

FIRST REGULAR SESSION

[P E R F E C T E D]

# SENATE BILL NO. 291

90TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR CASKEY.

Read 1st time January 18, 1999, and 1,000 copies ordered printed.

Read 2nd time January 20, 1999, and referred to the Committee on Civil and Criminal Jurisprudence.

Reported from the Committee January 27, 1999, with recommendation that the bill do pass with Senate Committee Amendment No. 1.

Taken up for Perfection February 1, 1999. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

S0923.01P

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## AN ACT

To repeal sections 210.843, 454.430, 454.520, 454.810 and 516.350, RSMo 1994, and sections 452.340, 452.345, 452.350, 454.415, 454.432, 454.433, 454.460, 454.495, 454.505, 454.530 and 483.163, RSMo Supp. 1998, relating to child support enforcement, and to enact in lieu thereof sixteen new sections relating to the same subject, with an emergency clause.

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

Section A. Sections 210.843, 454.430, 454.520, 454.810 and 516.350, RSMo 1994, and sections 452.340, 452.345, 452.350, 454.415, 454.432, 454.433, 454.460, 454.495, 454.505, 454.530 and 483.163, RSMo Supp. 1998, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 210.843, 452.340, 452.345, 452.350, 454.415, 454.430, 454.432, 454.433, 454.460, 454.495, 454.505, 454.520, 454.530, 454.810, 483.163 and 516.350, to read as follows:

210.843. 1. If the existence of a parent and child relationship is declared, and a duty of support has been established under sections 210.817 to 210.852, the support obligation may be enforced in the same or in other appropriate proceedings by the mother, the child, the division of child support enforcement, or any other public agency that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

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

2. The court shall order that support payments be made to the clerk of the circuit court as trustee for remittance to the person entitled to receive the payments, or where that person has assigned his support rights to the division of family services under section 208.040, RSMo, as trustee for remittance to the division, as long as the trusteeship remains in effect. **Effective October 1, 1999, the court shall order that support payments be made to the family support payment center established pursuant to section 454.530, RSMo, as trustee for remittance to the person entitled to receive the payments for payments that are required by section 454.530, RSMo, to be made to the payment center.**

3. Willful failure to obey any judgment or order of the court entered under this section is a civil contempt of court. Section 452.350, RSMo, applies to support orders entered under this section, and all administrative and judicial remedies for the enforcements of judgments shall apply.

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 days that the other parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support, notwithstanding any periods of visitation or temporary physical and legal or physical or legal custody pursuant to a judgment of dissolution or legal separation or any modification thereof. In a IV-D case, the division of child support enforcement may determine the amount of the abatement under this subsection for any child support order[. In such cases, upon notification by the division, the circuit clerk] **and shall record the amount of abatement [on the child support trusteeship] in the automated child support system** record established pursuant [to this chapter and] chapter 454, RSMo. **If the case is not a IV-D case, then upon court order the circuit clerk shall record the amount of abatement in the automated child support system record**

**established pursuant to chapter 454, RSMo.**

3. Unless the circumstances of the child manifestly dictate otherwise and the court specifically so provides, the obligation of a parent to make child support payments shall terminate when the child:

(1) Dies;

(2) Marries;

(3) Enters active duty in the military;

(4) Becomes self-supporting, provided that the custodial parent has relinquished the child from parental control by express or implied consent; or

(5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply.

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

5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-two, whichever first occurs. To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. If the child is enrolled in such an institution, the child or parent obligated to pay support may petition the court to amend the order to direct the obligated parent to make the payments directly to the child. As used in this section, an "institution of vocational education" means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly. "Higher education" means any junior college, community college, college, or university at which the child attends classes regularly. A child who has been diagnosed with a learning disability, or whose physical disability or diagnosed health problem limits the child's

ability to carry the number of credit hours prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending an institution of vocational or higher education, and the child continues to meet the other requirements of this subsection. A child who is employed at least fifteen hours per week during the semester may take as few as nine credit hours per semester and remain eligible for child support so long as all other requirements of this subsection are complied with.

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

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

8. The Missouri supreme court shall have in effect a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which will result in a computation of the support obligation. The guidelines shall address how the amount of child support shall be calculated when an award of joint physical custody results in the child or children spending substantially equal time with both parents. Not later than October 1, 1998, the Missouri supreme court shall publish child support guidelines and specifically list and explain the relevant factors and assumptions that were used to calculate the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less than once every three years to ensure that its application results in the determination of appropriate child support award amounts.

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

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

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

452.345. 1. As used in sections 452.345 to 452.350, the term "IV-D case" shall mean a case in which support rights have been assigned to the state of Missouri or where the division of child support enforcement is providing support enforcement services pursuant to section 454.400, RSMo.

2. At any time the court, upon its own motion, may, or upon the motion of either party shall, order that maintenance or support payments be made to the circuit clerk as trustee for remittance to the person entitled to receive the payments. The circuit clerk shall remit such support payments to the person entitled to receive the payments within three working days of receipt by the circuit clerk. Circuit clerks shall deposit all receipts no later than the next working day after receipt. Payment by a nonguaranteed negotiable financial instrument occurs when the instrument has cleared the depository institution and has been credited to the trust account. **Effective October 1, 1999, at any time the court, upon its own motion, may, or upon the motion of either party shall, order that support payments as required by section 454.530, RSMo, be made to the payment center established under that section as trustee for remittance to the person entitled to receive the payments. However, in**

**no case shall the court order payments to be made to the payment center, if the division of child support enforcement notifies the court that such payments shall not be made to the center. In such cases payments shall be made to the clerk as trustee until the division notifies the court that payments shall be directed to the payment center. Further, with the agreement of the division, courts may order payments to be made to the payment center prior to October 1, 1999.**

3. The circuit clerk shall maintain records **in the automated child support system established pursuant to chapter 454, RSMo**, listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order. **Nothing in this section shall prohibit the division of child support enforcement from entering information on the records of the automated child support system established pursuant to chapter 454, RSMo, as provided in chapter 454, RSMo.**

4. The parties affected by the order shall inform the circuit clerk **or payment center established pursuant to section 454.530, RSMo**, of any change of address or of other conditions that may affect the administration of the order.

