

SECOND REGULAR SESSION

# HOUSE BILL NO. 2464

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES OXFORD (Sponsor), YAEGER, LOW (39), CURLS,  
DONNELLY, DAUS, MEINERS, WRIGHT-JONES AND LAMPE (Co-sponsors).

Read 1st time March 26, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5373L.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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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 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] **twenty-two**, unless the provisions of the child support  
36 order specifically extend the parental support order past the child's twenty-first birthday for  
37 reasons provided by 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] **twenty-**

51 **two**, whichever first occurs. To remain eligible for such continued parental support, at the  
52 beginning of each semester the child shall submit to each parent a transcript or similar official  
53 document provided by the institution of vocational or higher education which includes the  
54 courses the child is enrolled in and has completed for each term, the grades and credits received  
55 for each such course, and an official document from the institution listing the courses which the  
56 child is enrolled in for the upcoming term and the number of credits for each such course.  
57 [When enrolled in at least twelve credit hours, if the child receives failing grades in half or more  
58 of his or her courseload in any one semester, payment of child support may be terminated and  
59 shall not 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 has pursued a path of continuous attendance and has demonstrated**  
66 **evidence of a plan to continue to do so, the court may enter a judgment abating support for**  
67 **a period of up to five months for any semester in which the child completes at least six but**  
68 **less than twelve credit hours; however, such five-month period of abatement shall only be**  
69 **granted one time for each child.** If the child is enrolled in such an institution, the child or  
70 parent obligated to pay support may petition the court to amend the order to direct the obligated  
71 parent to make the payments directly to the child. As used in this section, an "institution of  
72 vocational education" means any postsecondary training or schooling for which the student is  
73 assessed a fee and attends classes regularly. "Higher education" means any junior college,  
74 community college, college, or university at which the child attends classes regularly. A child  
75 who has been diagnosed with a [developmental] **learning** disability[, as defined in section  
76 630.005, RSMo,] or whose physical disability or diagnosed health problem limits the child's  
77 ability to carry the number of credit hours prescribed in this subsection, shall remain eligible for  
78 child support so long as such child is enrolled in and attending an institution of vocational or  
79 higher education, and the child continues to meet the other requirements of this subsection. A  
80 child who is employed at least fifteen hours per week during the semester may take as few as  
81 nine credit hours per semester and remain eligible for child support so long as all other  
82 requirements of this subsection are complied with.

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

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

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

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

119           10. Pursuant to this or any other chapter, when a court determines the amount owed by  
120 a parent for support provided to a child by another person, other than a parent, prior to the date  
121 of filing of a petition requesting support, or when the director of the family support division  
122 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-one] **twenty-two** if the child support order does not specifically require payment of child support beyond age [twenty-one] **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, 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

159 the parent paying child support files a sworn statement or affidavit with the court which entered  
160 the order establishing the child support obligation, or the family support division, stating that the  
161 child is emancipated and reciting the factual basis for such statement; and which statement or  
162 affidavit is served by the court or division on the child support obligee. If the obligee denies the  
163 statement or affidavit, the court or division shall thereupon treat the sworn statement or affidavit  
164 as a motion to modify the support obligation pursuant to section 452.370 or section 454.496,  
165 RSMo, and shall proceed to hear and adjudicate such motion as provided by law; provided that  
166 the court may require the payment of a deposit as security for court costs and any accrued court  
167 costs, as provided by law, in relation to such motion to modify.

168 12. The court may enter a judgment terminating child support pursuant to subdivisions  
169 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.  
170 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant  
171 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may  
172 promulgate uniform forms for sworn statements and affidavits to terminate orders of child  
173 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section  
174 452.370.

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