

FIRST REGULAR SESSION

SENATE BILL NO. 246

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time January 10, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

0542S.02I

AN ACT

To repeal sections 452.075 and 452.370, RSMo, and to enact in lieu thereof two new sections relating to alimony and maintenance.

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

Section A. Sections 452.075 and 452.370, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 452.075 and 452.370, to read as follows:

452.075. **1. When a divorce has been granted, and the court has made an order or decree providing for the payment of alimony and maintenance, the remarriage of the former spouse shall relieve the spouse obligated to pay support from further payment of alimony to the former spouse from the date of the remarriage, without the necessity of further court action, but the remarriage shall not relieve the former spouse from the provisions of any judgment or decree or order providing for the support of any minor children.**

2. When a divorce has been granted, and the court has made an order or decree providing for the payment of alimony and maintenance, a finding that a former spouse receiving alimony or maintenance is cohabiting or has cohabited with another person in a relationship of a romantic nature shall relieve the spouse obligated to pay support from further payment of alimony to the former spouse from the date of such finding. The order of the court terminating alimony or maintenance shall not relieve the former spouse from the provisions of any judgment or decree or order providing support for any minor.

3. Cohabitation, as used in this section, means the act of two adults dwelling together continuously and habitually in a romantic

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

19 relationship, even if this relationship is not solemnized by
20 marriage. The romantic nature of any cohabitation is evidenced by the
21 voluntary mutual assumption of those marital rights, duties, and
22 obligations which are usually ascribed to the institution of marriage,
23 and which include, but are not necessarily dependent on, sexual
24 relations.

25 4. Continued and habitual cohabitation occurs when the former
26 spouse receiving alimony or maintenance resides with another person
27 in a romantic relationship for a period of ninety or more consecutive
28 days. The court may determine that a continued cohabitation exists if
29 there is evidence that the supported spouse resides with another
30 person in a romantic relationship for periods of less than ninety days
31 and the two periodically separated in order to circumvent the ninety-
32 day requirement.

452.370. 1. Except as otherwise provided in subsection 6 of section
2 452.325, the provisions of any judgment respecting maintenance or support may
3 be modified only upon a showing of changed circumstances so substantial and
4 continuing as to make the terms unreasonable. In a proceeding for modification
5 of any child support or maintenance judgment, the court, in determining whether
6 or not a substantial change in circumstances has occurred, shall consider all
7 financial resources of both parties, including the extent to which the reasonable
8 expenses of either party are, or should be, shared by a spouse or other person
9 with whom he or she cohabits, and the earning capacity of a party who is not
10 employed. If the application of the child support guidelines and criteria set forth
11 in section 452.340 and applicable supreme court rules to the financial
12 circumstances of the parties would result in a change of child support from the
13 existing amount by twenty percent or more, a prima facie showing has been made
14 of a change of circumstances so substantial and continuing as to make the present
15 terms unreasonable, if the existing amount was based upon the presumed amount
16 pursuant to the child support guidelines.

17 2. When the party seeking modification has met the burden of proof set
18 forth in subsection 1 of this section, the child support shall be determined in
19 conformity with criteria set forth in section 452.340 and applicable supreme court
20 rules.

21 3. Unless otherwise agreed in writing or expressly provided in the
22 judgment, the obligation to pay future statutory maintenance is terminated upon

23 the death of either party or the remarriage of the party receiving maintenance.

24 **4. Unless otherwise agreed in writing or expressly provided in**
25 **the judgment, the obligation to pay future statutory maintenance is**
26 **terminated upon a finding that the party receiving maintenance is**
27 **cohabiting or has cohabited with another person in a relationship of a**
28 **romantic nature. An order of the court terminating such maintenance**
29 **shall not relieve the spouse paying maintenance from the provisions of**
30 **any judgment or decree or order providing support for a minor. For**
31 **purposes of this subsection the following terms shall mean:**

32 **(1) "Cohabitation", the act of two adults dwelling together**
33 **continuously and habitually in a romantic relationship, even if this**
34 **relationship is not solemnized by marriage. The romantic nature of any**
35 **cohabitation is evidenced by the voluntary mutual assumption of those**
36 **marital rights, duties, and obligations which are usually ascribed to the**
37 **institution of marriage, and which include, but are not necessarily**
38 **dependent on, sexual relations;**

39 **(2) "Continued and habitual cohabitation", when the former**
40 **spouse receiving maintenance resides with another person in a**
41 **romantic relationship for a period of ninety or more consecutive**
42 **days. The court may determine that a continued cohabitation exists if**
43 **there is evidence that the supported spouse resides with another**
44 **person in a romantic relationship for periods of less than ninety days**
45 **and the two periodically separated in order to circumvent the ninety-**
46 **day requirement.**

47 **5. Unless otherwise agreed in writing or expressly provided in the**
48 **judgment, provisions for the support of a child are terminated by emancipation**
49 **of the child. The parent entitled to receive child support shall have the duty to**
50 **notify the parent obligated to pay support of the child's emancipation and failing**
51 **to do so, the parent entitled to receive child support shall be liable to the parent**
52 **obligated to pay support for child support paid following emancipation of a minor**
53 **child, plus interest.**

54 **[5.] 6. If a parent has made an assignment of support rights to the**
55 **division of family services on behalf of the state as a condition of eligibility for**
56 **benefits pursuant to the Temporary Assistance for Needy Families program and**
57 **either party initiates a motion to modify the support obligation by reducing it, the**
58 **state of Missouri shall be named as a party to the proceeding. The state shall be**

59 served with a copy of the motion by sending it by certified mail to the director of
60 the division of child support enforcement.

61 [6.] 7. The court shall have continuing personal jurisdiction over both the
62 obligee and the obligor of a court order for child support or maintenance for the
63 purpose of modifying such order. Both obligee and obligor shall notify, in writing,
64 the clerk of the court in which the support or maintenance order was entered of
65 any change of mailing address. If personal service of the motion cannot be had
66 in this state, the motion to modify and notice of hearing shall be served outside
67 the state as provided by supreme court rule 54.14. The order may be modified
68 only as to support or maintenance installments which accrued subsequent to the
69 date of personal service. For the purpose of 42 U.S.C. 666(a)(9)(C), the circuit
70 clerk shall be considered the "appropriate agent" to receive notice of the motion
71 to modify for the obligee or the obligor, but only in those instances in which
72 personal service could not be had in this state.

73 [7.] 8. If a responsive pleading raising the issues of custody or visitation
74 is filed in response to a motion to modify child support filed at the request of the
75 division of child support enforcement by a prosecuting attorney or circuit attorney
76 or an attorney under contract with the division, such responsive pleading shall
77 be severed upon request.

78 [8.] 9. Notwithstanding any provision of this section which requires a
79 showing of substantial and continuing change in circumstances, in a IV-D case
80 filed pursuant to this section by the division of child support enforcement as
81 provided in section 454.400, RSMo, the court shall modify a support order in
82 accordance with the guidelines and criteria set forth in supreme court rule 88.01
83 and any regulations thereunder if the amount in the current order differs from
84 the amount which would be ordered in accordance with such guidelines or
85 regulations.

✓