5. For any case in which an order for support or maintenance was entered prior to January 1, 1994, which has not been modified subsequent to that date, except a IV-D case, if a party becomes delinquent in maintenance or support payments in an amount equal to one month's total support obligation, the provisions of this subsection shall apply. If the circuit clerk has been appointed trustee under subsection 2 of this section, or if the person entitled to receive the payments files with the clerk an affidavit stating the particulars of the obligor's noncompliance, the circuit clerk shall send by regular mail notice of the delinquency to the obligor. This notice shall advise the obligor of the delinquency, shall state the amount of the obligation, and shall advise that the obligor's income is subject to withholding for repayment of the delinquency and for payment of current support, as provided in section 452.350. For such cases, the circuit clerk shall, in addition to the notice to the obligor, send by regular mail a notice to the obligee. This notice shall state the amount of the delinquency and shall advise the obligee that income withholding, pursuant to section 452.350, is available for collection of support delinquencies and current support, and if the support order includes amounts for child support, that support enforcement services, pursuant to section 454.425, RSMo, are available through the Missouri division of child support enforcement of the department of social services.

452.350. 1. Until January 1, 1994, except for orders entered or modified in IV-D cases, each order for child support or maintenance entered or modified by the court under the authority of this chapter, or otherwise, shall include a provision notifying the person obligated to pay such support or maintenance that, upon application by the obligee or the Missouri division of child support enforcement of the department of social services, the obligor's wages or other income shall be subject to withholding without further notice if the obligor becomes delinquent in maintenance

or child support payments in an amount equal to one month's total support obligation. The order shall also contain provisions notifying the obligor that:

(1) The withholding shall be for the current month's maintenance and support; and

(2) The withholding shall include an additional amount equal to fifty percent of one month's child support and maintenance to defray delinquent child support and maintenance, which additional withholding shall continue until the delinquency is paid in full.

2. For all orders entered or modified in IV-D cases, and effective January 1, 1994, for every order for child support or maintenance entered or modified by the court under the authority of this chapter, or otherwise, income withholding pursuant to this section shall be initiated on the effective date of the order, except that such withholding shall not commence with the effective date of the order in any case where:

(1) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding. For purposes of this subdivision, any finding that there is good cause not to require immediate withholding must be based on, at least, a written determination and an explanation by the court that implementing immediate wage withholding would not be in the best interests of the child and proof of timely payments of previously ordered support in cases involving the modification of support orders; or

(2) A written agreement is reached between the parties that provides for an alternative arrangement. If the income of an obligor is not withheld as of the effective date of the support order, pursuant to subdivision (1) or (2) of this subsection, or otherwise, such obligor's income shall become subject to withholding pursuant to this section without further exception on the date on which the obligor becomes delinquent in maintenance or child support payments in an amount equal to one month's total support obligation. Such withholding shall be initiated in the manner provided in subsection 4 of this section. All IV-D orders entered or modified by the court shall contain a provision notifying the obligor that he or she shall notify the division of child support enforcement regarding the availability of medical insurance coverage through an employer or a group plan, provide the name of the insurance provider when coverage is available, and inform the division of any change in access to such insurance coverage. **Any income withheld pursuant to this section for a support order initially entered on or after October 1, 1999, shall be paid to the payment center pursuant to section 454.530, RSMo. Any order of the court entered on or after October 1, 1999, establishing the withholding for a support order as defined in section 454.460, RSMo, or notice from the clerk issued on or after October 1, 1999, pursuant to this section for a support order shall require payment to the payment center pursuant to section 454.530, RSMo.**

3. The provisions of section 432.030, RSMo, to the contrary notwithstanding, if income withholding has not been initiated on the effective date of the initial or modified order, the obligated party may execute a voluntary income assignment at any time, which assignment shall

be filed with the court and shall take effect after service on the employer or other payor.

4. The circuit clerk, upon application of the obligee or the division of child support enforcement, shall send, by certified mail, return receipt requested, a written notice to the employer or other payor listed on the application when the obligated party is subject to withholding pursuant to the child support order or subsection 2 of this section. For orders entered or modified in cases known by the circuit clerk to be IV-D cases in which income withholding is to be initiated on the effective date of the order, and effective January 1, 1994, for all orders entered or modified by the court in which income withholding is to be initiated on the effective date of the order, the circuit clerk shall send such notice to the employer or other payor in the manner provided by this section at the time the order is entered without application of any party when an employer or other payor is identified to the circuit clerk by inclusion in the pleadings pursuant to section 452.312, or otherwise. The notice of income withholding shall be prepared by the person entitled to support pursuant to the order, or the legal representative of that person, on a form prescribed by the court, and shall be presented to the clerk of the court at the time the order of support is entered. The notice shall direct the employer or other payor to withhold each month an amount equal to one month's child support and maintenance until further notice from the court. In the event of a delinquency in child support or maintenance payments in an amount equal to one month's total support obligation, the notice further shall direct the employer or other payor to withhold each month an additional amount equal to fifty percent of one month's child support and maintenance until the support delinquency is paid in full. The notice shall also include a statement of exemptions which may apply to limit the portion of the obligated party's disposable earnings which are subject to the withholding pursuant to federal or state law and notify the obligor that the obligor may request a hearing and related information pursuant to this section. The notice shall contain the Social Security number of the obligor if available. The circuit clerk shall send a copy of this notice by regular mail to the last known address of the obligated party. A notice issued pursuant to this section shall be binding on the employer or other payor, and successor employers and payors, two weeks after mailing, and shall continue until further order of the court **or the division of child support enforcement**. If the notice does not contain the Social Security number of the obligor, the employer or other payor shall not be liable for withholding from the incorrect obligor. The obligated party may, within that two-week period, request a hearing on the issue of whether the withholding should take effect. The withholding shall not be held in abeyance pending the outcome of the hearing. The obligor may not obtain relief from the withholding by paying overdue support, if any. The only basis for contesting the withholding is a mistake of fact. For the purpose of this section, "mistake of fact" shall mean an error in the amount of arrearages, if applicable, or an error as to the identity of the obligor. The court shall hold its hearing, enter its order disposing of all issues disputed by the obligated party, and notify the obligated party and the employer or other payor, within forty-five days of the date



on which the withholding notice was sent to the employer.

