, provide for spousal maintenance, and determine the rights each party has in the estate of the other as otherwise conferred upon them under probate law. The marriage itself is adequate consideration for an antenuptial agreement made in conformity with this section. A court may sever unenforceable provisions and enforce the remaining provisions of the agreement if the agreement unambiguously permits severability.

Subdivision 1b [Procedural fairness] provides that an antenuptial agreement is procedurally fair if there is a full and fair disclosure of the current income and property of each party; each party has a meaningful opportunity to consult with independent legal counsel; the agreement

is in writing and executed in the presence of witnesses; the agreement is voluntary and free of duress; and the agreement is executed no less than seven days before the marriage. This subdivision defines "full and fair disclosure" and provides that a party must not waive the full and fair disclosure requirement.

Subdivision 1c [Substantive fairness] provides that in determining whether an agreement is substantively fair, the court must consider whether the agreement is substantively unfair as to be unconscionable to a party either by the terms of the agreement or as a result of drastically changed and unforeseen circumstances.

Subdivision 1d [Postnuptial agreement] provides that postnuptial agreement entered into between legal spouses if valid and enforceable if the agreement complies with the requirements for antenuptial agreements and both parties are represented by separate legal counsel at the time of execution. A postnuptial agreement is presumed to be unenforceable if either party commences a legal separation or dissolution within two years of the date the agreement is executed, unless the spouse seeking enforcement of the agreement establishes that the agreement is fair and equitable. A postnuptial agreement may determine all matters that may be determined by an antenuptial agreement.

Subdivision 2a [Amendment or revocation] makes conforming changes.

Subdivision 6 [Application] provides that this section applies to all agreements executed on or after August 1, 2024.

Subdivision 7 [Effect of sections 519.01 to 519.101] makes a conforming change.

Effective date. This section is effective August 1, 2024, and applies to agreements executed on or after that date. An antenuptial agreement entered into before August 1, 2024, shall not be invalidated based on the same sex of the parties to the agreement.

Section 2 [Revisor instruction] instructs the revisor of statutes to change gendered terms to genderneutral terms, unless the context indicates that the previous term should remain.

Article 4 Assisted Reproduction.

Section 1 [§257E.10; Definitions] defines the following terms for purposes of this chapter: assisted reproduction, birth, determination of parentage, donor, gamete, genetic testing, intended parent, parent, parentage, parent-child relationship, presumed parent, and transfer. The definition of "assisted reproduction" excludes the use of surrogacy.

Section 2 [§257E.15; Orders of parentage] provides that if a court determines that an individual is a parent under this chapter either because the parent gave birth to the child or the individual is a consenting intended parent, the court must adjudicate that individual to be the parent of the child. This section permits an individual who is or claims to be a parent of the child to commence an action before or after the birth of the child and the court may issue an order before or after the birth of the child.

Section 3 [§257E.21; Parental status of donor] provides that a donor is not a parent of a child conceived by assisted reproduction.

Section 4 [§257E.22; Parentage of child of assisted reproduction] provides that an intended parent who consents under section 5 to assisted reproduction by another individual with the intent to be the parent of the child conceived by assisted reproduction is a parent of the child.

Section 5 [§257E.23; Consent to assisted reproduction] requires that the consent to be an intended parent be in a signed record. Failure to consent in a signed record does not preclude the court from finding consent to parentage if: (1) there is clear and convincing evidence of the existence of an express agreement that the intended parents and the individual giving birth would be parents to the child; or (2) the birthing individual and the intended parent for the first two years of the child's life resided together and openly held the child out as the intended parent's child. If the intended parent to parentage if there is clear and convincing evidence that the birthing individual and the intended parent of age, the court may find consent to parentage if there is clear and convincing evidence that the birthing individual and the intended parent intended to reside together and hold the child out as theirs but for the death or incapacity.

Section 6 [§257E.24; Spouse's dispute of parentage; limitations] provides that a spouse of a parent who gave birth to a child by assisted reproduction may not challenge their parentage of the child unless, within two years of the child's birth, the spouse commences a proceeding to adjudicate the spouse's parentage and the court finds that the spouse did not consent to assisted reproduction or withdrew their consent. A proceeding to adjudicate the spouse's parentage may be brought at anytime if the court determines that the spouse did not provide a gamete and did not consent to assisted reproduction; the spouse and the birthing parent have not cohabited since the assisted reproduction took place; and the spouse never openly held out the child as their own.

Section 7 [§257E.25; Effect of dissolution] provides that a former spouse of the individual giving birth to the child is not a parent of the child unless the former spouse consented in a record that the former spouse would be a parent of the child if assisted reproduction were to occur after a dissolution or other legal proceeding affecting the status of the marriage and the former spouse did not withdraw consent.

Section 8 [§257E.26; Withdrawal of consent] permits an intended parent who consents to parentage of a child conceived by assisted reproduction to withdraw consent anytime before a transfer that result in a pregnancy, by providing notice in a record of the withdrawal of consent to the individual who agreed to give birth to the child and to the clinic or healthcare provider facilitating the assisted reproduction.

Section 9 [§257E.27; Parental status of deceased individual] provides that an intended parent who dies during the period between a transfer and the birth of the child is not precluded from having their parentage of the child established if they would otherwise be a parent under this chapter. If an intended parent dies before a transfer, the deceased individual is a parent of a child conceived by assisted reproduction only if (1) the individual consented in a record that if assisted reproduction were to occur after their death, the individual would be a parent of the child or the individual's intent to be a parent of the child after their death is established by clear and convincing evidence; and (2) the embryo is in utero within 36 months of the individual's death or the child is born within 45 months of the individual's death.

Section 10 [Repealer] repeals section 257.56 (artificial insemination).