

FIRST REGULAR SESSION

# SENATE BILL NO. 225

97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR CURLS.

Read 1st time January 28, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1045S.01I

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## AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof two new sections relating to child support.

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

Section A. Section 452.340, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 452.339 and 452.340, to read as  
3 follows:

452.339. 1. As used in this section, the following terms shall  
2 mean:

3 (1) "Higher education", any community college, college, or  
4 university at which the child attends classes regularly;

5 (2) "Institution of vocational education", any postsecondary  
6 training or schooling for which the student is assessed a fee and  
7 attends classes regularly.

8 2. In any action for dissolution of marriage, legal separation, or  
9 action to establish or modify child support, the court may order either  
10 or both parents owing a duty of support to a child to provide for the  
11 educational expenses of the child or children of the parties for costs  
12 associated with attendance at an institution of vocational education or  
13 higher education, whether such child is of minor or majority  
14 age. Nothing in this section shall preclude the court from requiring the  
15 child to be responsible for a portion of such child's educational  
16 expenses.

17 3. An application for educational expenses may be made before  
18 or within one hundred twenty days after the child has graduated from

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

19 a secondary school or completed a graduation equivalence degree  
20 program, or reached the age of eighteen, whichever is later. The  
21 authority under this section to make provisions for a child's  
22 educational expenses extends only to periods of college education or  
23 vocational or other training after graduation from high school. The  
24 educational expenses may include, but shall not be limited to, room,  
25 board, dues, tuition, transportation, books, nondiscretionary fees,  
26 registration and application costs, medical expenses including medical  
27 insurance, dental expenses, and living expenses during the school year  
28 and periods of recess, which sums may be ordered payable to the child,  
29 to either parent, or to the educational institution directly or through  
30 a special account or trust created for such purpose, at the discretion of  
31 the court.

32 4. The following shall apply for a child to remain eligible for  
33 such continued educational parental support:

34 (1) If the child enrolls for and completes at least twelve hours of  
35 credit each semester, not including summer semester, at an institution  
36 of vocational education or higher education and achieves grades  
37 sufficient to reenroll at such institution, the educational parental  
38 support obligation shall continue until the child completes his or her  
39 education, but no later than when the child reaches the age of twenty-  
40 three; and

41 (2) Each parent and the child shall execute the consent necessary  
42 for the educational institution to provide the supporting parent or  
43 parents with access to the child's academic transcripts, records, and  
44 grade reports. The consent shall not apply to any nonacademic  
45 records. Failure to execute the required consent may be a basis for a  
46 modification or termination of any order entered under this  
47 section. Unless the court specifically finds that the child's safety would  
48 be jeopardized, each parent is entitled to be informed of the name of  
49 the educational institution the child attends.

50 5. When enrolled in at least twelve credit hours, if the child  
51 receives failing grades in half or more of his or her courseload in any  
52 one semester, payment of educational support shall be terminated and  
53 shall not be eligible for reinstatement.

54 6. When determining the cost of postsecondary education, the  
55 court may consider the cost of attending an in-state public institution

56 for a course of instruction leading to an undergraduate degree and  
57 shall include the reasonable costs for only necessary postsecondary  
58 education expenses; however, nothing in this subsection shall prohibit  
59 the court from considering an institution commensurate with the  
60 financial resources of the parents.

61 7. When considering the amount of educational support for each  
62 parent or the minor child, the court shall consider the following:

63 (1) The financial resources of both parents;

64 (2) The standard of living the child would have enjoyed had the  
65 marriage not been dissolved;

66 (3) The child's financial resources, including but not limited to  
67 the availability of financial aid whether in the form of scholarships,  
68 grants, or student loans, and the ability of the child to earn income  
69 while attending school;

70 (4) The child's academic performance;

71 (5) Any available financial aid or student loans available to each  
72 parent; and

73 (6) The ability of each parent to meet such expenses.

74 8. Any contribution by the child for financial aid in the form of  
75 scholarships, grants, or other form of need-based or performance-based  
76 assistance shall first be deducted from the cost of postsecondary  
77 education and the court shall apportion responsibility for the  
78 remaining cost of postsecondary education to each parent.

79 9. A child who has been diagnosed with a developmental  
80 disability, as defined in section 630.005, or whose physical disability or  
81 diagnosed health problem limits the child's ability to carry the number  
82 of credit hours prescribed in this section shall remain eligible for  
83 educational child support so long as such child is enrolled in and  
84 attending an institution of vocational education or higher education,  
85 and the child continues to meet the other requirements of this section.

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  
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. 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 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.] **The court may order either or both**  
90 **parents owing a duty of support to a child to provide for the**  
91 **educational expenses of the child in accordance with section 452.339.**

92         6. The court shall consider ordering a parent to waive the right to claim  
93 the tax dependency exemption for a child enrolled in an institution of vocational  
94 or higher education in favor of the other parent if the application of state and  
95 federal tax laws and eligibility for financial aid will make an award of the  
96 exemption to the other parent appropriate.

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

111         8. The Missouri supreme court shall have in effect a rule establishing  
112 guidelines by which any award of child support shall be made in any judicial or  
113 administrative proceeding. Said guidelines shall contain specific, descriptive and  
114 numeric criteria which will result in a computation of the support obligation. The  
115 guidelines shall address how the amount of child support shall be calculated

116 when an award of joint physical custody results in the child or children spending  
117 equal or substantially equal time with both parents and the directions and  
118 comments and any tabular representations of the directions and comments for  
119 completion of the child support guidelines and a subsequent form developed to  
120 reflect the guidelines shall reflect the ability to obtain up to a fifty percent  
121 adjustment or credit below the basic child support amount for joint physical  
122 custody or visitation as described in subsection 11 of this section. The Missouri  
123 supreme court shall publish child support guidelines and specifically list and  
124 explain the relevant factors and assumptions that were used to calculate the child  
125 support guidelines. Any rule made pursuant to this subsection shall be reviewed  
126 by the promulgating body not less than once every four years to ensure that its  
127 application results in the determination of appropriate child support award  
128 amounts.

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

140         10. Pursuant to this or any other chapter, when a court determines the  
141 amount owed by a parent for support provided to a child by another person, other  
142 than a parent, prior to the date of filing of a petition requesting support, or when  
143 the director of the family support division establishes the amount of state debt  
144 due pursuant to subdivision (2) of subsection 1 of section 454.465, the court or  
145 director shall use the guidelines established pursuant to subsection 8 of this  
146 section. The amount of child support resulting from the application of the  
147 guidelines shall be applied retroactively for a period prior to the establishment  
148 of a support order and the length of the period of retroactivity shall be left to the  
149 discretion of the court or director. There shall be a rebuttable presumption that  
150 the amount resulting from application of the guidelines under subsection 8 of this  
151 section constitutes the amount owed by the parent for the period prior to the date

152 of the filing of the petition for support or the period for which state debt is being  
153 established. In applying the guidelines to determine a retroactive support  
154 amount, when information as to average monthly income is available, the court  
155 or director may use the average monthly income of the noncustodial parent, as  
156 averaged over the period of retroactivity, in determining the amount of presumed  
157 child support owed for the period of retroactivity. The court or director may enter  
158 a different amount in a particular case upon finding, after consideration of all  
159 relevant factors, including the factors set out in subsection 1 of this section, that  
160 there is sufficient cause to rebut the presumed amount.

161         11. The court may award child support in an amount that provides up to  
162 a fifty percent adjustment below the basic child support amount authorized by the  
163 child support guidelines described under subsection 8 of this section for custody  
164 awards of joint physical custody where the child or children spend equal or  
165 substantially equal time with both parents.

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

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