

SECOND REGULAR SESSION

HOUSE BILL NO. 1653

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALTON.

Read 1st time February 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4820L.01I

AN ACT

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

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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

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.

15 2. The obligation of the parent ordered to make support payments shall abate, in whole
16 or in part, for such periods of time in excess of thirty consecutive days that the other parent has
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. **(1) (a)** If when a child reaches age eighteen, the child is enrolled in and attending a
43 secondary school program of instruction, the parental support obligation shall continue, if the
44 child continues to attend and progresses toward completion of said program, until the child
45 completes such program or reaches age twenty-one, whichever first occurs.

46 **(b)** If the child is enrolled in an institution of vocational or higher education not later
47 than October first following graduation from a secondary school or completion of a graduation
48 equivalence degree program and, **except as provided in subdivision (3) of this subsection**, so
49 long as the child enrolls for and completes at least twelve hours of credit each semester, not
50 including the summer semester, at an institution of vocational or higher education and achieves

51 grades sufficient to reenroll at such institution, the parental support obligation shall continue
52 until the child completes his or her education, or until the child reaches the age of twenty-two,
53 whichever first occurs. **If the circumstances of the child manifestly dictate, the court may**
54 **waive the October first deadline for enrollment required by this subsection.**

55 **(2)** To remain eligible for such continued parental support, **not more than thirty days**
56 **after the child receives a written request from the parent and** at the beginning of each
57 semester **thereafter** the child shall submit to each parent a transcript or similar official document
58 provided by the institution of vocational or higher education which includes the courses the child
59 is enrolled in and has completed for each term, the grades and credits received for each such
60 course, and an official document from the institution listing the courses which the child is
61 enrolled in for the upcoming term and the number of credits for each such course. [If the
62 circumstances of the child manifestly dictate, the court may waive the October first deadline for
63 enrollment required by this subsection.] **The parent shall notify the child in such written**
64 **request that failure to submit such transcript or official document within thirty days of**
65 **such request and at the beginning of each semester thereafter shall relieve the parent of the**
66 **parent's obligation to support the child during such semester. The child may comply with**
67 **this subsection by submitting any required fees along with a written request to the**
68 **institution that it forward such transcript or official document directly to the parent.**

69 **(3)** If the child has pursued a path of continuous attendance and has demonstrated
70 evidence of a plan to continue to do so, the court may enter a judgment abating support for a
71 period of up to five months for any semester in which the child completes at least six but less
72 than twelve credit hours; however, [such five-month period of abatement shall only be granted
73 one time for each child.] **if the child enrolls for and completes at least twenty-four hours of**
74 **credit over the academic school year, including the summer semester, no judgment of**
75 **abatement shall be entered by the court or, if a judgment of abatement has been entered**
76 **prior to the child completing twenty-four hours of credit, such judgment of abatement shall**
77 **be set aside, annulled, or voided and the child shall remain eligible for support. The duty**
78 **to support a child who takes a leave of absence from an institution upon call to active duty**
79 **as a member of a reserve component of the armed forces of the United States may be**
80 **abated, in whole or in part, for such periods of time in excess of thirty consecutive days**
81 **that the child is on active duty; provided however, that except as otherwise provided by**
82 **law, the child's eligibility for support shall be restored upon the child's discharge from**
83 **active duty provided the child reenrolls in such institution the next succeeding semester,**
84 **not including summer semester, following such discharge.**

85 **(4)** If the child is enrolled in such an institution, the child or parent obligated to pay
86 support may petition the court to amend the order to direct the obligated parent to make the
87 payments directly to the child.

88 **(5)** As used in this section, an "institution of vocational education" means any
89 postsecondary training or schooling for which the student is assessed a fee and attends classes
90 regularly. "Higher education" means any junior college, community college, college, or
91 university at which the child attends classes regularly.

92 **(6)** A child who has been diagnosed with a learning disability, or whose physical
93 disability or diagnosed health problem limits the child's ability to carry the number of credit
94 hours prescribed in this subsection, shall remain eligible for child support so long as such child
95 is enrolled in and attending an institution of vocational or higher education, and the child
96 continues to meet the other requirements of this subsection.

97 **(7)** A child who is employed at least fifteen hours per week during the semester may take
98 as few as nine credit hours per semester and remain eligible for child support so long as all other
99 requirements of this subsection are complied with.

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

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

116 8. The Missouri supreme court shall have in effect a rule establishing guidelines by
117 which any award of child support shall be made in any judicial or administrative proceeding.
118 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a
119 computation of the support obligation. The guidelines shall address how the amount of child
120 support shall be calculated when an award of joint physical custody results in the child or

121 children spending substantially equal time with both parents. Not later than October 1, 1998, the
122 Missouri supreme court shall publish child support guidelines and specifically list and explain
123 the relevant factors and assumptions that were used to calculate the child support guidelines.
124 Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less
125 than once every four years to ensure that its application results in the determination of
126 appropriate child support award amounts.

127 9. There shall be a rebuttable presumption, in any judicial or administrative proceeding
128 for the award of child support, that the amount of the award which would result from the
129 application of the guidelines established pursuant to subsection 8 of this section is the correct
130 amount of child support to be awarded. A written finding or specific finding on the record in a
131 judicial or administrative proceeding that the application of the guidelines would be unjust or
132 inappropriate in a particular case, after considering all relevant factors, including the factors set
133 out in subsection 1 of this section, is required if requested by a party and shall be sufficient to
134 rebut the presumption in the case. The written finding or specific finding on the record shall
135 detail the specific relevant factors that required a deviation from the application of the guidelines.

136 10. Pursuant to this or any other chapter, when a court determines the amount owed by
137 a parent for support provided to a child by another person, other than a parent, prior to the date
138 of filing of a petition requesting support, or when the director of the division of child support
139 enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection
140 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant
141 to subsection 8 of this section. The amount of child support resulting from the application of the
142 guidelines shall be applied retroactively for a period prior to the establishment of a support order
143 and the length of the period of retroactivity shall be left to the discretion of the court or director.
144 There shall be a rebuttable presumption that the amount resulting from application of the
145 guidelines under subsection 8 of this section constitutes the amount owed by the parent for the
146 period prior to the date of the filing of the petition for support or the period for which state debt
147 is being established. In applying the guidelines to determine a retroactive support amount, when
148 information as to average monthly income is available, the court or director may use the average
149 monthly income of the noncustodial parent, as averaged over the period of retroactivity, in
150 determining the amount of presumed child support owed for the period of retroactivity. The
151 court or director may enter a different amount in a particular case upon finding, after
152 consideration of all relevant factors, including the factors set out in subsection 1 of this section,
153 that there is sufficient cause to rebut the presumed amount.

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

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

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

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

173 (4) The obligation shall be terminated as provided by this subdivision by the court which
174 entered the order establishing the child support obligation, or the division of child support
175 enforcement, when the parent paying child support files a sworn statement or affidavit with the
176 court which entered the order establishing the child support obligation, or the division of child
177 support enforcement, stating that the child is emancipated and reciting the factual basis for such
178 statement; and which statement or affidavit is served by the court or division on the child support
179 obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon
180 treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to
181 section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion
182 as provided by law; provided that the court may require the payment of a deposit as security for
183 court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

184 12. The court may enter a judgment terminating child support pursuant to subdivisions
185 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.
186 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
187 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may
188 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
189 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section
190 452.370.

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