

HOUSE BILL NO. 1140

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEELY.

2283H.011

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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

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 parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support,

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 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. If the case is not a
23 IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the
24 automated child support system record established in chapter 454.

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 community college, college, or university at
70 which the child attends classes regularly. A child who has been diagnosed with a developmental
71 disability, as defined in section 630.005, or whose physical disability or diagnosed health
72 problem limits the child's ability to carry the number of credit hours prescribed in this subsection,
73 shall remain eligible for child support so long as such child is enrolled in and attending an
74 institution of vocational or higher education, and the child continues to meet the other
75 requirements of this subsection. A child who is employed at least fifteen hours per week during
76 the semester may take as few as nine credit hours per semester and remain eligible for child
77 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 equal or substantially equal time with both parents and the directions and
100 comments and any tabular representations of the directions and comments for completion of the
101 child support guidelines and a subsequent form developed to reflect the guidelines shall reflect
102 the ability to obtain up to a fifty percent adjustment or credit below the basic child support
103 amount for joint physical custody or visitation as described in subsection 11 of this section. The
104 Missouri supreme court shall publish child support guidelines and specifically list and explain
105 the relevant factors and assumptions that were used to calculate the child support guidelines.
106 Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less
107 than once every four years to ensure that its application results in the determination of
108 appropriate child support award amounts.

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

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

126 a rebuttable presumption that the amount resulting from application of the guidelines under
127 subsection 8 of this section constitutes the amount owed by the parent for the period prior to the
128 date of the filing of the petition for support or the period for which state debt is being established.
129 In applying the guidelines to determine a retroactive support amount, when information as to
130 average monthly income is available, the court or director may use the average monthly income
131 of the noncustodial parent, as averaged over the period of retroactivity, in determining the
132 amount of presumed child support owed for the period of retroactivity. The court or director may
133 enter a different amount in a particular case upon finding, after consideration of all relevant
134 factors, including the factors set out in subsection 1 of this section, that there is sufficient cause
135 to rebut the presumed amount.

136 11. The court ~~may~~ **shall** award child support in an amount that provides up to a fifty
137 percent adjustment below the basic child support amount authorized by the child support
138 guidelines described under subsection 8 of this section for custody awards of joint physical
139 custody where the child or children spend equal or substantially equal time with both parents.
140 **Additionally, this adjustment shall be credited and based upon the actual awarded annual**
141 **percentage of overnight custody the child is ordered to reside with the parent who is**
142 **required to pay support.**

143 12. The obligation of a parent to make child support payments may be terminated as
144 follows:

145 (1) Provided that the state case registry or child support order contains the child's date
146 of birth, the obligation shall be deemed terminated without further judicial or administrative
147 process when the child reaches age twenty-one if the child support order does not specifically
148 require payment of child support beyond age twenty-one for reasons provided by subsection 4
149 of this section;

150 (2) The obligation shall be deemed terminated without further judicial or administrative
151 process when the parent receiving child support furnishes a sworn statement or affidavit
152 notifying the obligor parent of the child's emancipation in accordance with the requirements of
153 subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the
154 court which entered the order establishing the child support obligation, or the family support
155 division for an order entered under section 454.470;

156 (3) The obligation shall be deemed terminated without further judicial or administrative
157 process when the parent paying child support files a sworn statement or affidavit with the court
158 which entered the order establishing the child support obligation, or the family support division
159 for an order entered under section 454.470, stating that the child is emancipated and reciting the
160 factual basis for such statement; which statement or affidavit is served by the court or division,
161 as applicable, on the child support obligee; and which is either acknowledged and affirmed by

162 the child support obligee in writing, or which is not responded to in writing within thirty days
163 of receipt by the child support obligee;

164 (4) The obligation shall be terminated as provided by this subdivision by the court which
165 entered the order establishing the child support obligation, or the family support division for an
166 order entered under section 454.470, when the parent paying child support files a sworn
167 statement or affidavit with the court which entered the order establishing the child support
168 obligation, or the family support division, as applicable, stating that the child is emancipated and
169 reciting the factual basis for such statement; and which statement or affidavit is served by the
170 court or division, as applicable, on the child support obligee. If the obligee denies the statement
171 or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a
172 request for hearing and shall proceed to hear and adjudicate such request for hearing as provided
173 by law; provided that the court may require the payment of a deposit as security for court costs
174 and any accrued court costs, as provided by law, in relation to such request for hearing. When
175 the division receives a request for hearing, the hearing shall be held in the manner provided by
176 section 454.475.

177 13. The court may enter a judgment terminating child support pursuant to subdivisions
178 (1) to (3) of subsection 12 of this section without necessity of a court appearance by either party.
179 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
180 to subsection 12 of this section on both the obligor and obligee parents. The supreme court may
181 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
182 support obligations for use pursuant to subsection 12 of this section and subsection 4 of section
183 452.370.

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