5. For each payment the employer may charge a fee not to exceed six dollars **per month**, which shall be deducted from each obligor's moneys, income or periodic earnings, in addition to the amount deducted to meet the support or maintenance obligation subject to the limitations contained in the federal Consumer Credit Protection Act (15 U.S.C. 1673).

6. Upon termination of the obligor's employment with an employer upon whom a withholding notice has been served, the employer shall so notify the court in writing. The employer shall also inform the court, in writing, as to the last known address of the obligor and the name and address of the obligor's new employer, if known.

7. Amounts withheld by the employer or other payor shall be transmitted, in accordance with the notice, within seven business days of the date that such amounts were payable to the obligated party. For purposes of this section, "business day" means a day that state offices are open for regular business. The employer or other payor shall, along with the amounts transmitted, provide the date each amount was withheld from each obligor. If the employer or other payor is withholding amounts for more than one order, the employer or other payor may combine all such withholdings that are payable to the same circuit clerk **or family support payment center** and transmit them as one payment, together with a separate list identifying the cases to which they apply. The cases shall be identified by court case number, name of obligor, the obligor's Social Security number, the IV-D case number, if any, the amount withheld for each obligor, and the withholding date or dates for each obligor, to the extent that such information is known to the employer or other payor. An employer or other payor who fails to honor a withholding notice pursuant to this section may be held in contempt of court and is liable to the obligee for the amount that should have been withheld. Compliance by an employer or other payor with the withholding notice operates as a discharge of liability to the obligor as to that portion of the obligor's periodic earnings or other income so affected.

8. As used in this section, the term "employer" includes the state and its political subdivisions.

9. An employer shall not discharge or otherwise discipline, or refuse to hire, an employee as a result of a withholding notice issued pursuant to this section. Any obligor who is aggrieved as a result of a violation of this subsection may bring a civil contempt proceeding against the employer by filing an appropriate motion in the cause of action from which the withholding notice issued. If the court finds that the employer discharged, disciplined, or refused to hire the obligor as a result of the withholding notice, the court may order the employer to reinstate or hire the obligor, or rescind any wrongful disciplinary action. If, after the entry of such an order, the employer refuses without good cause to comply with the court's order, or if the employer fails to comply with the withholding notice, the court may, after notice to the employer and a hearing, impose a fine against the employer, not to exceed five hundred dollars. Proceeds of any such fine

shall be distributed by the court to the county general revenue fund.

10. A withholding entered pursuant to this section may, upon motion of a party and for good cause shown, be amended by the court. The clerk shall notify the employer of the amendment in the manner provided for in subsection 4 of this section.

11. The court, upon the motion of obligor and for good cause shown, may terminate the withholding, except that the withholding shall not be terminated for the sole reason that the obligor has fully paid past due child support and maintenance.

12. A withholding effected pursuant to this section shall have priority over any other legal process pursuant to state law against the same wages, except that where the other legal process is an order issued pursuant to this section or section 454.505, RSMo, the processes shall run concurrently, up to applicable wage withholding limitations. If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations **and includes a wage withholding from another state pursuant to section 454.935, RSMo**, the employer shall first satisfy current support obligations by dividing the amount available to be withheld among the orders on a pro rata basis using the percentages derived from the relationship each current support order amount has to the sum of all current child support obligations. Thereafter, delinquencies shall be satisfied using the same pro rata distribution procedure used for distributing current support, up to the applicable limitation. **If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations and does not include a wage withholding from another state pursuant to section 454.932, RSMo, the employer shall withhold and pay to the payment center an amount equal to the wage withholding limitations. The payment center shall first satisfy current support obligations by dividing the amount available to be withheld among the orders on a pro rata basis using the percentages derived from the relationship of each current support order amount to the sum of all current child support obligations. Thereafter, arrearages shall be satisfied using the same pro rata distribution procedure used for distributing current support, up to the applicable limitation.**

13. The remedy provided by this section applies to child support and maintenance orders entered prior to August 13, 1986, notwithstanding the absence of the notice to the obligor provided for in subsection 1 of this section, provided that prior notice from the circuit clerk to the obligor in the manner prescribed in subsection 5 of section 452.345 is given.

14. Notwithstanding any provisions of this section to the contrary, in a case in which support rights have been assigned to the state or in which the division of child support enforcement is providing support enforcement services pursuant to section 454.425, RSMo, the

director of the division of child support enforcement may amend or terminate a withholding order issued pursuant to this section, as provided in this subsection without further action of the court. The director may amend or terminate a withholding order and issue an administrative withholding order pursuant to section 454.505, RSMo, when the director determines that children for whom the support order applies are no longer entitled to support pursuant to section 452.340, when the support obligation otherwise ends and all arrearages are paid, when the support obligation is modified pursuant to section 454.500, RSMo, or when the director enters an order that is approved by the court pursuant to section 454.496, RSMo. The director shall notify the employer and the circuit clerk of such amendment or termination. The director's administrative withholding order or withholding termination order shall preempt and supersede any previous judicial withholding order issued pursuant to this or any other section.

15. For the purpose of this section, "income" means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation benefits, disability benefits, payments pursuant to a pension or a retirement program and interest.

16. If the secretary of the Department of Health and Human Services promulgates a final standard format for an employer income withholding notice, the court shall use or require the use of such notice.

454.415. 1. For the purposes of this section, the term "IV-A agency" shall mean:

(1) An agency that has been designated by a state to administer programs pursuant to Title IV-A of the Social Security Act;

(2) An agency that has been designated by a state to administer programs pursuant to Title IV-D of the Social Security Act; or

(3) Any other entity entitled to receive and disburse child support payments in that state.

2. When a court has ordered support payments to a person who has made an assignment of support rights to the division of family services or the IV-A agency of another state on behalf of this or such other state, the division of child support enforcement shall notify the court.

