

FIRST REGULAR SESSION

# SENATE BILL NO. 277

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Read 1st time January 17, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1325S.011

## AN ACT

To repeal sections 454.507 and 513.430, RSMo, and to enact in lieu thereof two new sections relating to child support enforcement.

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

Section A. Sections 454.507 and 513.430, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 454.507 and 513.430, to read as follows:

454.507. 1. In addition to the authority of the division to request information pursuant to section 454.440, the division may request information from financial institutions pursuant to this section.

2. As used in this section:

(1) "Account" includes a demand deposit, checking or negotiable withdrawal order account, savings account, time deposit account or money market mutual fund account, **or individual retirement account qualified pursuant to Section 408 or 408A of the Internal Revenue Code;**

(2) "Encumbered assets", the noncustodial parent's interest in an account which is encumbered by a lien arising by operation of law or otherwise;

(3) "Financial institution" includes:

(a) A depository institution as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(c));

(b) An institution affiliated party as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(u));

(c) Any federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Section 1752), including an institution affiliated party of such a credit union as defined in Section 206(r) of

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

19 the Federal Credit Union Act (12 U.S.C. Section 1786(r)); or

20 (d) Any benefit association, insurance company, safe deposit company,  
21 money market fund or similar entity authorized to do business in the state.

22 3. The division **and each financial institution doing business in**  
23 **this state** shall enter into [agreements with financial institutions] **an**  
24 **agreement** to develop and operate a data match system which uses automated  
25 exchanges to the maximum extent feasible, **unless the financial institution**  
26 **does business in two or more states and enters into an agreement with**  
27 **the federal Office of Child Support Enforcement to effectuate a data**  
28 **match**. Such agreements shall require the financial institution to provide to the  
29 division, for each calendar quarter, the name, record address, Social Security  
30 number or other taxpayer identification number, and other identifying  
31 information of each noncustodial parent who maintains an account at such  
32 institution and who owes past due support, as identified by the division by name  
33 and Social Security number or other taxpayer identification number. The  
34 financial institution shall only provide such information stated in this subsection  
35 that is readily available through existing data systems, and as such data systems  
36 are enhanced, solely at the financial institution's discretion and for its business  
37 purposes, the financial institution shall provide any original and additional  
38 information which becomes readily available for any new data match request.

39 4. The division shall pay a reasonable fee to the financial institution for  
40 conducting the data match pursuant to this section, but such amount shall not  
41 exceed the costs incurred by the financial institution.

42 5. The division or a IV-D agency may issue liens against any account in  
43 a financial institution and may release such liens.

44 6. (1) If a notice of lien is received from the division or a IV-D agency, the  
45 financial institution shall immediately encumber the assets held by such  
46 institution on behalf of any noncustodial parent who is subject to such  
47 lien. However, if the account is in the name of a noncustodial parent and such  
48 parent's spouse or parent, the financial institution at its discretion may not  
49 encumber the assets and when it elects not to encumber such assets, shall so  
50 notify the division or IV-D agency. The amount of assets to be encumbered shall  
51 be stated in the notice and shall not exceed the amount of unpaid support due at  
52 the time of issuance. The financial institution shall, within ten business days of  
53 receipt of a notice of lien, notify the division or IV-D agency of the financial  
54 institution's response to the notice of lien.

55 (2) Within ten business days of notification by the financial institution  
56 that assets have been encumbered, the division or IV-D agency shall notify by  
57 mail the noncustodial parent of the issuance of the lien and the reasons for such  
58 issuance. The notice shall advise the noncustodial parent of the procedures to  
59 contest such lien pursuant to section 454.475 by requesting a hearing within  
60 thirty days from the date the notice was mailed by the division to the  
61 noncustodial parent.

62 7. (1) Except as provided in subsection 6 of this section, the interest of  
63 the noncustodial parent shall be presumed equal to all other joint owners, unless  
64 at least one of the joint owners provides the division or IV-D agency with a true  
65 copy of a written agreement entered prior to the date of issuance of notice of lien,  
66 or other clear and convincing evidence regarding the various ownership interests  
67 of the joint owners within [twenty] **thirty** days of the [financial institution's]  
68 **division's or IV-D agency's** mailing of the notice [of lien] **to the**  
69 **noncustodial parent**. The financial institution shall only encumber the amount  
70 presumed to belong to the noncustodial parent. The division or IV-D agency may  
71 proceed to issue an order for the amount in the account presumed to belong to the  
72 noncustodial parent if no prior written agreement or other evidence is provided.

73 (2) If a prior written agreement or other clear and convincing evidence is  
74 furnished to the division, and based on such agreement or evidence the division  
75 or IV-D agency determines that the interest of the noncustodial parent is less  
76 than the presumed amount, the division or IV-D agency shall amend the lien to  
77 reflect the amount in the account belonging to the noncustodial parent or shall  
78 release the lien if the noncustodial parent has no interest in the account. In no  
79 event shall the division or IV-D agency obtain more than the presumed amount  
80 of the account without a judicial determination that a greater amount of the  
81 account belongs to the noncustodial parent. The division or IV-D agency may by  
82 levy and execution on a judgment in a court of competent jurisdiction seek to  
83 obtain an amount greater than the amount presumed to belong to the  
84 noncustodial parent upon proof that the noncustodial parent's interest is greater  
85 than the amount presumed pursuant to this subsection.

