

FIRST REGULAR SESSION

# HOUSE BILL NO. 171

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

0149H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 454.475, 536.100, and 536.110, RSMo, and to enact in lieu thereof three new sections relating to the filing of petitions for review of certain decisions.

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

Section A. Sections 454.475, 536.100, and 536.110, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 454.475, 536.100, and 536.110, to read as follows:

454.475. 1. Hearings provided for in this section shall be conducted pursuant to chapter 536 by administrative hearing officers designated by the Missouri department of social services. The hearing officer shall provide the parents, the person having custody of the child, or other appropriate agencies or their attorneys with notice of any proceeding in which support obligations may be established or modified. The department shall not be stayed from enforcing and collecting upon the administrative order during the hearing process and during any appeal to the courts of this state, unless specifically enjoined by court order.

2. If no factual issue has been raised by the application for hearing, or the issues raised have been previously litigated or do not constitute a defense to the action, the director may enter an order without an evidentiary hearing, which order shall be a final decision entitled to judicial review as provided in sections 536.100 to 536.140.

3. After full and fair hearing, the hearing officer shall make specific findings regarding the liability and responsibility, if any, of the alleged responsible parent for the support of the dependent child, and for repayment of accrued state debt or arrearages, and the costs of collection, and shall enter an order consistent therewith. In making the determination of the

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.

16 amount the parent shall contribute toward the future support of a dependent child, the hearing  
17 officer shall consider the factors set forth in section 452.340.

18 4. If the person who requests the hearing fails to appear at the time and place set for the  
19 hearing, upon a showing of proper notice to that person, the hearing officer shall enter findings  
20 and order in accordance with the provisions of the notice or motion unless the hearing officer  
21 determines that no good cause therefor exists.

22 5. In contested cases, the findings and order of the hearing officer shall be the decision  
23 of the director. Any parent or person having custody of the child adversely affected by such  
24 decision may obtain judicial review pursuant to sections 536.100 to 536.140 by filing a petition  
25 for review in the circuit court of proper venue within thirty days of mailing of the decision. **Such**  
26 **thirty days shall be calculated as provided under Missouri supreme court rule 44.01(e).**  
27 Copies of the decision or order of the hearing officer shall be mailed to any parent, person having  
28 custody of the child and the division within fourteen days of issuance.

29 6. If a hearing has been requested, and upon request of a parent, a person having custody  
30 of the child, the division or a IV-D agency, the director shall enter a temporary order requiring  
31 the provision of child support pending the final decision or order pursuant to this section if there  
32 is clear and convincing evidence establishing a presumption of paternity pursuant to section  
33 210.822. In determining the amount of child support, the director shall consider the factors set  
34 forth in section 452.340. The temporary order, effective upon filing pursuant to section 454.490,  
35 is not subject to a hearing pursuant to this section. The temporary order may be stayed by a court  
36 of competent jurisdiction only after a hearing and a finding by the court that the order fails to  
37 comply with rule 88.01.

38 7. (1) Any administrative decision or order issued under this section containing clerical  
39 mistakes arising from oversight or omission, except proposed administrative modifications of  
40 judicial orders, may be corrected by an agency administrative hearing officer at any time upon  
41 ~~their~~ **his or her** own initiative or written motion filed by the division or any party to the action  
42 provided the written motion is mailed to all parties. Any objection or response to the written  
43 motion shall be made in writing and filed with the hearing officer within fifteen days from the  
44 mailing date of the motion. Proposed administrative modifications of judicial orders may be  
45 corrected by an agency administrative hearing officer prior to the filing of the proposed  
46 administrative modification of a judicial order with the court that entered the underlying judicial  
47 order as required in section 454.496, or upon express order of the court that entered the  
48 underlying judicial order. No correction shall be made during the court's review of the  
49 administrative decision, order, or proposed order as authorized under sections 536.100 to  
50 536.140, except in response to an express order from the reviewing court.

