

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1653

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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

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

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

(1) Dies;

(2) Marries;

(3) Enters active duty in the military;

(4) Becomes self-supporting, provided that the custodial parent has relinquished the child from parental control by

express or implied consent;

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

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

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

5. (1) (a) If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs.

(b) If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and, except as provided in subdivision (3) of this subsection, so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-two, whichever first

occurs. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection.

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

____ (3) If the child has pursued a path of continuous attendance and has demonstrated evidence of a plan to continue to do so, the court may enter a judgment abating support for a period of up to five months for any semester in which the child

completes at least six but less than twelve credit hours; however, such five-month period of abatement shall only be granted one time for each child.

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

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

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

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

6. The court shall consider ordering a parent to waive the right to claim the tax dependency exemption for a child enrolled in an institution of vocational or higher education in favor of the other parent if the application of state and federal tax laws

and eligibility for financial aid will make an award of the exemption to the other parent appropriate.

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

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

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

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

10. Pursuant to this or any other chapter, when a court determines the amount owed by a parent for support provided to a child by another person, other than a parent, prior to the date of filing of a petition requesting support, or when the director of the division of child support enforcement establishes the amount of state debt due pursuant to subdivision (2) of

subsection 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant to subsection 8 of this section. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior to the establishment of a support order and the length of the period of retroactivity shall be left to the discretion of the court or director. There shall be a rebuttable presumption that the amount resulting from application of the guidelines under subsection 8 of this section constitutes the amount owed by the parent for the period prior to the date of the filing of the petition for support or the period for which state debt is being established. In applying the guidelines to determine a retroactive support amount, when information as to average monthly income is available, the court or director may use the average monthly income of the noncustodial parent, as averaged over the period of retroactivity, in determining the amount of presumed child support owed for the period of retroactivity. The court or director may enter a different amount in a particular case upon finding, after consideration of all relevant factors, including the factors set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed amount.

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

(1) Provided that the child support order contains the child's date of birth, the obligation shall be deemed terminated without further judicial or administrative process when the child reaches age twenty-two if the child support order does not

specifically require payment of child support beyond age twenty-two for reasons provided by subsection 4 of this section;

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

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

(4) The obligation shall be terminated as provided by this subdivision by the court which entered the order establishing the child support obligation, or the division of child support enforcement, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated

and reciting the factual basis for such statement; and which statement or affidavit is served by the court or division on the child support obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion as provided by law; provided that the court may require the payment of a deposit as security for court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

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