

SECOND REGULAR SESSION

# SENATE BILL NO. 877

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time February 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4712S.011

## AN ACT

To repeal sections 452.340, 454.475, 454.517, 454.557, and 454.1003, RSMo, and to enact in lieu thereof five new sections relating to child support.

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

Section A. Sections 452.340, 454.475, 454.517, 454.557, and 454.1003, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 452.340, 454.475, 454.517, 454.557, and 454.1003, to read as follows: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

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

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

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

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

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

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

10 2. If no factual issue has been raised by the application for hearing, or the  
11 issues raised have been previously litigated or do not constitute a defense to the  
12 action, the director may enter an order without an evidentiary hearing, which  
13 order shall be a final decision entitled to judicial review as provided in sections  
14 536.100 to 536.140, RSMo.

15 3. After full and fair hearing, the hearing officer shall make specific  
16 findings regarding the liability and responsibility, if any, of the alleged  
17 responsible parent for the support of the dependent child, and for repayment of  
18 accrued state debt or arrearages, and the costs of collection, and shall enter an  
19 order consistent therewith. In making the determination of the amount the  
20 parent shall contribute toward the future support of a dependent child, the  
21 hearing officer shall [use the scale and formula for minimum support obligations  
22 established by the department pursuant to section 454.480] **consider the**  
23 **factors set forth in section 452.340.**

24 4. If the person who requests the hearing fails to appear at the time and  
25 place set for the hearing, upon a showing of proper notice to that parent, the  
26 hearing officer shall enter findings and order in accordance with the provisions  
27 of the notice and finding of support responsibility unless the hearing officer  
28 determines that no good cause therefor exists.

29 5. In contested cases, the findings and order of the hearing officer shall  
30 be the decision of the director. Any parent or person having custody of the child  
31 adversely affected by such decision may obtain judicial review pursuant to  
32 sections 536.100 to 536.140, RSMo, by filing a petition for review in the circuit

33 court of proper venue within thirty days of mailing of the decision. Copies of the  
34 decision or order of the hearing officer shall be mailed to any parent, person  
35 having custody of the child and the division within fourteen days of issuance.

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

          454.517. 1. The director, IV-D agency or the obligee may cause a lien for  
2 unpaid and delinquent child or spousal support to be placed upon any workers'  
3 compensation benefits payable to an obligor delinquent in child or spousal  
4 support payments.

5           2. No such lien shall be effective unless and until a written notice is filed  
6 with the director of the division of workers' compensation. The notice shall  
7 contain the name and address of the delinquent obligor, the Social Security  
8 number of the obligor, if known, the name of the obligee, and the amount of  
9 delinquent child or spousal support.

10           3. Notice of lien shall not be filed unless the delinquent child or spousal  
11 support obligation exceeds one hundred dollars.

12           4. Any person or persons, firm or firms, corporation or corporations,  
13 including an insurance carrier, making any payment of workers' compensation  
14 benefits to such obligor or to such obligor's attorneys, heirs or legal  
15 representative, after receipt of such notice, as defined in subsection 5 of this  
16 section, shall be liable to the obligee or, if support has been assigned pursuant  
17 to subsection 2 of section 208.040, RSMo, to the state or IV-D agency in an  
18 amount equal to the lesser of the workers' compensation benefits paid or  
19 delinquent child or spousal support. In such event, the lien may be enforced by  
20 a suit at law against any person or persons, firm or firms, corporation or  
21 corporations making the workers' compensation benefit payment.

22           5. Upon the filing of a notice pursuant to this section, the director of the



23 division of workers' compensation shall mail to the obligor and to all attorneys  
24 and insurance carriers of record, a copy of the notice. The obligor, attorneys and  
25 insurance carriers shall be deemed to have received the notice within five days  
26 of the mailing of the notice by the director of the division of workers'  
27 compensation. The lien described in this section shall attach to all workers'  
28 compensation benefits which are thereafter payable.

29 **6. A notice issued by the IV-D agency of this state shall advise**  
30 **the obligor of the procedures to contest the lien under section 454.475**  
31 **on the grounds that such lien is improper due to a mistake of fact by**  
32 **requesting a hearing within thirty days of the mailing date of the**  
33 **notice. At such a hearing the certified copy of the court order and the**  
34 **sworn or certified statement of arrearages shall constitute prima facie**  
35 **evidence that the director's order is valid and enforceable. If a prima**  
36 **facie case is established, the obligor may only assert mistake of fact as**  
37 **a defense. For purposes of this section, "mistake of fact" means an error**  
38 **in the amount of the overdue support or an error as to the identity of**  
39 **the obligor. The obligor shall have the burden of proof on such issues.**

40 **7.** In cases which are not IV-D cases, to cause a lien pursuant to the  
41 provisions of this section the obligee or the obligor's attorney shall file notice of  
42 the lien with the lienholder or payor. This notice shall have attached a certified  
43 copy of the court order with all modifications and a sworn statement by the  
44 obligee or a certified statement from the court attesting to or certifying the  
45 amount of arrearages.

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] **obligation of a parent to**  
27 **make child support payments is deemed terminated under subdivisions**  
28 **(1) to (4) of subsection 11 of section 452.340.**

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

454.1003. 1. A court or the director of the division of child support  
2 enforcement may issue an order, or in the case of a business, professional or  
3 occupational license, only a court may issue an order, suspending an obligor's  
4 license and ordering the obligor to refrain from engaging in a licensed activity in  
5 the following cases:

6 (1) When the obligor is not making child support payments in accordance  
7 with a [court] **support** order and owes an arrearage in an amount greater than  
8 or equal to three months support payments or two thousand five hundred dollars,  
9 whichever is less, as of the date of service of a notice of intent to suspend such  
10 license; or

11 (2) When the obligor or any other person, after receiving appropriate  
12 notice, fails to comply with a subpoena of a court or the director concerning  
13 actions relating to the establishment of paternity, or to the establishment,  
14 modification or enforcement of support orders, or order of the director for genetic  
15 testing.

16 2. In any case but a IV-D case, upon the petition of an obligee alleging the  
17 existence of an arrearage, a court with jurisdiction over the support order may  
18 issue a notice of intent to suspend a license. In a IV-D case, the director, or a  
19 court at the request of the director, may issue a notice of intent to suspend.

20           3. The notice of intent to suspend a license shall be served on the obligor  
21 personally or by certified mail. If the proposed suspension of license is based on  
22 the obligor's support arrearage, the notice shall state that the obligor's license  
23 shall be suspended sixty days after service unless, within such time, the obligor:

24           (1) Pays the entire arrearage stated in the notice;

25           (2) Enters into and complies with a payment plan approved by the court  
26 or the division; or

27           (3) Requests a hearing before the court or the director.

28           4. In a IV-D case, the notice shall advise the obligor that hearings are  
29 subject to the contested case provisions of chapter 536, RSMo.

30           5. If the proposed suspension of license is based on the alleged failure to  
31 comply with a subpoena relating to paternity or a child support proceeding, or  
32 order of the director for genetic testing, the notice of intent to suspend shall  
33 inform the person that such person's license shall be suspended sixty days after  
34 service, unless the person complies with the subpoena or order.

35           6. If the obligor fails to comply with the terms of repayment agreement,  
36 a court or the division may issue a notice of intent to suspend the obligor's  
37 license.

38           7. In addition to the actions to suspend or withhold licenses pursuant to  
39 this chapter, a court or the director of the division of child support enforcement  
40 may restrict such licenses in accordance with the provisions of this chapter.

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