**(1) Until October 1, 1999**, upon such notice, the court shall order all support payments to be made to the clerk of the court as trustee for the division of family services or the other state's IV-A agency, whichever is appropriate, as assignee of the support rights. The clerk shall forward all support payments to the department of social services, which payments have been identified by the department for deposit in the appropriate fund within the state treasury when assignments have been made to the division of family services. The clerk shall forward support payments to the other state's IV-D agency when assignments have been made to that state's IV-A agency. Notification to the court by the division of child support enforcement of the assignment of support rights shall, in and of itself, authorize the court to make the clerk trustee, notwithstanding any provision of any existing court order, statute, or other law to the contrary,

and the court need not hold a hearing on the matter. The amount of the obligation owed to this state or the other state's IV-A agency shall be the amount specified in a court order which covers the assigned rights. The clerk shall keep an accurate record of such orders and such payments and shall note such assignment in the case file in such a manner as to make the fact of the assignment easily discernible;

**(2) Effective October 1, 1999, support payments are to be made to the payment center pursuant to section 454.530 as trustee for the division of family services or the other state's IV-A agency, whichever is appropriate, as assignee of the support rights. The payment center shall forward all support payments to the state, which payments have been identified by the division of child support enforcement for deposit in the appropriate fund within the state treasury when assignments have been made to the division of family services. The payment center shall forward support payments to the other state's IV-D agency when assignments have been made to that state's IV-A agency. Notification to the court by the division of child support enforcement of the assignment of support rights shall, in and of itself, make the payment center trustee, notwithstanding any provision of any provision of any existing court order, statute, or other law to the contrary, and the court need not hold a hearing on the matter. The amount of the obligation owed to this state or the other state's IV-A agency shall be the amount specified in a court order which covers the assigned rights. The payment center shall keep an accurate record of such orders and such payments.**

3. **(1)** Upon termination of the assignment **for any case for which payments are not to be made to the payment center pursuant to section 454.530**, the clerk of the court shall continue as trustee for the division of family services or the other state's IV-A agency for any accrued unpaid support at the time of the termination and as trustee for the obligee for any support becoming due after the termination. If there has been an assignment to the division of family services and there is no current assignment to another state's IV-A agency, the clerk of the court shall forward to the obligee all payments for support accruing subsequent to the termination and shall forward to the department of social services all payments for support which had accrued and were unpaid at the time of the termination. If there has been an assignment to another state's IV-A agency and there is no current assignment to the division of family services, the clerk of the court shall continue to forward to that state's IV-D agency all payments for support accruing subsequent to the termination of the assignment as well as all payments for support which had accrued and were unpaid at the time of the termination. When there has been an assignment to the division of family services, the clerk of the court shall apply payments first to support which has accrued subsequent to the termination, to the extent thereof, and then to support which accrued prior to termination, except such payments collected by the division of child support enforcement through debt setoff or legal process shall be forwarded to the department of social

services, unless the department of social services directs otherwise. After termination of the assignment, the trusteeship may be dissolved upon motion of a party after notice and hearing on behalf of all parties to the proceeding or pursuant to subsections 3 to 7 of section 454.430. Prior to termination of the assignment, no motion may be filed, nor maintained, for the purpose of terminating or abating any trusteeship in favor of the division of family services or another state's IV-A agency;

**(2) Effective October 1, 1999, upon termination of the assignment for any case for which payments are to be made to the payment center pursuant to section 454.530, the payment center shall continue as trustee for the division of family services or the other state's IV-A agency for any accrued unpaid support at the time of the termination and as trustee for the obligee for any support becoming due after the termination. If there has been an assignment to the division of family services and there is no current assignment to another state's IV-A agency, the payment center shall forward to the obligee all payments for support accruing subsequent to the termination and shall forward to the division of child support enforcement all payments for support which had accrued and were unpaid at the time of the termination. If there has been an assignment to another state's IV-A agency and there is no current assignment to the division of family services, the payment center shall continue to forward to that state's IV-D agency all payments for support accruing subsequent to the termination of the assignment as well as all payments for support which had accrued and were unpaid at the time of the termination. When there has been an assignment to the division of family services, the payment center shall apply payments first to support which has accrued subsequent to the termination, to the extent thereof, and then to support which accrued prior to termination, except such payments collected by the division of child support enforcement through debt setoff or legal process shall be forwarded to the division of child support enforcement, unless the division directs otherwise. After termination of the assignment, the trusteeship may be dissolved upon motion of a party after notice and hearing on behalf of all parties to the proceeding or pursuant to subsections 3 to 7 of section 454.430. Prior to termination of the assignment, no motion may be filed nor maintained for the purpose of terminating or abating any trusteeship in favor of the division of family services or another state's IV-A agency.**

4. For purposes of this section, "assignment" includes an assignment to the state by a person who has applied or is receiving assistance under a program funded under Part A of Title IV or Title XIX of the Social Security Act.

454.430. 1. For the purposes of this section, the term "IV-D agency" means an agency that has been designated by a state to administer programs under Title IV-D of the Social Security Act or any other entity entitled to receive and disburse child support payments in that state.

2. When a court has ordered support payments to a person who is receiving child support

services under section 454.425, or pursuant to application for IV-D agency services in another state, the division of child support enforcement shall so notify the court. **Until October 1, 1999,** upon such notice the court shall order all support payments to be made to the clerk of the court as trustee for such person. The notification to the court by the division shall, in and of itself, authorize the court to make the clerk trustee, notwithstanding any provision of any existing court order, statute, or other law to the contrary, and the court need not hold a hearing on the matter. The clerk shall keep an accurate record of such orders and such payments, and shall report all such collections to the [department of social services] **division** in the manner specified by the [department] **division**. The circuit clerk shall forward all such payments to the person receiving child support services under section [454.525] **454.425**, or to the IV-D agency in the state in which the person is currently receiving IV-D services, as appropriate. **Effective October 1, 1999, upon notice by the division, all support payments shall be made to the payment center pursuant to section 454.530 as trustee for such person. The notification by the division shall, in and of itself, authorize the payment center pursuant to section 454.530 to be trustee, notwithstanding any provision of any existing court order, statute, or other law to the contrary, and the court need not hold a hearing on the matter. The payment center shall keep an accurate record of such orders and such payments, and shall report all such collections to the division in the manner specified by the division. The payment center shall forward all such payments to the person receiving child support services pursuant to section 454.425, or to the IV-D agency in the state in which the person is currently receiving IV-D services, as appropriate.**

3. The division is authorized to terminate trusteeship responsibilities for future support in IV-D cases pursuant to the procedures set forth in this section. If the division determines that the order no longer provides a continuing obligation for support or the custodial party is no longer receiving child support enforcement services, the division shall send a notice of its intent to terminate the trusteeship by regular mail to the custodial and noncustodial parties. The notice shall advise each party that unless written objection is received by the division within fifteen days of the date the notice is sent, the [clerk] trusteeship for current support shall be terminated. Unless a party objects to the termination of the [clerk] trusteeship in writing within the specified period, the division shall [notify the court to] terminate the trusteeship for current support.

