

SECOND REGULAR SESSION

SENATE BILL NO. 521

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Pre-filed December 6, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

4368S.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Section A. Section 452.340, RSMo, is repealed and one new section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] **twenty-two**, unless the provisions of the
40 child support order specifically extend the parental support order past the child's
41 [twenty-first] **twenty-second** birthday for reasons provided by subsection 4 of
42 this section.

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

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

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

91 6. The court shall consider ordering a parent to waive the right to claim

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

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

110 8. The Missouri supreme court shall have in effect a rule establishing
111 guidelines by which any award of child support shall be made in any judicial or
112 administrative proceeding. Said guidelines shall contain specific, descriptive and
113 numeric criteria which will result in a computation of the support obligation. The
114 guidelines shall address how the amount of child support shall be calculated
115 when an award of joint physical custody results in the child or children spending
116 equal or substantially equal time with both parents and the directions and
117 comments and any tabular representations of the directions and comments for
118 completion of the child support guidelines and a subsequent form developed to
119 reflect the guidelines shall reflect the ability to obtain up to a fifty percent
120 adjustment or credit below the basic child support amount for joint physical
121 custody or visitation as described in subsection 11 of this section. The Missouri
122 supreme court shall publish child support guidelines and specifically list and
123 explain the relevant factors and assumptions that were used to calculate the child
124 support guidelines. Any rule made pursuant to this subsection shall be reviewed
125 by the promulgating body not less than once every four years to ensure that its
126 application results in the determination of appropriate child support award
127 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. The court may award child support in an amount that provides up to
161 a fifty percent adjustment below the basic child support amount authorized by the
162 child support guidelines described under subsection 8 of this section for custody
163 awards of joint physical custody where the child or children spend equal or

164 substantially equal time with both parents.

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

167 (1) Provided that the state case registry or child support order contains
168 the child's date of birth, the obligation shall be deemed terminated without
169 further judicial or administrative process when the child reaches age [twenty-one]
170 **twenty-two** if the child support order does not specifically require payment of
171 child support beyond age [twenty-one] **twenty-two** for reasons provided by
172 subsection 4 of this section;

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

180 (3) The obligation shall be deemed terminated without further judicial or
181 administrative process when the parent paying child support files a sworn
182 statement or affidavit with the court which entered the order establishing the
183 child support obligation, or the family support division for an order entered under
184 section 454.470, stating that the child is emancipated and reciting the factual
185 basis for such statement; which statement or affidavit is served by the court or
186 division, as applicable, on the child support obligee; and which is either
187 acknowledged and affirmed by the child support obligee in writing, or which is
188 not responded to in writing within thirty days of receipt by the child support
189 obligee;

190 (4) The obligation shall be terminated as provided by this subdivision by
191 the court which entered the order establishing the child support obligation, or the
192 family support division for an order entered under section 454.470, when the
193 parent paying child support files a sworn statement or affidavit with the court
194 which entered the order establishing the child support obligation, or the family
195 support division, as applicable, stating that the child is emancipated and reciting
196 the factual basis for such statement; and which statement or affidavit is served
197 by the court or division, as applicable, on the child support obligee. If the obligee
198 denies the statement or affidavit, the court or division shall thereupon treat the
199 sworn statement or affidavit as a request for hearing and shall proceed to hear

200 and adjudicate such request for hearing as provided by law; provided that the
201 court may require the payment of a deposit as security for court costs and any
202 accrued court costs, as provided by law, in relation to such request for
203 hearing. When the division receives a request for hearing, the hearing shall be
204 held in the manner provided by section 454.475.

205 13. The court may enter a judgment terminating child support pursuant
206 to subdivisions (1) to (3) of subsection 12 of this section without necessity of a
207 court appearance by either party. The clerk of the court shall mail a copy of a
208 judgment terminating child support entered pursuant to subsection 12 of this
209 section on both the obligor and obligee parents. The supreme court may
210 promulgate uniform forms for sworn statements and affidavits to terminate
211 orders of child support obligations for use pursuant to subsection 12 of this
212 section and subsection 4 of section 452.370.

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Bill

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