

SECOND REGULAR SESSION

HOUSE BILL NO. 2042

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TERRY.

4176H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof one new section relating to child support payments.

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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.

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other

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.

18 parent has voluntarily relinquished physical custody of a child to the parent ordered to pay
19 child support, notwithstanding any periods of visitation or temporary physical and legal or
20 physical or legal custody pursuant to a judgment of dissolution or legal separation or any
21 modification thereof. In a IV-D case, the family support division may determine the amount
22 of the abatement pursuant to this subsection for any child support order and shall record the
23 amount of abatement in the automated child support system record established pursuant to
24 chapter 454. If the case is not a IV-D case and upon court order, the circuit clerk shall record
25 the amount of abatement in the automated child support system record established in chapter
26 454.

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

30 (1) Dies;

31 (2) Marries;

32 (3) Enters active duty in the military;

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

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

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

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

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

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

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

86 7. The general assembly finds and declares that it is the public policy of this state that
87 frequent, continuing and meaningful contact with both parents after the parents have
88 separated or dissolved their marriage is in the best interest of the child except for cases where
89 the court specifically finds that such contact is not in the best interest of the child. In order to
90 effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and
91 child support orders in the same manner. A court with jurisdiction may abate, in whole or in

92 part, any past or future obligation of support and may transfer the physical and legal or
93 physical or legal custody of one or more children if it finds that a parent has, without good
94 cause, failed to provide visitation or physical and legal or physical or legal custody to the
95 other parent pursuant to the terms of a judgment of dissolution, legal separation or
96 modifications thereof. The court shall also award, if requested and for good cause shown,
97 reasonable expenses, attorney's fees and court costs incurred by the prevailing party.

98 8. The Missouri supreme court shall have in effect a rule establishing guidelines by
99 which any award of child support shall be made in any judicial or administrative proceeding.
100 Said guidelines shall contain specific, descriptive and numeric criteria which will result in a
101 computation of the support obligation. The guidelines shall address how the amount of child
102 support shall be calculated when an award of joint physical custody results in the child or
103 children spending equal or substantially equal time with both parents and the directions and
104 comments and any tabular representations of the directions and comments for completion of
105 the child support guidelines and a subsequent form developed to reflect the guidelines shall
106 reflect the ability to obtain up to a fifty percent adjustment or credit below the basic child
107 support amount for joint physical custody or visitation as described in subsection 11 of this
108 section. The Missouri supreme court shall publish child support guidelines and specifically
109 list and explain the relevant factors and assumptions that were used to calculate the child
110 support guidelines. Any rule made pursuant to this subsection shall be reviewed by the
111 promulgating body not less than once every four years to ensure that its application results in
112 the determination of appropriate child support award amounts.

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

123 10. Pursuant to this or any other chapter, when a court determines the amount owed
124 by a parent for support provided to a child by another person, other than a parent, prior to the
125 date of filing of a petition requesting support, or when the director of the family support
126 division establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of
127 section 454.465, the court or director shall use the guidelines established pursuant to
128 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 court may award child support in an amount that provides up to a fifty percent adjustment below the basic child support amount authorized by the child support guidelines described under subsection 8 of this section for custody awards of joint physical custody where the child or children spend equal or substantially equal time with both parents.

12. 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 for an order entered under section 454.470;

(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, 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, 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 the court or division, as applicable, 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 request for hearing and shall proceed to hear and adjudicate such request for hearing 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 request for hearing. When the division receives a request for hearing, the hearing shall be held in the manner provided by section 454.475.

13. The court may enter a judgment terminating child support pursuant to subdivisions (1) to (3) of subsection 12 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 12 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 12 of this section and subsection 4 of section 452.370.

14. Notwithstanding any provision of law, if the court awards each parent equal periods of time with the child, the court shall not order a parent to pay child support to the other parent for reasonable or necessary expenses of the child.

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