

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 493
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Family Services March 15, 2007 with recommendation that House Committee Substitute for House Bill No. 493 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0951L.03C

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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 **family support** division [of child support enforcement] may determine the
21 amount of the abatement pursuant to this subsection for any child support order and shall record
22 the amount of abatement in the automated child support system record established pursuant to
23 chapter 454, RSMo. If the case is not a IV-D case and upon court order, the circuit clerk shall
24 record the amount of abatement in the automated child support system record established in
25 chapter 454, 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] **twenty-one**, unless the provisions of the child support
37 order specifically extend the parental support order past the child's twenty-second birthday for
38 reasons provided 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] **twenty-**
52 **one**, whichever first occurs. To remain eligible for such continued parental support, at the
53 beginning of each semester the child shall submit to each parent a transcript or similar official
54 document provided by the institution of vocational or higher education which includes the
55 courses the child is enrolled in and has completed for each term, the grades and credits received
56 for each such course, and an official document from the institution listing the courses which the
57 child is enrolled in for the upcoming term and the number of credits for each such course. **When**
58 **enrolled in at least twelve credit hours, if the child receives two failing grades in any one**
59 **semester, payment of child support may be terminated and shall not be eligible for**
60 **reinstatement. If the child fails to produce the required documents, payment of child**
61 **support may terminate without the accrual of any child support arrearage and shall not**
62 **be eligible for reinstatement.** If the circumstances of the child manifestly dictate, the court may
63 waive the October first deadline for enrollment required by this subsection. [If the child has
64 pursued a path of continuous attendance and has demonstrated evidence of a plan to continue to
65 do so, the court may enter a judgment abating support for a period of up to five months for any
66 semester in which the child completes at least six but less than twelve credit hours; however,
67 such five-month period of abatement shall only be granted one time for each child.] If the child
68 is enrolled in such an institution, the child or parent obligated to pay support may petition the
69 court to amend the order to direct the obligated parent to make the payments directly to the child.
70 As used in this section, an "institution of vocational education" means any postsecondary training
71 or schooling for which the student is assessed a fee and attends classes regularly. "Higher
72 education" means any junior college, community college, college, or university at which the child
73 attends classes regularly. A child who has been diagnosed with a [learning] **developmental**
74 **disability, as defined in section 630.005, RSMo,** or whose physical disability or diagnosed
75 health problem limits the child's ability to carry the number of credit hours prescribed in this
76 subsection, shall remain eligible for child support so long as such child is enrolled in and
77 attending an institution of vocational or higher education, and the child continues to meet the
78 other requirements of this subsection. **However, a parent who has a child diagnosed after age**
79 **eighteen with a developmental or physical disability or diagnosed health care problem shall**
80 **not be required to pay support after age twenty-one. Diagnosis prior to or after age**
81 **eighteen shall be completed by two licensed physicians, one selected by each parent. Both**
82 **physicians shall be in agreement for the diagnosis to be considered in the child support**
83 **case. If a diagnosis of a developmental or physical disability or health care problem occurs**
84 **prior to the dissolution of the marriage between a child's parents, then the original**
85 **diagnosis made by a licensed physician prior to the dissolution of marriage will be**
86 **sufficient for the diagnosis to be considered in the child support case.** A child who is

87 employed at least fifteen hours per week during the semester may take as few as nine credit hours
88 per semester and remain eligible for child support so long as all other requirements of this
89 subsection are complied with.

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

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

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

117 9. There shall be a rebuttable presumption, in any judicial or administrative proceeding
118 for the award of child support, that the amount of the award which would result from the
119 application of the guidelines established pursuant to subsection 8 of this section is the correct
120 amount of child support to be awarded. A written finding or specific finding on the record in a
121 judicial or administrative proceeding that the application of the guidelines would be unjust or
122 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 **family support** 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] **twenty-one** if the child support order does not specifically require payment of child support beyond age [twenty-two] **twenty-one** 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

159 which entered the order establishing the child support obligation, or the **family support** division
160 [of child support enforcement], stating that the child is emancipated and reciting the factual basis
161 for such statement; which statement or affidavit is served by the court or division on the child
162 support obligee; and which is either acknowledged and affirmed by the child support obligee in
163 writing, or which is not responded to in writing within thirty days of receipt by the child support
164 obligee;

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

177 12. The court may enter a judgment terminating child support pursuant to subdivisions
178 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.
179 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
180 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may
181 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
182 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section
183 452.370.

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