4. If an objection is filed by either party to the case, the trusteeship may be terminated for future support only upon the filing of a motion with the court in which the trusteeship is established and after notice to all parties and hearing on the motion.

5. Upon [the court's receipt of written notice from the division that] the requirements of subsection 3 of this section have been met, the [clerk] trusteeship responsibilities for future support shall terminate. The trusteeship shall remain in effect only to the extent that payments

are made to satisfy any accrued unpaid support that was due as of the date the notice [was received from the division]. The [notification to the court by the division] **notice** shall, in and of itself, terminate the trusteeship responsibilities for future support, and the court need not hold a hearing on the matter.

6. Any party whose trusteeship is terminated pursuant to this section may reopen a trusteeship pursuant to section 452.345, RSMo.

7. Termination of a [clerk] trusteeship under this section shall not, in and of itself, constitute a judicial determination as to the rights of a party to receive support or the obligation of a party to pay support pursuant to a support order entered in the case.

454.432. 1. The circuit clerk **in a case that is not a IV-D case or the division in a IV-D case** shall record credits on **the automated child support [trusteeship] system** records established pursuant to this chapter or chapter 452, RSMo, for amounts not received by the clerk [only to the extent permitted by this section] **or the division.**

2. Credits allowed under this section shall include, but not be limited to, in-kind payments as provided in this section, amounts collected from an obligor from federal and state income tax refunds, state lottery payments, Social Security payments, unemployment and workers' compensation benefits, income withholdings authorized by law, liens, garnishment actions, **abatements pursuant to section 452.340, RSMo**, and any other amounts required to be credited by statute or case law.

3. Credits shall be recorded on the trusteeship record for payments received by the division of child support enforcement and, at the discretion of the division of child support enforcement, and upon receipt of waivers requested pursuant to subsection 4 of this section, credits may be given on state debt judgments obtained pursuant to subsection 1 of section 454.465 for completion of such activities as job training and education, if mutually agreed upon by the division and the obligor. The circuit clerk shall make such credits upon receipt of paper or electronic [documentation] **notification** of the amount of the credit from the division [and verification of the authenticity of the documentation by the circuit clerk]. **The division may record the credit or adjust the records to reflect payments and disbursements shown on the trusteeship record when the trusteeship record is contained or maintained in the automated child support system established pursuant to this chapter.**

4. The director of the department of social services shall apply to the United States Secretary of Health and Human Services for all waivers of requirements under federal law necessary to implement the provisions of subsection 3 of this section.

5. Credits shall be entered on the [trusteeship record] **automated child support system established pursuant to this chapter** for direct and in-kind payments received by the custodial parent when the custodial parent files an affidavit stating the particulars of the direct and in-kind payments to be credited on the court record with the circuit clerk; however, no such credits shall

be entered for periods during which child support payments are assigned to the state pursuant to law. Such credits may include, but shall not be limited to, partial and complete satisfaction of judgment for support arrearages.

6. Nothing contained in this section shall prohibit satisfaction of judgment as provided for in sections 511.570 to 511.620, RSMo, and by supreme court rule.

7. Application for the federal earned income tax credit shall, when applicable, be required as a condition of participating in the alternative child support credit programs of subsection 3 of this section.

454.433. 1. When a tribunal of another state as defined in section 454.850 has ordered support payments to a person who has made an assignment of child support rights to the division of family services or who is receiving child support services under section 454.425, the division of child support enforcement may notify the court of this state in the county in which the obligor, obligee or the child resides or works. **Until October 1, 1999**, upon such notice the circuit clerk shall accept all support payments and remit such payments to the person or entity entitled to receive the payments. **Effective October 1, 1999, the division shall order that the payment center shall accept all support payments and remit such payments to the person or entity entitled to receive the payments.**

2. Notwithstanding any provision of law to the contrary, the notification to the court by the division shall authorize the court to make the clerk trustee. The clerk shall keep an accurate record of such payments and shall report all collections to the [department of social services] **division** in the manner specified by the [department] **division**. **Effective October 1, 1999, the duties of the clerk as trustee pursuant to this section shall terminate and all payments shall be made to the payment center pursuant to section 454.530.**

454.460. As used in sections [454.460 to 454.520] **454.400 to 454.530**, unless the context clearly indicates otherwise, the following terms mean:

(1) "Court", any circuit court of this state and any court or agency of any other state having jurisdiction to determine the liability of persons for the support of another person;

(2) "Court order", any judgment, decree, or order of any court which orders payment of a set or determinable amount of support money;

(3) "Department", the department of social services of the state of Missouri;

(4) "Dependent child", any person under the age of twenty-one who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(5) "Director", the director of the division of child support enforcement, or the director's designee;

(6) "Division", the division of child support enforcement of the department of social services of the state of Missouri;

(7) "IV-D agency", an agency designated by a state to administer programs under Title



IV-D of the Social Security Act;

(8) "IV-D case", a case in which services are being provided pursuant to section 454.400;

(9) "Obligee", any person to whom payments are required to be made pursuant to the terms of a court order for a child, spouse or former spouse;

(10) "Obligor", any person required to make payments pursuant to the terms of a court order for a child, spouse or former spouse;

(11) "Parent", the biological or adoptive father or mother of a dependent child;

(12) "Public assistance", any cash or benefit under Part IV-A or Title XIX of the federal Social Security Act paid by the department to or for the benefit of any dependent child or any public assistance assigned to the state;

(13) "State", any state or political subdivision, territory or possession of the United States, District of Columbia, and the Commonwealth of Puerto Rico;

(14) "Support order", a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the child is living and providing monetary support, health care, child care, arrearages or reimbursement for such child, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees and other relief.

