

SECOND REGULAR SESSION

# HOUSE BILL NO. 2142

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHAD (Sponsor), SANDER AND FRANZ (Co-sponsors).

Read 1st time February 14, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4830L.01I

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### AN ACT

To repeal sections 452.340 and 454.557, RSMo, and to enact in lieu thereof two new sections relating to termination of child support.

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

Section A. Sections 452.340 and 454.557, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 452.340 and 454.557, 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 address how the amount of child  
98 support shall be calculated when an award of joint physical custody results in the child or  
99 children spending substantially equal time with both parents. The Missouri supreme court shall  
100 publish child support guidelines and specifically list and explain the relevant factors and  
101 assumptions that were used to calculate the child support guidelines. Any rule made pursuant  
102 to this subsection shall be reviewed by the promulgating body not less than once every four years  
103 to ensure that its application results in the determination of appropriate child support award  
104 amounts.

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

114         10. Pursuant to this or any other chapter, when a court determines the amount owed by  
115 a parent for support provided to a child by another person, other than a parent, prior to the date  
116 of filing of a petition requesting support, or when the director of the family support division  
117 establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section  
118 454.465, RSMo, the court or director shall use the guidelines established pursuant to subsection  
119 8 of this section. The amount of child support resulting from the application of the guidelines  
120 shall be applied retroactively for a period prior to the establishment of a support order and the  
121 length of the period of retroactivity shall be left to the discretion of the court or director. There  
122 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 **state case registry** or 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-one if the child support order does not specifically require payment of child support beyond age 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 **family support division [of child support enforcement] for an order entered under section 454.470, RSMo;**

(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 **for an order entered under section 454.470, RSMo**, 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, **as applicable**, 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 **for an order entered under section 454.470, RSMo**, 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, **as applicable**, stating that the child is emancipated and reciting the factual basis for such statement; and which statement or affidavit is served by

159 the court or division, **as applicable**, on the child support obligee. If the obligee denies the  
160 statement or affidavit, the court or division shall thereupon treat the sworn statement or affidavit  
161 as a [motion to modify the support obligation pursuant to section 452.370 or section 454.496,  
162 RSMo] **request for hearing**, and shall proceed to hear and adjudicate such [motion] **request for**  
163 **hearing** as provided by law; provided that the court may require the payment of a deposit as  
164 security for court costs and any accrued court costs, as provided by law, in relation to such  
165 [motion to modify] **request for hearing**. **When the division receives a request for hearing,**  
166 **the hearing shall be held in the manner provided by section 454.475, RSMo.**

167 12. The court may enter a judgment terminating child support pursuant to subdivisions  
168 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.  
169 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant  
170 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may  
171 promulgate uniform forms for sworn statements and affidavits to terminate orders of child  
172 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section  
173 452.370.

454.557. 1. A current support obligation shall not be recorded in the records maintained  
2 in the automated child support system in the following cases:

3 (1) In a IV-D case with a support order pursuant to section 454.465 or 454.470 when the  
4 division determines that payments for current support are no longer due and should no longer be  
5 made to the payment center. The division shall notify by first class mail the obligor and obligee  
6 under the support orders that payments shall no longer be made to the payment center, and any  
7 withholding of income shall be terminated unless it is subsequently determined by the division  
8 or court having jurisdiction that payments will continue. The division's determination shall  
9 terminate the division's support order, but shall not terminate any obligation of support  
10 established by court order. The obligor and obligee may contest the decision of the division to  
11 terminate the division's support order by requesting a hearing within thirty days of the mailing  
12 of the notice provided pursuant to this section. The hearing shall comply with the provisions of  
13 section 454.475;

14 (2) In [a IV-D case] **all cases** with a support order entered by a court when the court that  
15 issued the support order terminates such order [and notifies the division]. The division shall also  
16 cease enforcing the order if no past support is due; or

17 (3) In all cases when the [child is twenty-two years of age, unless a court orders support  
18 to continue. The obligor or obligee may contest the decision of the division to terminate  
19 accruing support orders by requesting a hearing within thirty days of the mailing of notice by the  
20 division. The hearing shall comply with the provisions of section 454.475. The issue at the  
21 hearing, if any, shall be limited to a mistake of fact as to the age of the child or the existence of

22 a court order requiring support after the age of twenty-two] **obligation of a parent to make**  
23 **child support payments is deemed terminated under subdivisions (1) to (4) of subsection**  
24 **11 of section 452.340, RSMo.**

25 2. Nothing in this section shall affect or terminate the amount due for unpaid past  
26 support.

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