

SECOND REGULAR SESSION

HOUSE BILL NO. 2485

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

5148H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 454.1000, 454.1008, 454.1010, and 568.040, RSMo, and to enact in lieu thereof four new sections relating to nonsupport, with a penalty provision.

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

Section A. Sections 454.1000, 454.1008, 454.1010, and 568.040, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 454.1000, 454.1008,
3 454.1010, and 568.040, to read as follows:

454.1000. As used in sections 454.1000 to 454.1025, the following terms mean:

- 2 (1) "Arrearage", the amount created by a failure to provide:
 - 3 (a) Support to a child pursuant to an administrative or judicial support order; or
 - 4 (b) Support to a spouse if the judgment or order requiring payment of spousal support
5 also requires payment of child support and such spouse is the custodial parent;
- 6 (2) "Child", a person for whom child support is due pursuant to a support order;
- 7 (3) "Court", any circuit court of the state that enters a support order or a circuit court in
8 which such order is registered or filed;
- 9 (4) "Director", the director of the family support division;
- 10 (5) "Division", the family support division of the department of social services;
- 11 (6) "IV-D case", a case in which support rights are assigned to the state pursuant to
12 section 208.040 or the division is providing support enforcement services pursuant to section
13 454.425;
- 14 (7) "License", a license, certificate, registration or authorization issued by a licensing
15 authority granting a person a right or privilege to engage in a business, occupation, profession,
16 recreation or other related privilege that is subject to suspension, revocation, forfeiture or

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.

17 termination by the licensing authority prior to its date of expiration, except for any license issued
18 by the department of conservation~~[- Licenses include licenses to operate motor vehicles pursuant~~
19 ~~to chapter 302, but shall not include motor vehicle registrations pursuant to chapter 301]~~ **or a**
20 **driver's license issued by the department of revenue;**

21 (8) "Licensing authority", any department, except for the department of conservation,
22 division, board, agency or instrumentality of this state or any political subdivision thereof that
23 issues a license. Any board or commission assigned to the division of professional registration
24 is included in the definition of licensing authority;

25 (9) "Obligee":

26 (a) A person to whom payments are required to be made pursuant to a support order; or

27 (b) A public agency of this or any other state which has the right to receive current or
28 accrued support payments or provides support enforcement services pursuant to this chapter;

29 (10) "Obligor", a person who owes a duty of support;

30 (11) "Order suspending a license", an order issued by a court or the director to suspend
31 a license. The order shall contain the name of the obligor, date of birth of the obligor, the type
32 of license and the Social Security number of the obligor;

33 (12) "Payment plan" includes, but is not limited to, a written plan approved by the court
34 or division that incorporates an income withholding pursuant to sections 452.350 and 454.505
35 or a similar plan for periodic payment of an arrearage, and current and future support, if
36 applicable;

37 (13) "Support order", an order providing a determinable amount for temporary or final
38 periodic payment of support. Such order may include payment of a determinable amount of
39 insurance, medical or other expenses of the child issued by:

40 (a) A court of this state;

41 (b) A court or administrative agency of competent jurisdiction of another state, an Indian
42 tribe, or a foreign country; or

43 (c) The director of the division.

454.1008. 1. Upon receipt of an order suspending a license, a licensing authority shall:

2 (1) Determine if the licensing authority has issued a license to the obligor whose name
3 appears on the order;

4 (2) Enter the suspension as effective from the date of the order issued by the court or
5 division;

6 (3) Issue the notice of the suspension to the licensee; and

7 (4) If required by law, demand surrender of the suspended license.

8 2. An order issued by a court or the director suspending a license shall be processed by
9 the licensing authority without any additional review or hearing by such licensing authority.

10 3. Notwithstanding the provisions of any other law regarding the suspension, revocation,
11 denial, termination or renewal of a license to the contrary, an order issued by a court or the
12 director suspending a license shall be implemented by the licensing authority and continue until
13 the court or division advises the licensing authority that such suspension has been stayed or
14 terminated. The obligor may not appeal the suspension of a license pursuant to sections
15 454.1000 to 454.1025 pursuant to any other law~~[, including, but not limited to, section 302.311].~~
16 The exclusive procedure for appeal is provided in sections 454.1000 to 454.1025.

17 4. If a license is suspended, any funds paid by the obligor to the licensing authority for
18 costs related to issuance, renewal or maintenance of a license shall not be refunded to the obligor.

19 5. Unless acting pursuant to an order of a court or the director which stays the suspension
20 of a license, an obligor who continues to engage in the business, occupation, profession or other
21 licensed activity while the license is suspended pursuant to this section is guilty of a class A
22 misdemeanor, unless a penalty is otherwise provided. The division or the licensing authority
23 may refer the obligor to the appropriate prosecuting or circuit attorney or the attorney general for
24 prosecution pursuant to this section in addition to any other remedy provided by law for engaging
25 in a licensed activity without a license or while a license is suspended.