454.495. 1. **Until October 1, 1999**, when an administrative order has been docketed pursuant to section 454.490, the court shall order all support payments to be made to the circuit clerk as trustee for the division of family services or other person entitled to receive such payments pursuant to the order. The filing of such order by the director shall in and of itself authorize the court to make the circuit clerk the trustee, notwithstanding any existing court order, statute, or other law to the contrary, and the court need not hold a hearing on the matter. The circuit clerk shall:

(1) Forward all such payments to the department or other person entitled to receive such payments pursuant to the order;

(2) Keep an accurate record of the orders and the payments; and

(3) Report all such collections to the department in the manner specified by the department.

2. **Effective October 1, 1999, and when an administrative order has been docketed pursuant to section 454.490, the payment center pursuant to section 454.530 shall be trustee for the division of family services or other person entitled to receive such payments pursuant to the order. The order by the director shall in and of itself authorize the payment center pursuant to section 454.530 to be the trustee, notwithstanding any existing court order, statute, or other law to the contrary, and the**

**court need not hold a hearing on the matter. The payment center shall:**

**(1) Forward all such payments to the department or other person entitled to receive such payments pursuant to the order;**

**(2) Keep an accurate record of the orders and the payments; and**

**(3) Report all such collections to the division in the manner specified by the division.**

**3.** As used in this section, "assignment" includes an assignment to the state by a person who has applied for or is receiving assistance under a program funded under Part A of Title IV or Title XIX of the Social Security Act.

454.505. 1. In addition to any other remedy provided by law for the enforcement of support, if a support order has been entered, the director shall issue an order directing any employer or other payor of the parent to withhold and pay over to the division, **the payment center pursuant to section 454.530** or the clerk of the circuit court in the county in which a trusteeship is or will be established, money due or to become due the obligated parent in an amount not to exceed federal wage garnishment limitations. For administrative child support orders issued pursuant to sections other than section 454.476, the director shall not issue an order to withhold and pay over in any case in which:

(1) One of the parties demonstrates, and the director finds, that there is good cause not to require immediate income withholding. For purposes of this subdivision, any finding that there is good cause not to require immediate withholding shall be based on, at least, a written determination and an explanation by the director that implementing immediate wage withholding would not be in the best interests of the child and proof of timely payments of previously ordered support in cases involving the modification of support orders; or

(2) A written agreement is reached between the parties that provides for an alternative payment arrangement. If the income of an obligor is not withheld as of the effective date of the support order, pursuant to subdivision (1) or (2) of this subsection, or otherwise, such obligor's income shall become subject to withholding pursuant to this section, without further exception, on the date on which the obligor becomes delinquent in maintenance or child support payments in an amount equal to one month's total support obligation.

2. An order entered pursuant to this section shall recite the amount required to be paid as continuing support, the amount to be paid monthly for arrearages and the Social Security number of the obligor if available. In addition, the order shall contain a provision that the obligor shall notify the division of child support enforcement regarding the availability of medical insurance coverage through an employer or a group plan, provide the name of the insurance provider when coverage is available, and inform the division of any change in access to such insurance coverage. A copy of sections 454.460 and 454.505 shall be appended to the order. A copy of such order shall be filed with the circuit court in the county **or city not within a county** in

which the [trusteeship is or will be established] **judgment of dissolution or paternity was entered, or if no such judgment was entered, in the county or city not within a county where either the parent or the child resides or where the order or judgment is filed or registered.**

3. An order entered pursuant to this section shall be served on the employer or other payor by certified mail, return receipt requested or may be issued through electronic means, and shall be binding on the employer or other payor two weeks after mailing or electronic issuance of such service. A copy of the order and a notice of property exempt from withholding shall be mailed to the obligor at the obligor's last known address. The notice shall advise the obligor that the withholding has commenced and the procedures to contest such withholding pursuant to section 454.475 on the grounds that such withholding or the amount withheld is improper due to a mistake of fact by requesting a hearing thirty days from mailing the notice. At such a hearing the certified copy of the court order and the sworn or certified statement of arrearages shall constitute prima facie evidence that the director's order is valid and enforceable. If a prima facie case is established, the obligor may only assert mistake of fact as a defense. For purposes of this section, "mistake of fact" means an error in the amount of the withholding or an error as to the identity of the obligor. The obligor shall have the burden of proof on such issues. The obligor may not obtain relief from the withholding by paying the overdue support. The employer or other payor shall withhold from the earnings or other income of each obligor the amount specified in the order, and may deduct an additional sum not to exceed six dollars per month as reimbursement for costs, except that the total amount withheld shall not exceed the limitations contained in the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b). The employer or other payor shall transmit the payments as directed in the order within seven business days of the date the earnings, money due or other income was payable to the obligor. For purposes of this section, "business day" means a day that state offices are open for regular business. The employer or other payor shall, along with the amounts transmitted, provide the date the amount was withheld from each obligor. If the order does not contain the Social Security number of the obligor, the employer or other payor shall not be liable for withholding from the incorrect obligor.

4. If the order is served on a payor other than an employer, it shall be a lien against any money due or to become due the obligated parent which is in the possession of the payor on the date of service or which may come into the possession of the payor after service until further order of the director, except for any deposits held in two or more names in a financial institution.

5. The [department] **division** shall notify an employer or other payor upon whom such an order has been directed whenever all arrearages have been paid in full, and whenever, for any other reason, the amount required to be withheld and paid over to the [department] **payment center** pursuant to the order as to future pay periods is to be reduced or redirected. If the parent's support obligation is required to be paid monthly and the parent's pay periods are at more

frequent intervals, the employer or other payor may, at the request of the [parent and with the consent of the] **obligee or** director, withhold and pay over to the [department] **payment center**, an equal amount at each pay period cumulatively sufficient to comply with the withholding order.

6. An order issued pursuant to subsection 1 of this section shall be a continuing order and shall remain in effect and be binding upon any employer or other payor upon whom it is directed until a further order of the director. Such orders shall terminate when all children for whom the support order applies are emancipated or deceased, or the support obligation otherwise ends, and all arrearages are paid. No order to withhold shall be terminated solely because the obligor has fully paid arrearages.

