

FIRST REGULAR SESSION

HOUSE BILL NO. 719

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BYRD.

Read 1st time March 7, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2013L.011

AN ACT

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

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

29 (1) Dies;

30 (2) Marries;

31 (3) Enters active duty in the military;

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

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

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

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

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

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

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

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

88 8. The Missouri supreme court shall have in effect a rule establishing guidelines by
89 which any award of child support shall be made in any judicial or administrative proceeding.
90 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a

91 computation of the support obligation. The guidelines shall address how the amount of child
92 support shall be calculated when an award of joint physical custody results in the child or
93 children spending substantially equal time with both parents. Not later than October 1, 1998, the
94 Missouri supreme court shall publish child support guidelines and specifically list and explain
95 the relevant factors and assumptions that were used to calculate the child support guidelines.
96 Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less
97 than once every [three] **four** years to ensure that its application results in the determination of
98 appropriate child support award amounts.

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

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

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

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

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

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

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

156 12. The court may enter a judgment terminating child support pursuant to subdivisions
157 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.
158 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
159 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may
160 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
161 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section
162 452.370.