

SECOND REGULAR SESSION

HOUSE BILL NO. 2434

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LEMBKE (Sponsor) AND MEADOWS (Co-sponsor).

Read 1st time March 13, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4725L.02I

AN ACT

To repeal sections 452.340, 452.360, 452.370, and 452.423, RSMo, and to enact in lieu thereof four new sections relating to child support.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 452.340, 452.360, 452.370, and 452.423, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 452.340, 452.360, 452.370,
3 and 452.423, to read as follows:

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support,
2 the court may order either or both parents owing a duty of support to a child of the marriage to
3 pay an amount reasonable or necessary for the support of the child, including an award
4 retroactive to the date of filing the petition, without regard to marital misconduct, after
5 considering all relevant factors including:

- 6 (1) The financial needs and resources of the child;
- 7 (2) The financial resources and needs of the parents;
- 8 (3) The standard of living the child would have enjoyed had the marriage not been
9 dissolved;
- 10 (4) The physical and emotional condition of the child, and the child's educational needs;
- 11 (5) The child's physical and legal custody arrangements, including the amount of time
12 the child spends with each parent and the reasonable expenses associated with the custody or
13 visitation arrangements; and
- 14 (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 may determine the amount of the abatement pursuant
21 to this subsection for any child support order and shall record the amount of abatement in the
22 automated child support system record established pursuant to chapter 454, RSMo. If the case
23 is not a IV-D case and upon court order, the circuit clerk shall record the amount of abatement
24 in the automated child support system record established in chapter 454, RSMo.

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

28 (1) Dies;

29 (2) Marries;

30 (3) Enters active duty in the military;

31 (4) Becomes self-supporting, provided that the custodial parent has relinquished the child
32 from parental control by express or implied consent;

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

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

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

41 5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary
42 school program of instruction, the parental support obligation shall continue, if the child
43 continues to attend and progresses toward completion of said program, until the child completes
44 such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an
45 institution of vocational or higher education not later than October first following graduation
46 from a secondary school or completion of a graduation equivalence degree program and so long
47 as the child enrolls for and completes at least twelve hours of credit each semester, not including
48 the summer semester, at an institution of vocational or higher education and achieves grades
49 sufficient to reenroll at such institution, the parental support obligation shall continue until the
50 child completes his or her education, or until the child reaches the age of twenty-one, whichever

51 first occurs. To remain eligible for such continued parental support, at the beginning of each
52 semester the child shall submit to each parent a transcript or similar official document provided
53 by the institution of vocational or higher education which includes the courses the child is
54 enrolled in and has completed for each term, the grades and credits received for each such
55 course, and an official document from the institution listing the courses which the child is
56 enrolled in for the upcoming term and the number of credits for each such course. When
57 enrolled in at least twelve credit hours, if the child receives failing grades in half or more of his
58 or her courseload in any one semester, payment of child support may be terminated and shall not
59 be eligible for reinstatement. Upon request for notification of the child's grades by the
60 noncustodial parent, the child shall produce the required documents to the noncustodial parent
61 within thirty days of receipt of grades from the education institution. If the child fails to produce
62 the required documents, payment of child support may terminate without the accrual of any child
63 support arrearage and shall not be eligible for reinstatement. If the circumstances of the child
64 manifestly dictate, the court may waive the October first deadline for enrollment required by this
65 subsection. If the child is enrolled in such an institution, the child or parent obligated to pay
66 support may petition the court to amend the order to direct the obligated parent to make the
67 payments directly to the child. As used in this section, an "institution of vocational education"
68 means any postsecondary training or schooling for which the student is assessed a fee and attends
69 classes regularly. "Higher education" means any junior college, community college, college, or
70 university at which the child attends classes regularly. A child who has been diagnosed with a
71 developmental disability, as defined in section 630.005, RSMo, or whose physical disability or
72 diagnosed health problem limits the child's ability to carry the number of credit hours prescribed
73 in this subsection, shall remain eligible for child support so long as such child is enrolled in and
74 attending an institution of vocational or higher education, and the child continues to meet the
75 other requirements of this subsection. A child who is employed at least fifteen hours per week
76 during the semester may take as few as nine credit hours per semester and remain eligible for
77 child support so long as all other requirements of this subsection are complied with.

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

82 7. The general assembly finds and declares that it is the public policy of this state that
83 frequent, continuing and meaningful contact with both parents after the parents have separated
84 or dissolved their marriage is in the best interest of the child except for cases where the court
85 specifically finds that such contact is not in the best interest of the child. In order to effectuate
86 this public policy, a court with jurisdiction shall enforce visitation, custody and child support

87 orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or
88 future obligation of support and may transfer the physical and legal or physical or legal custody
89 of one or more children if it finds that a parent has, without good cause, failed to provide
90 visitation or physical and legal or physical or legal custody to the other parent pursuant to the
91 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall
92 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court
93 costs incurred by the prevailing party.

