

FIRST REGULAR SESSION

SENATE BILL NO. 35

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEMBKE.

Pre-filed December 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

0186S.011

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Section A. Section 452.340, RSMo, is repealed and one new section
2 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
2 or child support, the court may order either or both parents owing a duty of
3 support to a child of the marriage to pay an amount reasonable or necessary for
4 the support of the child, including an award retroactive to the date of filing the
5 petition, without regard to marital misconduct, after considering all relevant
6 factors including:

7 (1) The financial needs and resources of the child;

8 (2) The financial resources and needs of the parents;

9 (3) The standard of living the child would have enjoyed had the marriage
10 not been dissolved;

11 (4) The physical and emotional condition of the child, and the child's
12 educational needs;

13 (5) The child's physical and legal custody arrangements, including the
14 amount of time the child spends with each parent and the reasonable expenses
15 associated with the custody or visitation arrangements; and

16 (6) The reasonable work-related child care expenses of each parent.

17 2. The obligation of the parent ordered to make support payments shall
18 abate, in whole or in part, for such periods of time in excess of thirty consecutive
19 days that the other parent has voluntarily relinquished physical custody of a

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

32 (1) Dies;

33 (2) Marries;

34 (3) Enters active duty in the military;

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

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

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

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

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

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

90 6. The court shall consider ordering a parent to waive the right to claim
91 the tax dependency exemption for a child enrolled in an institution of vocational

92 or higher education in favor of the other parent if the application of state and
93 federal tax laws and eligibility for financial aid will make an award of the
94 exemption to the other parent appropriate.

95 7. The general assembly finds and declares that it is the public policy of
96 this state that frequent, continuing and meaningful contact with both parents
97 after the parents have separated or dissolved their marriage is in the best
98 interest of the child except for cases where the court specifically finds that such
99 contact is not in the best interest of the child. In order to effectuate this public
100 policy, a court with jurisdiction shall enforce visitation, custody and child support
101 orders in the same manner. A court with jurisdiction may abate, in whole or in
102 part, any past or future obligation of support and may transfer the physical and
103 legal or physical or legal custody of one or more children if it finds that a parent
104 has, without good cause, failed to provide visitation or physical and legal or
105 physical or legal custody to the other parent pursuant to the terms of a judgment
106 of dissolution, legal separation or modifications thereof. The court shall also
107 award, if requested and for good cause shown, reasonable expenses, attorney's
108 fees and court costs incurred by the prevailing party.

109 8. The Missouri supreme court shall have in effect a rule establishing
110 guidelines by which any award of child support shall be made in any judicial or
111 administrative proceeding. Said guidelines shall contain specific, descriptive and
112 numeric criteria which will result in a computation of the support
113 obligation. **The guidelines shall require documentation to verify the**
114 **income of the parties for the initial order of support and for any**
115 **modification of such order. Such documentation may include, but not**
116 **be limited to, current wage stubs, a current W-2 form, statements from**
117 **the party's employer, a wage match with the division of employment**
118 **security, and bank statements.** The guidelines shall address how the amount
119 of child support shall be calculated when an award of joint physical custody
120 results in the child or children spending substantially equal time with both
121 parents **and as specified in subdivision (2) of subsection 11 of this**
122 **section.** The Missouri supreme court shall publish child support guidelines and
123 specifically list and explain the relevant factors and assumptions that were used
124 to calculate the child support guidelines. Any rule made pursuant to this
125 subsection shall be reviewed by the promulgating body not less than once every
126 four years to ensure that its application results in the determination of
127 appropriate child support award amounts.

128 9. There shall be a rebuttable presumption, in any judicial or
129 administrative proceeding for the award of child support, that the amount of the
130 award which would result from the application of the guidelines established
131 pursuant to subsection 8 of this section is the correct amount of child support to
132 be awarded. A written finding or specific finding on the record in a judicial or
133 administrative proceeding that the application of the guidelines would be unjust
134 or inappropriate in a particular case, after considering all relevant factors,
135 including the factors set out in subsection 1 of this section, is required if
136 requested by a party and shall be sufficient to rebut the presumption in the
137 case. The written finding or specific finding on the record shall detail the specific
138 relevant factors that required a deviation from the application of the guidelines.

