

SECOND REGULAR SESSION

# HOUSE BILL NO. 1731

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MUCKLER.

Read 1<sup>st</sup> time April 13, 2004 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5044L.011

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### AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof one new section relating to child support.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows:

- 452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support, 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 support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:
- (1) The financial needs and resources of the child;
  - (2) The financial resources and needs of the parents, **including whether, due to the death of a biological parent, a parent has sole responsibility for the financial support of a child or children not of the marriage;**
  - (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
  - (4) The physical and emotional condition of the child, and the child's educational needs;
  - (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
  - (6) The reasonable work-related child care expenses of each parent.
2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other parent has

19 voluntarily relinquished physical custody of a child to the parent ordered to pay child support,  
20 notwithstanding any periods of visitation or temporary physical and legal or physical or legal  
21 custody pursuant to a judgment of dissolution or legal separation or any modification thereof.  
22 In a IV-D case, the division of child support enforcement may determine the amount of the  
23 abatement pursuant to this subsection for any child support order and shall record the amount of  
24 abatement in the automated child support system record established pursuant to chapter 454,  
25 RSMo. If the case is not a IV-D case and upon court order, the circuit clerk shall record the  
26 amount of abatement in the automated child support system record established in chapter 454,  
27 RSMo.

28         3. Unless the circumstances of the child manifestly dictate otherwise and the court  
29 specifically so provides, the obligation of a parent to make child support payments shall  
30 terminate when the child:

31             (1) Dies;

32             (2) Marries;

33             (3) Enters active duty in the military;

34             (4) Becomes self-supporting, provided that the custodial parent has relinquished the child  
35 from parental control by express or implied consent;

36             (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply;

37 or

38             (6) Reaches age twenty-two, unless the provisions of the child support order specifically  
39 extend the parental support order past the child's twenty-second birthday for reasons provided  
40 by subsection 4 of this section.

41         4. If the child is physically or mentally incapacitated from supporting himself and  
42 insolvent and unmarried, the court may extend the parental support obligation past the child's  
43 eighteenth birthday.

44         5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary  
45 school program of instruction, the parental support obligation shall continue, if the child  
46 continues to attend and progresses toward completion of said program, until the child completes  
47 such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an  
48 institution of vocational or higher education not later than October first following graduation  
49 from a secondary school or completion of a graduation equivalence degree program and so long  
50 as the child enrolls for and completes at least twelve hours of credit each semester, not including  
51 the summer semester, at an institution of vocational or higher education and achieves grades  
52 sufficient to reenroll at such institution, the parental support obligation shall continue until the  
53 child completes his or her education, or until the child reaches the age of twenty-two, whichever  
54 first occurs. To remain eligible for such continued parental support, at the beginning of each

55 semester the child shall submit to each parent a transcript or similar official document provided  
56 by the institution of vocational or higher education which includes the courses the child is  
57 enrolled in and has completed for each term, the grades and credits received for each such  
58 course, and an official document from the institution listing the courses which the child is  
59 enrolled in for the upcoming term and the number of credits for each such course. If the  
60 circumstances of the child manifestly dictate, the court may waive the October first deadline for  
61 enrollment required by this subsection. If the child is enrolled in such an institution, the child  
62 or parent obligated to pay support may petition the court to amend the order to direct the  
63 obligated parent to make the payments directly to the child. As used in this section, an  
64 "institution of vocational education" means any postsecondary training or schooling for which  
65 the student is assessed a fee and attends classes regularly. "Higher education" means any junior  
66 college, community college, college, or university at which the child attends classes regularly.  
67 A child who has been diagnosed with a learning disability, or whose physical disability or  
68 diagnosed health problem limits the child's ability to carry the number of credit hours prescribed  
69 in this subsection, shall remain eligible for child support so long as such child is enrolled in and  
70 attending an institution of vocational or higher education, and the child continues to meet the  
71 other requirements of this subsection. A child who is employed at least fifteen hours per week  
72 during the semester may take as few as nine credit hours per semester and remain eligible for  
73 child support so long as all other requirements of this subsection are complied with.

74         6. The court shall consider ordering a parent to waive the right to claim the tax  
75 dependency exemption for a child enrolled in an institution of vocational or higher education in  
76 favor of the other parent if the application of state and federal tax laws and eligibility for  
77 financial aid will make an award of the exemption to the other parent appropriate.

78         7. The general assembly finds and declares that it is the public policy of this state that  
79 frequent, continuing and meaningful contact with both parents after the parents have separated  
80 or dissolved their marriage is in the best interest of the child except for cases where the court  
81 specifically finds that such contact is not in the best interest of the child. In order to effectuate  
82 this public policy, a court with jurisdiction shall enforce visitation, custody and child support  
83 orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or  
84 future obligation of support and may transfer the physical and legal or physical or legal custody  
85 of one or more children if it finds that a parent has, without good cause, failed to provide  
86 visitation or physical and legal or physical or legal custody to the other parent pursuant to the  
87 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall  
88 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court  
89 costs incurred by the prevailing party.