7. An order issued pursuant to subsection 1 of this section shall have priority over any other legal process pursuant to state law against the same wages, except that where the other legal process is an order issued pursuant to this section or section 452.350, RSMo, the processes shall run concurrently, up to applicable wage withholding limitations. If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations **and includes a wage withholding from another state pursuant to section 454.932**, the employer shall first satisfy current support obligations by dividing the amount available to be withheld among the orders on a pro rata basis using the percentages derived from the relationship each current support order amount has to the sum of all current child support obligations. Thereafter, arrearages shall be satisfied using the same pro rata distribution procedure used for distributing current support, up to the applicable limitation. **If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations and does not include a wage withholding from another state pursuant to section 454.932, the employer shall withhold and pay to the payment center an amount equal to the wage withholding limitations. The payment center shall first satisfy current support obligations by dividing the amount available to be withheld among the orders on a pro rata basis using the percentages derived from the relationship of each current support order amount to the sum of all current child support obligations. Thereafter, arrearages shall be satisfied using the same pro rata distribution procedure used for distributing current support, up to the applicable limitation.**

8. No employer or other payor who complies with an order entered pursuant to this section shall be liable to the parent, or to any other person claiming rights derived from the parent, for wrongful withholding. An employer or other payor who fails or refuses to withhold or pay the amounts as ordered pursuant to this section shall be liable to the party holding the support rights in an amount equal to the amount which became due the parent during the relevant period and

which, pursuant to the order, should have been withheld and paid over. The director is hereby authorized to bring an action in circuit court to determine the liability of an employer or other payor for failure to withhold or pay the amounts as ordered. If a court finds that a violation has occurred, the court may fine the employer in an amount not to exceed five hundred dollars. The court may also enter a judgment against the employer for the amounts to be withheld or paid, court costs and reasonable attorney's fees.

9. The remedy provided by this section shall be available where the state or any of its political subdivisions is the employer or other payor of the obligated parent in the same manner and to the same extent as where the employer or other payor is a private party.

10. An employer shall not discharge, or refuse to hire or otherwise discipline an employee as a result of an order to withhold and pay over certain money authorized by this section. If any such employee is discharged within thirty days of the date upon which an order to withhold and pay over certain money is to take effect, there shall arise a rebuttable presumption that such discharge was a result of such order. This presumption shall be overcome only by clear, cogent and convincing evidence produced by the employer that the employee was not terminated because of the order to withhold and pay over certain money. The director is hereby authorized to bring an action in circuit court to determine whether the discharge constitutes a violation of this subsection. If the court finds that a violation has occurred, the court may enter an order against the employer requiring reinstatement of the employee and may fine the employer in an amount not to exceed one hundred fifty dollars. Further, the court may enter judgment against the employer for the back wages, costs, attorney's fees, and for the amount of child support which should have been withheld and paid over during the period of time the employee was wrongfully discharged.

11. If an obligor for whom an order to withhold has been issued pursuant to subsection 1 of this section terminates the obligor's employment, the employer shall, within ten days of the termination, notify the division of the termination, shall provide to the division the last known address of the obligor, if known to the employer, and shall provide to the **[department] division** the name and address of the obligor's new employer, if known. When the **[department] division** determines the identity of the obligor's new employer, the director shall issue an order to the new employer as provided in subsection 1 of this section.

12. If an employer or other payor is withholding amounts for more than one order issued pursuant to subsection 1 of this section, the employer or other payor may transmit all such withholdings which are to be remitted to the same circuit clerk **[or]**, other collection unit **or to the payment center after October 1, 1999**, as one payment together with a separate list identifying obligors for whom a withholding has been made and the amount withheld from each obligor so listed, and the withholding date or dates for each obligor.

13. For purposes of this section, "income" means any periodic form of payment due to an

individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation benefits, disability benefits, payments pursuant to a pension or a retirement program, and interest.

14. The employer shall withhold funds as directed in the notice, except if an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income;
- (3) The time periods within which the employer shall implement the income withholding order and forward the child support payments;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms and conditions not specified in the order.

15. If the secretary of the Department of Health and Human Services promulgates a final standard format for an employer income withholding notice, the director shall use such notice prescribed by the secretary.

454.520. 1. All delinquent child support and maintenance payments which have accrued based upon judgments or orders of courts of this state entered prior to September 29, 1979, shall draw interest at the rate of six percent per annum through September 28, 1979; at the rate of nine percent per annum from September 29, 1979, through August 31, 1982; and thereafter at the rate of one percent per month.

2. All delinquent child support and maintenance payments which have accrued based upon judgments or orders of courts of this state entered after September 28, 1979, but prior to September 1, 1982, shall draw interest at the rate of nine percent per annum through August 31, 1982, and thereafter at the rate of one percent per month.

3. All delinquent child support and maintenance payments which accrue based upon judgments of courts of this state entered on or after September 1, 1982, shall draw interest at the rate of one percent per month.

4. The interest imposed under subsections 1 to 3 of this section shall be simple interest. Interest shall accrue at the close of the business day on the last day of each month and shall be calculated by multiplying the total arrearage existing at the end of the day, less the amount of that month's installments, by the applicable rate of interest. The total amount of interest collectible is the sum of the interest which has accrued on the last day of each month following the first delinquent payment. This interest computation method shall apply to all support and maintenance orders, regardless of the frequency of the installments required by the court. If the order does not specify the date on which support or maintenance payments are to begin, it shall be assumed that the first installment was due on the date the order was entered,

and subsequent installments fall due on the same day of the week, or date of the month, as is appropriate. Payments which were to begin on the twenty-ninth, thirtieth or thirty-first of any month shall be deemed due on the last day of any month not containing such date. The interest imposed under this section shall automatically accrue and attach to the underlying support or maintenance judgment or order, and may be collected together with the arrearage, except that no payment or collection shall be construed to be interest until the entire support arrearage has been satisfied. Such interest shall be considered support or maintenance for the purposes of exemptions, restrictions on amounts which may be recovered by garnishment, and nondischargeability in bankruptcy.

5. As a condition precedent to execution for interest on delinquent child support or maintenance payments, the obligee shall present to the circuit clerk a sworn affidavit setting forth the payment history of the obligor under the judgment or order, together with a statement which details the computation of the interest claimed to be due and owing; except, that the payment history affidavit shall not be required for periods during which the clerk is acting as trustee pursuant to section 452.345, RSMo, **or the division is acting as trustee pursuant to this chapter** or any other provision of the laws of this state. It shall not be the responsibility of the circuit clerk to compute the interest due and owing. The payment history affidavit and statement of interest shall be entered in the case record by the circuit clerk. If the obligor disputes the payment history as sworn to by the obligee, or the interest claimed, the obligor may petition the court for a determination. The court shall hold a hearing and shall make such a determination prior to the return date of the execution, or if this is not possible, the court shall direct the sheriff to pay the proceeds of the execution into the court pending such determination. If the determination [is] **as** made by the court is inconsistent with the payment history affidavit of the obligee, or the interest claimed, the amount of the execution shall be so amended.

