

SECOND REGULAR SESSION

HOUSE BILL NO. 1938

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAKER (123).

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

STEPHEN S. DAVIS, Chief Clerk

5310L.02I

AN ACT

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

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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. If when a child reaches age eighteen, the child is enrolled in and attending a secondary
43 school program of instruction, the **court may order the** parental support obligation [shall] **to**
44 continue, if the child continues to attend and progresses toward completion of said program, until
45 the child completes such program or reaches age twenty-one, whichever first occurs; **except**
46 **that, the obligation to continue child support shall cease if the child has two consecutive**
47 **semesters of failing grades.** If the child is enrolled in an institution of vocational or higher
48 education not later than October first following graduation from a secondary school or
49 completion of a graduation equivalence degree program and so long as the child enrolls for and
50 completes at least twelve hours of credit each semester, not including the summer semester, at

51 an institution of vocational or higher education and achieves grades sufficient to reenroll at such
52 institution, the parental support obligation shall continue until the child completes his or her
53 education, or until the child reaches the age of twenty-two, whichever first occurs; **except that,**
54 **the obligation to continue child support shall cease if the child has two consecutive**
55 **semesters of failing grades.** To remain eligible for such continued parental support, at the
56 beginning of each semester the child shall submit to each parent a transcript or similar official
57 document provided by the institution of vocational or higher education which includes the
58 courses the child is enrolled in and has completed for each term, the grades and credits received
59 for each such course, and an official document from the institution listing the courses which the
60 child is enrolled in for the upcoming term and the number of credits for each such course. If the
61 circumstances of the child manifestly dictate, the court may waive the October first deadline for
62 enrollment required by this subsection. If the child has pursued a path of continuous attendance
63 and has demonstrated evidence of a plan to continue to do so, the court may enter a judgment
64 abating support for a period of up to five months for any semester in which the child completes
65 at least six but less than twelve credit hours; however, such five-month period of abatement shall
66 only be granted one time for each child. If the child is enrolled in such an institution, the child
67 or parent obligated to pay support may petition the court to amend the order to direct the
68 obligated parent to make the payments directly to the child. As used in this section, an
69 "institution of vocational education" means any postsecondary training or schooling for which
70 the student is assessed a fee and attends classes regularly. "Higher education" means any junior
71 college, community college, college, or university at which the child attends classes regularly.
72 A child who has been diagnosed with a learning disability, or whose physical disability or
73 diagnosed health problem limits the child's ability to carry the number of credit hours prescribed
74 in this subsection, shall remain eligible for child support so long as such child is enrolled in and
75 attending an institution of vocational or higher education, and the child continues to meet the
76 other requirements of this subsection. A child who is employed at least fifteen hours per week
77 during the semester may take as few as nine credit hours per semester and remain eligible for
78 child support so long as all other requirements of this subsection are complied with.

79 6. The court shall consider ordering a parent to waive the right to claim the tax
80 dependency exemption for a child **who is receiving child support under subsection 5 of this**
81 **section for a child who is** enrolled in an institution of vocational or higher education in favor
82 of the other parent if the application of state and federal tax laws and eligibility for financial aid
83 will make an award of the exemption to the other parent appropriate.

84 7. The general assembly finds and declares that it is the public policy of this state that
85 frequent, continuing and meaningful contact with both parents after the parents have separated
86 or dissolved their marriage is in the best interest of the child except for cases where the court

87 specifically finds that such contact is not in the best interest of the child. In order to effectuate
88 this public policy, a court with jurisdiction shall enforce visitation, custody and child support
89 orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or
90 future obligation of support and may transfer the physical and legal or physical or legal custody
91 of one or more children if it finds that a parent has, without good cause, failed to provide
92 visitation or physical and legal or physical or legal custody to the other parent pursuant to the
93 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall
94 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court
95 costs incurred by the prevailing party.

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

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

116 10. Pursuant to this or any other chapter, when a court determines the amount owed by
117 a parent for support provided to a child by another person, other than a parent, prior to the date
118 of filing of a petition requesting support, or when the director of the division of child support
119 enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection
120 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant
121 to subsection 8 of this section. The amount of child support resulting from the application of the
122 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] **eighteen** if the child support order does not specifically require payment of child support beyond age [twenty-two] **eighteen** for reasons provided by subsection 4 or 5 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

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

165 12. The court may enter a judgment terminating child support pursuant to subdivisions
166 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.
167 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
168 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may
169 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
170 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section
171 452.370.

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