90           8. The Missouri supreme court shall have in effect a rule establishing guidelines by  
91 which any award of child support shall be made in any judicial or administrative proceeding.  
92 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a  
93 computation of the support obligation. The guidelines shall address how the amount of child  
94 support shall be calculated when an award of joint physical custody results in the child or  
95 children spending substantially equal time with both parents. Not later than October 1, 1998, the  
96 Missouri supreme court shall publish child support guidelines and specifically list and explain  
97 the relevant factors and assumptions that were used to calculate the child support guidelines.  
98 Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less  
99 than once every three years to ensure that its application results in the determination of  
100 appropriate child support award amounts.

101           9. There shall be a rebuttable presumption, in any judicial or administrative proceeding  
102 for the award of child support, that the amount of the award which would result from the  
103 application of the guidelines established pursuant to subsection 8 of this section is the correct  
104 amount of child support to be awarded. A written finding or specific finding on the record in a  
105 judicial or administrative proceeding that the application of the guidelines would be unjust or  
106 inappropriate in a particular case, after considering all relevant factors, including the factors set  
107 out in subsection 1 of this section, is required if requested by a party and shall be sufficient to  
108 rebut the presumption in the case. The written finding or specific finding on the record shall  
109 detail the specific relevant factors that required a deviation from the application of the guidelines.

110           10. Pursuant to this or any other chapter, when a court determines the amount owed by  
111 a parent for support provided to a child by another person, other than a parent, prior to the date  
112 of filing of a petition requesting support, or when the director of the division of child support  
113 enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection  
114 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant  
115 to subsection 8 of this section. The amount of child support resulting from the application of the  
116 guidelines shall be applied retroactively for a period prior to the establishment of a support order  
117 and the length of the period of retroactivity shall be left to the discretion of the court or director.  
118 There shall be a rebuttable presumption that the amount resulting from application of the  
119 guidelines under subsection 8 of this section constitutes the amount owed by the parent for the  
120 period prior to the date of the filing of the petition for support or the period for which state debt  
121 is being established. In applying the guidelines to determine a retroactive support amount, when  
122 information as to average monthly income is available, the court or director may use the average  
123 monthly income of the noncustodial parent, as averaged over the period of retroactivity, in  
124 determining the amount of presumed child support owed for the period of retroactivity. The  
125 court or director may enter a different amount in a particular case upon finding, after

126 consideration of all relevant factors, including the factors set out in subsection 1 of this section,  
127 that there is sufficient cause to rebut the presumed amount.

128           11. The obligation of a parent to make child support payments may be terminated as  
129 follows:

130           (1) Provided that the child support order contains the child's date of birth, the obligation  
131 shall be deemed terminated without further judicial or administrative process when the child  
132 reaches age twenty-two if the child support order does not specifically require payment of child  
133 support beyond age twenty-two for reasons provided by subsection 4 of this section;

134           (2) The obligation shall be deemed terminated without further judicial or administrative  
135 process when the parent receiving child support furnishes a sworn statement or affidavit  
136 notifying the obligor parent of the child's emancipation in accordance with the requirements of  
137 subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the  
138 court which entered the order establishing the child support obligation, or the division of child  
139 support enforcement;

140           (3) The obligation shall be deemed terminated without further judicial or administrative  
141 process, when the parent paying child support files a sworn statement or affidavit with the court  
142 which entered the order establishing the child support obligation, or the division of child support  
143 enforcement, stating that the child is emancipated and reciting the factual basis for such  
144 statement; which statement or affidavit is served by the court or division on the child support  
145 obligee; and which is either acknowledged and affirmed by the child support obligee in writing,  
146 or which is not responded to in writing within thirty days of receipt by the child support obligee;

147           (4) The obligation shall be terminated as provided by this subdivision by the court which  
148 entered the order establishing the child support obligation, or the division of child support  
149 enforcement, when the parent paying child support files a sworn statement or affidavit with the  
150 court which entered the order establishing the child support obligation, or the division of child  
151 support enforcement, stating that the child is emancipated and reciting the factual basis for such  
152 statement; and which statement or affidavit is served by the court or division on the child support  
153 obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon  
154 treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to  
155 section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion  
156 as provided by law; provided that the court may require the payment of a deposit as security for  
157 court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

158           12. The court may enter a judgment terminating child support pursuant to subdivisions  
159 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.  
160 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant  
161 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may

162 promulgate uniform forms for sworn statements and affidavits to terminate orders of child  
163 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section  
164 452.370.