

FIRST REGULAR SESSION

SENATE BILL NO. 562

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SMITH.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2240S.01I

AN ACT

To repeal sections 452.340 and 454.557, RSMo, and to enact in lieu thereof two new sections relating to electronic storage of support obligations.

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

Section A. Sections 452.340 and 454.557, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 452.340 and
3 454.557, 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, RSMo. If the case is not a IV-D case and
27 upon court order, the circuit clerk shall record the amount of abatement in the
28 automated child support system record established in chapter 454, RSMo.

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. As
77 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 RSMo, or whose physical disability or diagnosed health problem limits the child's
83 ability to carry the number of credit hours prescribed in this subsection, shall
84 remain eligible for child support so long as such child is enrolled in and attending
85 an institution of vocational or higher education, and the child continues to meet
86 the other requirements of this subsection. A child who is employed at least
87 fifteen hours per week during the semester may take as few as nine credit hours
88 per semester and remain eligible for child support so long as all other
89 requirements 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 obligation. The
113 guidelines shall address how the amount of child support shall be calculated
114 when an award of joint physical custody results in the child or children spending
115 substantially equal time with both parents. The Missouri supreme court shall
116 publish child support guidelines and specifically list and explain the relevant
117 factors and assumptions that were used to calculate the child support
118 guidelines. Any rule made pursuant to this subsection shall be reviewed by the
119 promulgating body not less than once every four years to ensure that its
120 application results in the determination of appropriate child support award
121 amounts.

122 9. There shall be a rebuttable presumption, in any judicial or
123 administrative proceeding for the award of child support, that the amount of the
124 award which would result from the application of the guidelines established
125 pursuant to subsection 8 of this section is the correct amount of child support to
126 be awarded. A written finding or specific finding on the record in a judicial or
127 administrative proceeding that the application of the guidelines would be unjust

128 or inappropriate in a particular case, after considering all relevant factors,
129 including the factors set out in subsection 1 of this section, is required if
130 requested by a party and shall be sufficient to rebut the presumption in the
131 case. The written finding or specific finding on the record shall detail the specific
132 relevant factors that required a deviation from the application of the guidelines.

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

154 11. The obligation of a parent to make child support payments may be
155 terminated as follows:

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

161 (2) The obligation shall be deemed terminated without further judicial or
162 administrative process when the parent receiving child support furnishes a sworn
163 statement or affidavit notifying the obligor parent of the child's emancipation in

164 accordance with the requirements of subsection 4 of section 452.370, and a copy
165 of such sworn statement or affidavit is filed with the court which entered the
166 order establishing the child support obligation, or the **family support** division
167 [of child support enforcement] **for an order entered under section 454.470,**
168 **RSMo;**

169 (3) The obligation shall be deemed terminated without further judicial or
170 administrative process when the parent paying child support files a sworn
171 statement or affidavit with the court which entered the order establishing the
172 child support obligation, or the family support division **for an order entered**
173 **under section 454.470, RSMo,** stating that the child is emancipated and
174 reciting the factual basis for such statement; which statement or affidavit is
175 served by the court or division, **as applicable,** on the child support obligee; and
176 which is either acknowledged and affirmed by the child support obligee in
177 writing, or which is not responded to in writing within thirty days of receipt by
178 the child support obligee;

179 (4) The obligation shall be terminated as provided by this subdivision by
180 the court which entered the order establishing the child support obligation, or the
181 family support division **for an order enter under section 454.470, RSMo,**
182 when the parent paying child support files a sworn statement or affidavit with
183 the court which entered the order establishing the child support obligation, or the
184 family support division, **as applicable,** stating that the child is emancipated and
185 reciting the factual basis for such statement; and which statement or affidavit is
186 served by the court or division on the child support obligee. If the obligee denies
187 the statement or affidavit, the court or division shall thereupon treat the sworn
188 statement or affidavit as a [motion to modify the support obligation pursuant to
189 section 452.370 or section 454.496, RSMo,] **request for hearing** and shall
190 proceed to hear and adjudicate such [motion] **request for hearing** as provided
191 by law; provided that the court may require the payment of a deposit as security
192 for court costs and any accrued court costs, as provided by law, in relation to such
193 [motion to modify] **request for hearing. When the division receives a**
194 **request for hearing, the hearing shall be held in the manner provided**
195 **by section 454.475, RSMo.**

196 12. The court may enter a judgment terminating child support pursuant
197 to subdivisions (1) to (3) of subsection 11 of this section without necessity of a
198 court appearance by either party. The clerk of the court shall mail a copy of a
199 judgment terminating child support entered pursuant to subsection 11 of this

200 section on both the obligor and obligee parents. The supreme court may
201 promulgate uniform forms for sworn statements and affidavits to terminate
202 orders of child support obligations for use pursuant to subsection 11 of this
203 section and subsection 4 of section 452.370.

454.557. 1. A current support obligation shall not be recorded in the
2 records maintained in the automated child support system in the following cases:

3 (1) In a IV-D case with a support order pursuant to section 454.465 or
4 454.470 when the division determines that payments for current support are no
5 longer due and should no longer be made to the payment center. The division
6 shall notify by first class mail the obligor and obligee under the support orders
7 that payments shall no longer be made to the payment center, and any
8 withholding of income shall be terminated unless it is subsequently determined
9 by the division or court having jurisdiction that payments will continue. The
10 division's determination shall terminate the division's support order, but shall not
11 terminate any obligation of support established by court order. The obligor and
12 obligee may contest the decision of the division to terminate the division's support
13 order by requesting a hearing within thirty days of the mailing of the notice
14 provided pursuant to this section. The hearing shall comply with the provisions
15 of section 454.475;

16 (2) In [a IV-D case] **all cases** with a support order entered by a court
17 when the court that issued the support order terminates such order [and notifies
18 the division]. The division shall also cease enforcing the order if no past support
19 is due; or

20 (3) In all cases when the [child is twenty-two years of age, unless a court
21 orders support to continue. The obligor or obligee may contest the decision of the
22 division to terminate accruing support orders by requesting a hearing within
23 thirty days of the mailing of notice by the division. The hearing shall comply
24 with the provisions of section 454.475. The issue at the hearing, if any, shall be
25 limited to a mistake of fact as to the age of the child or the existence of a court
26 order requiring support after the age of twenty-two] **the obligation of a parent
27 to make child support payments is deemed terminated under
28 subdivisions (1) to (4) of subsection 11 of section 452.340, RSMo.**

29 2. Nothing in this section shall affect or terminate the amount due for
30 unpaid past support.