94 8. The Missouri supreme court shall have in effect a rule establishing guidelines by
95 which any award of child support shall be made in any judicial or administrative proceeding.
96 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a
97 computation of the support obligation. **The guidelines shall require documentation to verify**
98 **the income of the parties for the initial order of support and for any modification of such**
99 **order. Such documentation shall include, but not be limited to, current wage stubs, a**
100 **current W-2 form, statements from the party's employer, a wage match with the division**
101 **of employment security, and bank statements.** The guidelines shall address how the amount
102 of child support shall be calculated when an award of joint physical custody results in the child
103 or children spending substantially equal time with both parents. **No child support shall be**
104 **awarded when an award of joint physical custody results in the child or children spending**
105 **substantially equal time with both parents and the difference in the verified incomes of the**
106 **parents is less than twenty-five percent.** The Missouri supreme court shall publish child
107 support guidelines and specifically list and explain the relevant factors and assumptions that were
108 used to calculate the child support guidelines. Any rule made pursuant to this subsection shall
109 be reviewed by the promulgating body not less than once every four years to ensure that its
110 application results in the determination of appropriate child support award amounts. **Any party**
111 **who submits falsified documentation or otherwise falsifies the amount of his or her income**
112 **shall be liable to the child for support in an amount that equals the amount of support that**
113 **would have been awarded under the guidelines based on the actual income of the party**
114 **plus an additional twenty-five percent.**

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

123 detail the specific relevant factors that required a] **No** deviation from the application of the
124 guidelines **shall be permitted**.

125 10. Pursuant to this or any other chapter, when a court determines the amount owed by
126 a parent for support provided to a child by another person, other than a parent, prior to the date
127 of filing of a petition requesting support, or when the director of the family support division
128 establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section
129 454.465, RSMo, the court or director shall use the guidelines established pursuant to subsection
130 8 of this section. The amount of child support resulting from the application of the guidelines
131 shall be applied retroactively for a period prior to the establishment of a support order and the
132 length of the period of retroactivity shall be left to the discretion of the court or director. [There
133 shall be a rebuttable presumption that] The amount resulting from application of the guidelines
134 under subsection 8 of this section constitutes the amount owed by the parent for the period prior
135 to the date of the filing of the petition for support or the period for which state debt is being
136 established. In applying the guidelines to determine a retroactive support amount, when
137 information as to average monthly income is available, the court or director may use the average
138 monthly income of the noncustodial parent, as averaged over the period of retroactivity, in
139 determining the amount of presumed child support owed for the period of retroactivity. [The
140 court or director may enter a different amount in a particular case upon finding, after
141 consideration of all relevant factors, including the factors set out in subsection 1 of this section,
142 that there is sufficient cause to rebut the presumed amount.]

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

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

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

155 (3) The obligation shall be deemed terminated without further judicial or administrative
156 process when the parent paying child support files a sworn statement or affidavit with the court
157 which entered the order establishing the child support obligation, or the family support division,
158 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, 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, 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.

452.360. 1. A judgment of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from a judgment of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the judgment which dissolves the marriage beyond the time for appealing from that provision, so that either of the parties may remarry pending appeal.

2. The court's judgment of dissolution of marriage or legal separation as it affects distribution of marital property shall be a final judgment not subject to modification.

3. No earlier than ninety days after entry of a judgment of legal separation, on motion of either party, the court may convert the judgment of legal separation to a judgment of dissolution of marriage.

4. On motion of both parties, the court shall set aside a judgment of legal separation.

5. The circuit clerk shall give notice of the entry of a judgment of legal separation or dissolution to the department of social services.

6. In any appeal from an order of child support issued under this chapter, the state of Missouri shall be designated as the party of interest for purposes of defending the lower

16 **court's order of child support and the attorney general's office shall be the legal counsel**
17 **for the state in any such appellate proceedings.**

452.370. 1. Except as otherwise provided in subsection 6 of section 452.325, the
2 provisions of any judgment respecting maintenance or support may be modified only upon a
3 showing of changed circumstances so substantial and continuing as to make the terms
4 unreasonable. In a proceeding for modification of any child support or maintenance judgment,
5 the court, in determining whether or not a substantial change in circumstances has occurred, shall
6 consider all financial resources of both parties, including the extent to which the reasonable
7 expenses of either party are, or should be, shared by a spouse or other person with whom he or
8 she cohabits, and the earning capacity of a party who is not employed. If the application of the
9 child support guidelines and criteria set forth in section 452.340 and applicable supreme court
10 rules to the financial circumstances of the parties would result in a change of child support from
11 the existing amount by twenty percent or more, a prima facie showing has been made of a change
12 of circumstances so substantial and continuing as to make the present terms unreasonable[, if the
13 existing amount was based upon the presumed amount pursuant to the child support guidelines].

14 2. When the party seeking modification has met the burden of proof set forth in
15 subsection 1 of this section, the child support shall be determined **based on the documentation**
16 **of the verified income of the parties and application of the child support guidelines** in
17 conformity with criteria set forth in section 452.340 and applicable supreme court rules. **The**
18 **court shall not have any discretion to deviate from the amount of child support resulting**
19 **from application of the child support guidelines.**

20 3. Unless otherwise agreed in writing or expressly provided in the judgment, the
21 obligation to pay future statutory maintenance is terminated upon the death of either party or the
22 remarriage of the party receiving maintenance.

