

FIRST REGULAR SESSION

# HOUSE BILL NO. 493

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BAKER (123).

Read 1st time January 18, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0951L.01I

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### AN ACT

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

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*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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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  
35 apply; 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  
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. If the child is  
46 enrolled in an institution of vocational or higher education not later than October first following  
47 graduation from a secondary school or completion of a graduation equivalence degree program  
48 and so long as the child enrolls for and completes at least twelve hours of credit each semester,  
49 not including the summer semester, at an institution of vocational or higher education and  
50 achieves grades sufficient to reenroll at such institution, the parental support obligation shall

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

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

80         [7.] 6. The general assembly finds and declares that it is the public policy of this state  
81 that frequent, continuing and meaningful contact with both parents after the parents have  
82 separated or dissolved their marriage is in the best interest of the child except for cases where  
83 the court specifically finds that such contact is not in the best interest of the child. In order to  
84 effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and child  
85 support orders in the same manner. A court with jurisdiction may abate, in whole or in part, any  
86 past or future obligation of support and may transfer the physical and legal or physical or legal

87 custody of one or more children if it finds that a parent has, without good cause, failed to provide  
88 visitation or physical and legal or physical or legal custody to the other parent pursuant to the  
89 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall  
90 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court  
91 costs incurred by the prevailing party.

92 [8.] 7. The Missouri supreme court shall have in effect a rule establishing guidelines by  
93 which any award of child support shall be made in any judicial or administrative proceeding.  
94 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a  
95 computation of the support obligation. The guidelines shall address how the amount of child  
96 support shall be calculated when an award of joint physical custody results in the child or  
97 children spending substantially equal time with both parents. [Not later than October 1, 1998,]  
98 The Missouri supreme court shall publish child support guidelines and specifically list and  
99 explain the relevant factors and assumptions that were used to calculate the child support  
100 guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating  
101 body not less than once every four years to ensure that its application results in the determination  
102 of appropriate child support award amounts.

103 [9.] 8. There shall be a rebuttable presumption, in any judicial or administrative  
104 proceeding for the award of child support, that the amount of the award which would result from  
105 the application of the guidelines established pursuant to subsection [8] 7 of this section is the  
106 correct amount of child support to be awarded. A written finding or specific finding on the  
107 record in a judicial or administrative proceeding that the application of the guidelines would be  
108 unjust or inappropriate in a particular case, after considering all relevant factors, including the  
109 factors set out in subsection 1 of this section, is required if requested by a party and shall be  
110 sufficient to rebut the presumption in the case. The written finding or specific finding on the  
111 record shall detail the specific relevant factors that required a deviation from the application of  
112 the guidelines.

113 [10.] 9. Pursuant to this or any other chapter, when a court determines the amount owed  
114 by a parent for support provided to a child by another person, other than a parent, prior to the  
115 date of filing of a petition requesting support, or when the director of the **family support**  
116 division [of child support enforcement] establishes the amount of state debt due pursuant to  
117 subdivision (2) of subsection 1 of section 454.465, RSMo, the court or director shall use the  
118 guidelines established pursuant to subsection [8] 7 of this section. The amount of child support  
119 resulting from the application of the guidelines shall be applied retroactively for a period prior  
120 to the establishment of a support order and the length of the period of retroactivity shall be left  
121 to the discretion of the court or director. There shall be a rebuttable presumption that the amount  
122 resulting from application of the guidelines under subsection [8] 7 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.] 10. 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 **family support** 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 **family support** 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 **family support** 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

159 the support obligation pursuant to section 452.370 or section 454.496, RSMo, and shall proceed  
160 to hear and adjudicate such motion as provided by law; provided that the court may require the  
161 payment of a deposit as security for court costs and any accrued court costs, as provided by law,  
162 in relation to such motion to modify.

163 [12.] **11.** The court may enter a judgment terminating child support pursuant to  
164 subdivisions (1) to (3) of subsection [11] **10** of this section without necessity of a court  
165 appearance by either party. The clerk of the court shall mail a copy of a judgment terminating  
166 child support entered pursuant to subsection [11] **10** of this section on both the obligor and  
167 obligee parents. The supreme court may promulgate uniform forms for sworn statements and  
168 affidavits to terminate orders of child support obligations for use pursuant to subsection [11] **10**  
169 of this section and subsection 4 of section 452.370.

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