139 10. Pursuant to this or any other chapter, when a court determines the
140 amount owed by a parent for support provided to a child by another person, other
141 than a parent, prior to the date of filing of a petition requesting support, or when
142 the director of the family support division establishes the amount of state debt
143 due pursuant to subdivision (2) of subsection 1 of section 454.465, the court or
144 director shall use the guidelines established pursuant to subsection 8 of this
145 section. The amount of child support resulting from the application of the
146 guidelines shall be applied retroactively for a period prior to the establishment
147 of a support order and the length of the period of retroactivity shall be left to the
148 discretion of the court or director. There shall be a rebuttable presumption that
149 the amount resulting from application of the guidelines under subsection 8 of this
150 section constitutes the amount owed by the parent for the period prior to the date
151 of the filing of the petition for support or the period for which state debt is being
152 established. In applying the guidelines to determine a retroactive support
153 amount, when information as to average monthly income is available, the court
154 or director may use the average monthly income of the noncustodial parent, as
155 averaged over the period of retroactivity, in determining the amount of presumed
156 child support owed for the period of retroactivity. The court or director may enter
157 a different amount in a particular case upon finding, after consideration of all
158 relevant factors, including the factors set out in subsection 1 of this section, that
159 there is sufficient cause to rebut the presumed amount.

160 11. **(1) Notwithstanding subsection 1 of this section, no child**
161 **support shall be awarded in instances:**

162 **(a) Where both parents sign an agreement requesting the court**
163 **not to award child support and to award them joint physical custody**

164 **resulting in the child or children spending equal or substantially equal**
165 **time with both parents;**

166 **(b) The difference in the verified incomes of the parents is less**
167 **than twenty-five percent; and**

168 **(c) A finding has been made that such custody and award of no**
169 **child support is in the best interest of the child.**

170 **(2) When parents do not agree on an award of no child support**
171 **but meet all of the other requirements under subdivision (1) of this**
172 **subsection, the court shall award child support in an amount that**
173 **provides up to a fifty percent adjustment below the basic child support**
174 **amount authorized by the child support guidelines described under**
175 **subsection 8 of this section for custody awards of children spending**
176 **equal or substantially equal time with both parents. The Missouri**
177 **supreme court shall amend the child support guidelines, commonly**
178 **referred to as "Form 14", to reflect the ability to obtain up to a fifty**
179 **percent adjustment for joint custody in accordance with this section.**

180 **12.** The obligation of a parent to make child support payments may be
181 terminated as follows:

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

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

194 **(3)** The obligation shall be deemed terminated without further judicial or
195 administrative process when the parent paying child support files a sworn
196 statement or affidavit with the court which entered the order establishing the
197 child support obligation, or the family support division for an order entered under
198 section 454.470, stating that the child is emancipated and reciting the factual
199 basis for such statement; which statement or affidavit is served by the court or

200 division, as applicable, on the child support obligee; and which is either
201 acknowledged and affirmed by the child support obligee in writing, or which is
202 not responded to in writing within thirty days of receipt by the child support
203 obligee;

204 (4) The obligation shall be terminated as provided by this subdivision by
205 the court which entered the order establishing the child support obligation, or the
206 family support division for an order entered under section 454.470, when the
207 parent paying child support files a sworn statement or affidavit with the court
208 which entered the order establishing the child support obligation, or the family
209 support division, as applicable, stating that the child is emancipated and reciting
210 the factual basis for such statement; and which statement or affidavit is served
211 by the court or division, as applicable, on the child support obligee. If the obligee
212 denies the statement or affidavit, the court or division shall thereupon treat the
213 sworn statement or affidavit as a request for hearing and shall proceed to hear
214 and adjudicate such request for hearing as provided by law; provided that the
215 court may require the payment of a deposit as security for court costs and any
216 accrued court costs, as provided by law, in relation to such request for
217 hearing. When the division receives a request for hearing, the hearing shall be
218 held in the manner provided by section 454.475.

219 [12.] 13. The court may enter a judgment terminating child support
220 pursuant to subdivisions (1) to (3) of subsection [11] 12 of this section without
221 necessity of a court appearance by either party. The clerk of the court shall mail
222 a copy of a judgment terminating child support entered pursuant to subsection
223 [11] 12 of this section on both the obligor and obligee parents. The supreme
224 court may promulgate uniform forms for sworn statements and affidavits to
225 terminate orders of child support obligations for use pursuant to subsection [11]
226 12 of this section and subsection 4 of section 452.370.

✓