51 (2) Any administrative decision or order or proposed administrative modification of  
52 judicial order issued under this section containing errors arising from mistake, surprise, fraud,  
53 misrepresentation, excusable neglect or inadvertence, may be corrected prior to being filed with  
54 the court by an agency administrative hearing officer upon ~~their~~ **his or her** own initiative or  
55 by written motion filed by the division or any party to the action provided the written motion is  
56 mailed to all parties and filed within sixty days of the administrative decision, order, or proposed  
57 decision and order. Any objection or response to the written motion shall be made in writing and  
58 filed with the hearing officer within fifteen days from the mailing date of the motion. No  
59 decision, order, or proposed administrative modification of judicial order may be corrected after  
60 ninety days from the mailing of the administrative decision, order, or proposed order or during  
61 the court's review of the administrative decision, order, or proposed order as authorized under  
62 sections 536.100 to 536.140, except in response to an express order from the reviewing court.

63 (3) Any administrative decision or order or proposed administrative modification of  
64 judicial order issued under this section may be vacated by an agency administrative hearing  
65 officer upon ~~their~~ **his or her** own initiative or by written motion filed by the division or any  
66 party to the action provided the written motion is mailed to all parties, if the administrative  
67 hearing officer determines that the decision or order was issued without subject matter  
68 jurisdiction, without personal jurisdiction, or without affording the parties due process. Any  
69 objection or response to the written motion shall be made in writing and filed with the hearing  
70 officer within fifteen days from the mailing date of the motion. A proposed administrative  
71 modification of a judicial order may only be vacated prior to being filed with the court. No  
72 decision, order, or proposed administrative modification of a judicial order may be vacated  
73 during the court's review of the administrative decision, order, or proposed order as authorized  
74 under sections 536.100 to 536.140, except in response to an express order from the reviewing  
75 court.

536.100. Any person who has exhausted all administrative remedies provided by law and  
2 who is aggrieved by a final decision in a contested case, whether such decision is affirmative or  
3 negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to  
4 536.140, unless some other provision for judicial review is provided by statute; provided,  
5 however, that nothing in this chapter contained shall prevent any person from attacking any void  
6 order of an agency at any time or in any manner that would be proper in the absence of this  
7 section. If the agency or any board, other than the administrative hearing commission,  
8 established to provide independent review of the decisions of a department or division that is  
9 authorized to promulgate rules and regulations under this chapter fails to issue a final decision  
10 in a contested case within the earlier of:

11 (1) Sixty days after the conclusion of a hearing on the contested case; or

12           (2) One hundred eighty days after the receipt by the agency of a written request for the  
13 issuance of a final decision,  
14  
15 then the person shall be considered to have exhausted all administrative remedies and shall be  
16 considered to have received a final decision in favor of the agency and shall be entitled to  
17 immediate judicial review as provided in sections 536.100 to 536.140 or other provision for  
18 judicial review provided by statute. In cases, whether contested or not, where the law provides  
19 for an independent review of an agency's decision by a board other than the administrative  
20 hearing commission and further provides for a de novo review of the board's decision by the  
21 circuit court, a party aggrieved by the agency's decision may, within thirty days after it receives  
22 notice of that decision, waive independent review by the board and instead file a petition in the  
23 circuit court for the de novo review of the agency's decision. **Such thirty days shall be**  
24 **calculated as provided under Missouri supreme court rule 44.01(e).** The party filing the  
25 petition under this section shall be considered to have exhausted all administrative remedies.

          536.110. 1. Proceedings for review may be instituted by filing a petition in the circuit  
2 court of the county of proper venue within thirty days after the mailing or delivery of the notice  
3 of the agency's final decision. **Such thirty days shall be calculated as provided under**  
4 **Missouri supreme court rule 44.01(e).**

5           2. Such petition may be filed without first seeking a rehearing, but in cases where  
6 agencies have authority to entertain motions for rehearing and such a motion is duly filed, the  
7 thirty-day period aforesaid shall run from the date of the delivery or mailing of notice of the  
8 agency's decision on such motion. No summons shall issue in such case, but copies of the  
9 petition shall be delivered to the agency and to each party of record in the proceedings before the  
10 agency or to his attorney of record, or shall be mailed to the agency and to such party or his said  
11 attorney by registered mail, and proof of such delivery or mailing shall be filed in the case.

12           3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of  
13 Cole County or in the county of the plaintiff or of one of the plaintiff's residence or if any  
14 plaintiff is a corporation, domestic or foreign, having a registered office or business office in this  
15 state, in the county of such registered office or business office, except that, in cases involving  
16 real property or improvements thereto, the venue shall be the circuit court of the county where  
17 such real property is located. The court in its discretion may permit other interested persons to  
18 intervene.

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