

FIRST REGULAR SESSION

# HOUSE BILL NO. 81

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TERRY.

0651H.011

DANA RADEMAN MILLER, 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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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 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 award child support in an amount that provides up to a fifty percent  
137 adjustment below the basic child support amount authorized by the child support guidelines  
138 described under subsection 8 of this section for custody awards of joint physical custody where  
139 the child or children spend equal or substantially equal time with both parents.

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

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

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

153         (3) The obligation shall be deemed terminated without further judicial or administrative  
154 process when the parent paying child support files a sworn statement or affidavit with the court  
155 which entered the order establishing the child support obligation, or the family support division  
156 for an order entered under section 454.470, stating that the child is emancipated and reciting the  
157 factual basis for such statement; which statement or affidavit is served by the court or division,  
158 as applicable, on the child support obligee; and which is either acknowledged and affirmed by  
159 the child support obligee in writing, or which is not responded to in writing within thirty days  
160 of receipt by the child support obligee;

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

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

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

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