26 6. The licensing authority shall be exempt from liability to the licensee for activities
27 conducted pursuant to this section.

28 7. The licensing authority shall not modify, remand, reverse, vacate or stay an order of
29 the court or director suspending a license.

30 ~~[8. If the license suspended is a driver's license, the obligor shall have no rights pursuant~~
31 ~~to section 302.311.]~~

 454.1010. 1. An obligor may, at any time, petition a court or the director for an order
2 to stay the suspension of a license. Any petition seeking to stay an order of the director shall be
3 served on the director.

4 2. The court or director may consider the obligor's petition for a stay separately from any
5 determination on the suspension of a license.

6 3. The court, but not the director, may stay suspension of a license upon a showing that
7 a suspension or continued suspension of a license would create a significant hardship to the
8 obligor, the obligor's employees, any legal dependents residing in the obligor's household, or
9 persons, businesses or other entities served by the obligor.

10 4. The court or director may stay suspension of a license upon entry of a payment plan
11 or receipt of adequate assurance that the obligor shall comply with an existing payment plan.

12 5. A stay shall terminate if:

13 (1) A court determines that the significant hardship circumstance pursuant to subsection
14 3 of this section has ended;

15 (2) The court or division determines that the obligor has failed to abide by the terms and
16 conditions of a payment plan; or

17 (3) The order staying suspension of a license has a termination date and such date has
18 been reached.

19 6. If the licensing authority is notified of an order suspending a license, the court or
20 division shall send a copy of any order staying or reimposing suspension of the license to the
21 licensing authority and the obligor by certified mail.

22 7. Upon receipt of an order staying or reimposing suspension of the license, the licensing
23 authority shall:

24 (1) Enter the information on appropriate records;

25 (2) Issue notice of the action to the licensee; and

26 (3) If required by law, demand surrender of the suspended license or return the reinstated
27 license.

28 8. No additional action by the licensing authority shall be required to implement a stay
29 or reinstatement of suspension of a license.

30 9. This section shall be the exclusive remedy for the obligor to obtain an order staying
31 suspension of a license pursuant to sections 454.1000 to 454.1025. ~~[Any other provisions
32 providing for the issuance of hardship licenses, including, but not limited to, those provided in
33 section 302.309, do not apply to suspensions pursuant to sections 454.1000 to 454.1025.~~

34 ~~10. No person shall be required to file proof of financial responsibility with the
35 department of revenue as a condition of reinstatement of a driver's license suspended solely
36 pursuant to the provisions of sections 454.1000 to 454.1025.~~

37 ~~11. Any person whose license to operate a motor vehicle in this state has been suspended
38 pursuant to this section shall, before having the license reinstated, pay to the director of revenue
39 a reinstatement fee of twenty dollars.]~~

568.040. 1. A person commits the offense of nonsupport if he or she knowingly fails to
2 provide adequate support for his or her spouse; a parent commits the offense of nonsupport if
3 such parent knowingly fails to provide adequate support which such parent is legally obligated
4 to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.

5 2. For purposes of this section:

6 (1) "Arrearage":

7 (a) The amount of moneys created by a failure to provide support to a child under an
8 administrative or judicial support order;

9 (b) Support to an estranged or former spouse if the judgment or order requiring payment
10 of spousal support also requires payment of child support and such estranged or former spouse
11 is the custodial parent; or

12 (c) Both paragraphs (a) and (b) of this subdivision.

13

14 The arrearage shall reflect any retroactive support ordered under a modification and any
15 judgments entered by a court of competent jurisdiction or any authorized agency and any
16 satisfactions of judgment filed by the custodial parent;

17 (2) "Child" means any biological or adoptive child, or any child whose paternity has been
18 established under chapter 454, or chapter 210, or any child whose relationship to the defendant
19 has been determined, by a court of law in a proceeding for dissolution or legal separation, to be
20 that of child to parent;

21 (3) "Good cause" means any substantial reason why the defendant is unable to provide
22 adequate support. Good cause does not exist if the defendant purposely maintains his inability
23 to support;

24 (4) "Support" means food, clothing, lodging, and medical or surgical attention;

25 (5) It shall not constitute a failure to provide medical and surgical attention, if
26 nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

27 3. Inability to provide support for good cause shall be an affirmative defense under this
28 section. A defendant who raises such affirmative defense has the burden of proving the defense
29 by a preponderance of the evidence.

30 4. The defendant shall have the burden of injecting the issues raised by subdivision (5)
31 of subsection 2 of this section.

