

FIRST REGULAR SESSION

HOUSE BILL NO. 879

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KIRKTON (Sponsor), SCHUPP, JONES (63), YAEGER, McNEIL, STORCH, LAMPE, WALTON GRAY, OXFORD, CURLS, ATKINS, SATER, LeBLANC, MORRIS, CARTER, STREAM, DEEKEN, STILL, FAITH AND BROWN (73) (Co-sponsors).

1408L.01I

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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

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

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

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

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

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

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

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

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

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

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