86 (3) For purposes of this subsection, accounts are not joint accounts when  
87 the noncustodial parent has no legal right to the funds, but is either a contingent  
88 owner or agent. Such nonjoint accounts shall include, but are not limited to, a  
89 pay-on-death account or any other account in which the noncustodial parent  
90 owner may act as agent by a power of attorney or otherwise. Furthermore, when

91 any account naming the noncustodial parent has not been disclosed to the  
92 noncustodial parent which is evidenced by a signature card or other deposit  
93 agreement not containing the signature of such noncustodial parent, then for the  
94 purposes of this subsection, such account shall not be treated as a joint account.

95 (4) Notwithstanding any other provision of this section, a financial  
96 institution shall not encumber any account of less than one hundred dollars.

97 8. Upon service of an order to surrender issued pursuant to this section,  
98 any financial institution in possession of a jointly owned account may interplead  
99 such property as otherwise provided by law.

100 9. Any other joint owner may petition a court of competent jurisdiction for  
101 a determination that the interests of the joint owners are disproportionate. The  
102 party filing the petition shall have the burden of proof on such a claim. If subject  
103 to the jurisdiction of the court, all persons owning affected accounts with a  
104 noncustodial parent shall be made parties to any proceeding to determine the  
105 respective interests of the joint owners. The court shall enter an appropriate  
106 order determining the various interests of each of the joint owners and  
107 authorizing payment against the obligor's share for satisfaction of the child  
108 support or maintenance obligation.

109 10. The court may assess costs and reasonable attorney's fees against the  
110 noncustodial parent if the court determines that the noncustodial parent has an  
111 interest in the affected joint account.

112 11. The division may order the financial institution to surrender all or  
113 part of the encumbered assets. The order shall not issue until sixty days after  
114 the notice of lien is sent to the financial institution. The financial institution  
115 shall, within seven days of receipt of the order, pay the encumbered amount as  
116 directed in the order to surrender.

117 12. A financial institution shall not be liable pursuant to any state or  
118 federal law, including 42 U.S.C. Section 669A, to any person for:

119 (1) Any disclosure of information to the division pursuant to this section;

120 (2) Encumbering or surrendering any assets held by the financial  
121 institution in response to a lien or order pursuant to this section and  
122 notwithstanding any other provisions in this section to the contrary, encumbering  
123 or surrendering assets from any account in the financial institution connected in  
124 any way to the noncustodial parent; or

125 (3) Any other action taken in good faith to comply with the requirements  
126 of this section.

127           13. A financial institution that fails without due cause to comply with a  
128 notice of lien or order to surrender issued pursuant to this section shall be liable  
129 for the amount of the encumbered assets and the division may bring an action  
130 against the financial institution in circuit court for such amount. For purposes  
131 of this subsection, "due cause" shall include, but not be limited to, when a  
132 financial institution demonstrates to a court of competent jurisdiction that the  
133 institution established in good faith a routine to comply with the requirements  
134 of this section and that one or more transactions to enforce the lien or order to  
135 surrender were not completed due to an accidental error, a misplaced computer  
136 entry, or other accidental human or mechanical problems.

          513.430. 1. The following property shall be exempt from attachment and  
2 execution to the extent of any person's interest therein:

3           (1) Household furnishings, household goods, wearing apparel, appliances,  
4 books, animals, crops or musical instruments that are held primarily for personal,  
5 family or household use of such person or a dependent of such person, not to  
6 exceed three thousand dollars in value in the aggregate;

7           (2) A wedding ring not to exceed one thousand five hundred dollars in  
8 value and other jewelry held primarily for the personal, family or household use  
9 of such person or a dependent of such person, not to exceed five hundred dollars  
10 in value in the aggregate;

11           (3) Any other property of any kind, not to exceed in value six hundred  
12 dollars in the aggregate;

13           (4) Any implements or professional books or tools of the trade of such  
14 person or the trade of a dependent of such person not to exceed three thousand  
15 dollars in value in the aggregate;

16           (5) Any motor vehicles, not to exceed three thousand dollars in value in  
17 the aggregate;

18           (6) Any mobile home used as the principal residence but not attached to  
19 real property in which the debtor has a fee interest, not to exceed five thousand  
20 dollars in value;

21           (7) Any one or more unmaturred life insurance contracts owned by such  
22 person, other than a credit life insurance contract, and up to fifteen thousand  
23 dollars of any matured life insurance proceeds for actual funeral, cremation, or  
24 burial expenses where the deceased is the spouse, child, or parent of the  
25 beneficiary;

26           (8) The amount of any accrued dividend or interest under, or loan value