32 5. The offense of criminal nonsupport is a class A misdemeanor, unless the total
33 arrearage is in excess of an aggregate of twelve monthly payments due under any order of
34 support issued by any court of competent jurisdiction or any authorized administrative agency,
35 in which case it is a class E felony.

36 6. (1) If at any time an offender convicted of criminal nonsupport, or an offender who
37 has plead guilty to a charge of criminal nonsupport, is placed on probation or parole, there may
38 be ordered as a condition of probation or parole that the offender commence payment of current
39 support as well as satisfy the arrearages. Arrearages may be satisfied first by making such lump
40 sum payment as the offender is capable of paying, if any, as may be shown after examination of
41 the offender's financial resources or assets, both real, personal, and mixed, and second by making
42 periodic payments. Periodic payments toward satisfaction of arrears when added to current
43 payments due shall be in such aggregate sums as is not greater than fifty percent of the offender's
44 adjusted gross income after deduction of payroll taxes, medical insurance that also covers a
45 dependent spouse or children, and any other court- or administrative-ordered support, only.

46 (2) If the offender fails to pay the support and arrearages under the terms of his or her
47 probation, the court may revoke probation or parole and then impose an appropriate sentence

48 within the range for the class of offense that the offender was convicted of as provided by law,
49 unless the offender proves good cause for the failure to pay as required under subsection 3 of this
50 section.

51 (3) (a) An individual whose children were the subject of a child support order and the
52 obligation of such individual to make child support payments has been terminated under
53 subsection 3 of section 452.340, who has been found guilty of a felony offense for criminal
54 nonsupport under this section, and who has successfully completed probation after a plea of
55 guilty or conviction may petition the court for expungement of all recordations of his or her
56 arrest, plea, trial, or conviction. If the court determines after hearing that such person:

57 a. Has not been convicted of any subsequent offense, unless such offense is eligible for
58 expungement under a different section;

59 b. Does not have any other felony pleas of guilt, findings of guilt, or convictions, unless
60 such felony pleas of guilt, findings of guilt, or convictions are eligible for expungement under
61 a different section;

62 c. Has paid off all arrearages; and

63 d. Has no administrative child support actions pending at the time of the hearing on the
64 application for expungement with respect to all children subject to orders of payment of child
65 support

66

67 the court shall enter an order of expungement. In addition, the court may consider successful
68 completion of a criminal nonsupport court program under section 478.1000, or any other
69 circumstances or factors deemed relevant by the court.

70 (b) Upon granting the order of expungement, the records and files maintained in any
71 court proceeding in an associate or a circuit division of the circuit court under this section shall
72 be confidential and only available to the parties or by order of the court for good cause shown.

73 (c) The effect of such order shall be to restore such person to the status he or she
74 occupied prior to such arrest, plea, or conviction, and as if such event had never taken place. No
75 person for whom such order has been entered shall be held thereafter under any provision of any
76 law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure
77 to recite or acknowledge such arrest, plea, trial, conviction, or expungement in response to any
78 inquiry made of him or her for any purpose whatsoever and no such inquiry shall be made for
79 information relating to an expungement under this section.

80 (d) A person shall only be entitled to one expungement under this section. Nothing in
81 this section shall prevent the director of the department of social services from maintaining such
82 records as to ensure that an individual receives only one expungement under this section for the

83 purpose of informing the proper authorities of the contents of any record maintained under this
84 section.

85 7. During any period that a nonviolent offender is incarcerated for criminal nonsupport,
86 if the offender is ready, willing, and able to be gainfully employed **or is gainfully employed**
87 during said period of incarceration, the offender, if he or she meets the criteria established by the
88 department of corrections, may be placed on work release to allow the offender to satisfy his or
89 her obligation to pay support. Arrearages shall be satisfied as outlined in the collection
90 agreement. **At no time following a conviction for criminal nonsupport shall an offender be**
91 **penalized with the revocation of his or her driver's license.**

92 8. Beginning August 28, 2009, every nonviolent first- and second-time offender then
93 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole
94 for conviction of criminal nonsupport, may be considered for parole, under the conditions set
95 forth in subsection 6 of this section, or work release, under the conditions set forth in subsection
96 7 of this section.

97 9. Beginning January 1, 1991, every prosecuting attorney in any county which has
98 entered into a cooperative agreement with the family support division within the department of
99 social services regarding child support enforcement services shall report to the division on a
100 quarterly basis the number of charges filed and the number of convictions obtained under this
101 section by the prosecuting attorney's office on all IV-D cases. The division shall consolidate the
102 reported information into a statewide report by county and make the report available to the
103 general public.

104 10. Persons accused of committing the offense of nonsupport of the child shall be
105 prosecuted:

106 (1) In any county in which the child resided during the period of time for which the
107 defendant is charged; or

108 (2) In any county in which the defendant resided during the period of time for which the
109 defendant is charged.

✓