23 4. Unless otherwise agreed in writing or expressly provided in the judgment, provisions
24 for the support of a child are terminated by emancipation of the child. The parent entitled to
25 receive child support shall have the duty to notify the parent obligated to pay support of the
26 child's emancipation and failing to do so, the parent entitled to receive child support shall be
27 liable to the parent obligated to pay support for child support paid following emancipation of a
28 minor child, plus interest.

29 5. If a parent has made an assignment of support rights to the **family support** division
30 [of family services] on behalf of the state as a condition of eligibility for benefits pursuant to the
31 Temporary Assistance for Needy Families program and either party initiates a motion to modify
32 the support obligation by reducing it, the state of Missouri shall be named as a party to the
33 proceeding. The state shall be served with a copy of the motion by sending it by certified mail
34 to the director of the division of child support enforcement.

35 6. The court shall have continuing personal jurisdiction over both the obligee and the
36 obligor of a court order for child support or maintenance for the purpose of modifying such
37 order. Both obligee and obligor shall notify, in writing, the clerk of the court in which the
38 support or maintenance order was entered of any change of mailing address. If personal service
39 of the motion cannot be had in this state, the motion to modify and notice of hearing shall be
40 served outside the state as provided by supreme court rule 54.14. The order may be modified
41 only as to support or maintenance installments which accrued subsequent to the date of personal
42 service. For the purpose of 42 U.S.C. 666(a)(9)(C), the circuit clerk shall be considered the
43 "appropriate agent" to receive notice of the motion to modify for the obligee or the obligor, but
44 only in those instances in which personal service could not be had in this state.

45 7. If a responsive pleading raising the issues of custody or visitation is filed in response
46 to a motion to modify child support filed at the request of the division of child support
47 enforcement by a prosecuting attorney or circuit attorney or an attorney under contract with the
48 division, such responsive pleading shall be severed upon request.

49 8. Notwithstanding any provision of this section which requires a showing of substantial
50 and continuing change in circumstances, in a IV-D case filed pursuant to this section by the
51 division of child support enforcement as provided in section 454.400, RSMo, the court shall
52 modify a support order in accordance with the guidelines and criteria set forth in supreme court
53 rule 88.01 and any regulations thereunder if the amount in the current order differs from the
54 amount which would be ordered in accordance with such guidelines or regulations.

452.423. 1. In all proceedings for child custody or for dissolution of marriage or legal
2 separation where custody, visitation, or support of a child is a contested issue, the court may
3 appoint a guardian ad litem. Disqualification of a guardian ad litem shall be ordered in any legal
4 proceeding only pursuant to this chapter, upon the filing of a written application by any party
5 within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs
6 prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad
7 litem appointed under this subsection in each proceeding, except a party may be entitled to
8 additional disqualifications of a guardian ad litem for good cause shown.

9 2. The court shall appoint a guardian ad litem in any proceeding in which child abuse
10 or neglect is alleged.

11 3. The guardian ad litem shall:

12 (1) Be the legal representative of the child at the hearing, and may examine,
13 cross-examine, subpoena witnesses and offer testimony;

14 (2) Prior to the hearing, conduct all necessary interviews with persons having contact
15 with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and
16 attitudes. If appropriate, the child should be interviewed;

17 (3) Request the juvenile officer to cause a petition to be filed in the juvenile division of
18 the circuit court if the guardian ad litem believes the child alleged to be abused or neglected is
19 in danger.

20 4. **All appointments of guardians ad litem shall be made on a rotational basis and**
21 **no preference shall be given in the appointment of any guardian ad litem except as**
22 **otherwise provided for in this subsection.** The appointing judge shall require the guardian ad
23 litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall
24 discharge such guardian ad litem and appoint another. The judge in making appointments
25 pursuant to this section shall give preference to persons who served as guardian ad litem for the
26 child in the earlier proceeding, unless there is a reason on the record for not giving such
27 preference.

28 5. The guardian ad litem shall be awarded a reasonable fee for such services to be set by
29 the court. The court, in its discretion, may:

30 (1) Issue a direct payment order to the parties. If a party fails to comply with the court's
31 direct payment order, the court may find such party to be in contempt of court; or

32 (2) Award such fees as a judgment to be paid by any party to the proceedings or from
33 public funds. Such an award of guardian fees shall constitute a final judgment in favor of the
34 guardian ad litem. Such final judgment shall be enforceable against the parties in accordance
35 with chapter 513, RSMo.

36 6. The court may designate volunteer advocates, who may or may not be attorneys
37 licensed to practice law, to assist in the performance of the guardian ad litem duties for the court.
38 The volunteer advocate shall be provided with all reports relevant to the case made to or by any
39 agency or person and shall have access to all records of such agencies or persons relating to the
40 child or such child's family members. Any such designated person shall receive no compensation
41 from public funds. This shall not preclude reimbursement for reasonable expenses.

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