27 of, any one or more unmaturred life insurance contracts owned by such person  
28 under which the insured is such person or an individual of whom such person is  
29 a dependent; provided, however, that if proceedings under Title 11 of the United  
30 States Code are commenced by or against such person, the amount exempt in  
31 such proceedings shall not exceed in value one hundred fifty thousand dollars in  
32 the aggregate less any amount of property of such person transferred by the life  
33 insurance company or fraternal benefit society to itself in good faith if such  
34 transfer is to pay a premium or to carry out a nonforfeiture insurance option and  
35 is required to be so transferred automatically under a life insurance contract with  
36 such company or society that was entered into before commencement of such  
37 proceedings. No amount of any accrued dividend or interest under, or loan value  
38 of, any such life insurance contracts shall be exempt from any claim for child  
39 support. Notwithstanding anything to the contrary, no such amount shall be  
40 exempt in such proceedings under any such insurance contract which was  
41 purchased by such person within one year prior to the commencement of such  
42 proceedings;

43 (9) Professionally prescribed health aids for such person or a dependent  
44 of such person;

45 (10) Such person's right to receive:

46 (a) A Social Security benefit, unemployment compensation or a public  
47 assistance benefit;

48 (b) A veteran's benefit;

49 (c) A disability, illness or unemployment benefit;

50 (d) Alimony, support or separate maintenance, not to exceed seven  
51 hundred fifty dollars a month;

52 (e) Any payment under a stock bonus plan, pension plan, disability or  
53 death benefit plan, profit-sharing plan, nonpublic retirement plan or any plan  
54 described, defined, or established pursuant to section 456.014, the person's right  
55 to a participant account in any deferred compensation program offered by the  
56 state of Missouri or any of its political subdivisions, or annuity or similar plan or  
57 contract on account of illness, disability, death, age or length of service, to the  
58 extent reasonably necessary for the support of such person and any dependent of  
59 such person unless:

60 a. Such plan or contract was established by or under the auspices of an  
61 insider that employed such person at the time such person's rights under such  
62 plan or contract arose;

63           b. Such payment is on account of age or length of service; and  
64           c. Such plan or contract does not qualify under Section 401(a), 403(a),  
65 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, (26  
66 U.S.C. Section 401(a), 403(a), 403(b), 408, 408A or 409);  
67 except that any such payment to any person shall be subject to attachment or  
68 execution pursuant to a qualified domestic relations order, as defined by Section  
69 414(p) of the Internal Revenue Code of 1986, as amended, issued by a court in  
70 any proceeding for dissolution of marriage or legal separation or a proceeding for  
71 disposition of property following dissolution of marriage by a court which lacked  
72 personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of  
73 marital property at the time of the original judgment of dissolution;  
74           (f) Any money or assets, payable to a participant or beneficiary from, or  
75 any interest of any participant or beneficiary in, a retirement plan, profit-sharing  
76 plan, health savings plan, or similar plan, including an inherited account or plan,  
77 that is qualified under Section 401(a), 403(a), 403(b), 408, 408A or 409 of the  
78 Internal Revenue Code of 1986, as amended, whether such participant's or  
79 beneficiary's interest arises by inheritance, designation, appointment, or  
80 otherwise, except as provided in this paragraph. Any plan or arrangement  
81 described in this paragraph shall not be exempt from the claim of an alternate  
82 payee under a qualified domestic relations order; however, the interest of any and  
83 all alternate payees under a qualified domestic relations order shall be exempt  
84 from any and all claims of any creditor, other than the state of Missouri through  
85 its department of social services. As used in this paragraph, the terms "alternate  
86 payee" and "qualified domestic relations order" have the meaning given to them  
87 in Section 414(p) of the Internal Revenue Code of 1986, as amended. If  
88 proceedings under Title 11 of the United States Code are commenced by or  
89 against such person, no amount of funds shall be exempt in such proceedings  
90 under any such plan, contract, or trust which is fraudulent as defined in  
91 subsection 2 of section 428.024 and for the period such person participated within  
92 three years prior to the commencement of such proceedings. For the purposes of  
93 this section, when the fraudulently conveyed funds are recovered and after, such  
94 funds shall be deducted and then treated as though the funds had never been  
95 contributed to the plan, contract, or trust;

96           (11) The debtor's right to receive, or property that is traceable to, a  
97 payment on account of the wrongful death of an individual of whom the debtor  
98 was a dependent, to the extent reasonably necessary for the support of the debtor

99 and any dependent of the debtor;

100 (12) Firearms, firearm accessories, and ammunition, not to exceed one  
101 thousand five hundred dollars in value in the aggregate.

102 2. Nothing in this section shall be interpreted to exempt from attachment  
103 or execution for a valid judicial or administrative order for the payment of child  
104 support or maintenance any money or assets, payable to a participant or  
105 beneficiary from, or any interest of any participant or beneficiary in, a retirement  
106 plan which is qualified pursuant to [Section] **Sections 408 and 408A** of the  
107 Internal Revenue Code of 1986, as amended.

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Bill

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