454.530. [1. On or before October 1, 1999, the state shall establish and operate a disbursement unit for the collection and disbursement of payments pursuant to support orders for:

- (1) All cases enforced pursuant to section 454.400; and
- (2) Any other case including, but not limited to, cases in which a support order is initially issued on or after January 1, 1994.

2. In order to determine which disbursement unit organizational structure will best meet the needs of the state and comply with the criteria set forth in section 312 of P.L. 104-193, the director of the department of social services shall appoint a disbursement unit committee to evaluate and consider whether a centralized disbursement unit operated directly by the state or one operated by a contractor responsible to the state would be most efficient and cost effective. The committee shall also consider whether a state disbursement unit may be established by linking local disbursement units through an automated information network without costing more, or taking more time to establish or operate than a centralized system. The committee shall

submit a final recommendation to the department director no later than December 31, 1997.

3. Members of the disbursement unit committee shall serve without additional compensation, but may be reimbursed for all actual and necessary expenses in the performance of official duties for the committee.

4. The disbursement unit shall distribute all child support received from an employer or other source of periodic income within two business days after such receipt, if sufficient information identifying the payee is provided. As used in this subsection, "business day" means a day state government offices are open for legal business. Distribution of collections toward arrearages shall be delayed until the resolution of any timely appeal related to such arrearage or upon an order of the court.]

**1. On or before October 1, 1999, the division of child support enforcement shall establish and operate a state disbursement unit to be known as the "Family Support Payment Center" for the receipt and disbursement of payments under support orders for:**

**(1) All cases being enforced by the division pursuant to section 454.400; and**

**(2) Any case required by federal law to be collected or disbursed by the payment center including, but not limited to, cases in which a support order is initially issued on or after January 1, 1994, in which the income of the obligor is subject to withholding.**

**2. The family support payment center will be operated by the division, with other state agencies under a cooperative agreement, or by a contractor responsible directly to the division. Notwithstanding any other provisions of law to the contrary, after notice by the division or the court that issued the support order to the obligor that all future payments shall be made to the payment center, the payment center becomes trustee for payments made by parents, employers, states and other entities, and all future payments shall be made to the payment center. The payment center shall disburse payments to custodial parents and other obligees, the state or the agencies of other states. If the payment center is operated by a contractor and the contractor receives and disburses the payments, then the contractor shall employ an independent certified public accountant to conduct a yearly audit. The audit will determine that funds received are disbursed or otherwise accounted for and make recommendations as to procedures and changes that the contractor should take to protect the funds from misappropriation and theft. A copy of the audit shall be delivered to the division, the office of administration and the office of state court administrator.**

**3. Except as provided herein, the payment center shall disburse support payments within two business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided. As used in this section, "business day" means a day state government offices are open for regular business. Disbursement of payments made toward arrearages may be delayed until the**



resolution of any timely appeal with respect to the arrearage or upon order of a court.

4. All support payments collected by the payment center shall be deposited in a separate trust fund and not commingled with any other funds. The fund shall be known as the "Family Support Trust Fund".

5. The moneys in the family support trust fund shall not be deemed to be state funds and shall not be commingled with any state funds. Any moneys that are payable from the trust fund to the state of Missouri shall be deposited in the state's general revenue fund. The payment center shall keep an accurate record of the money received and disbursed through the trust fund and such records shall be available for inspection by state and federal officers and employees, obligors, obligees and the courts, as authorized by law.

6. The director or the division may authorize the state treasurer to make refunds to the trust fund for erroneous payments and overpayments to the state.

7. The division shall maintain or cause to be maintained records showing payments received and disbursements made by the payment center. The records shall be maintained in the automated child support system established pursuant to this chapter. The records shall include the amount of current support due and the total amount due for past unpaid support. The records shall include payment and disbursement records previously maintained by the various circuit clerks of this state. The circuit clerk shall certify to the payment center the records of past payments and disbursements at the time payments are directed to be made to the payment center. The payment and disbursement records of the circuit clerks as shown on the automated child support system established pursuant to this chapter shall be deemed as certified by the clerks. The division or the circuit clerk shall record or cause to be recorded other credits against a support order. Credits allowed pursuant to this subsection shall include, but not be limited to, abatements pursuant to section 452.340, RSMo, in-kind payments as provided for in section 454.432, amounts collected from an obligor from federal and state income tax refunds, state lottery payments, social security payments, unemployment and workers' compensation benefits, income withholdings authorized by law, liens, garnishment actions, and any other amounts required to be credited by statute or case law. In a case that is not a IV-D case, the division shall only record payments that are received by the payment center and all other credits shall be recorded by the clerk. The division may change the name and address information for any case or person shown on the automated child support system established pursuant to this chapter based on information received by the payment center. In cases in which payments are to be made to the payment center, obligees and obligors shall notify the payment center of any changes in their names or addresses, such notice shall be notice on the division as required by section 454.413.

**8. Copies of records of payments to and disbursements by the payment center, including but not limited to the records maintained in the automated child support system established pursuant to this chapter, or a circuit clerk including but not limited to copies produced by electronic or optically scanned means, whether certified by the division, the circuit clerk, or by an employee of the payment center, shall be admissible, without further proof or foundation, in any judicial or administrative proceeding as proof of credits and of payments made to or by the payment center or any circuit clerk. Records include but are not limited to the records maintained in the automated child support system established pursuant to this chapter. The records shall be certified by the director, a circuit clerk or their designees, or by an employee of the payment center, and additional proof of the official character of the person certifying such record or the authenticity of his signature shall not be required. The director, the circuit clerk and their designees, or an employee of the payment center may certify payment and disbursement records contained in, maintained in or shown by the automated child support system established pursuant to this chapter. The certification of the director, the circuit clerk or their designees, or an employee of the payment center shall certify payments or disbursements regardless of who made the entry of the payment or disbursement. Such records shall constitute prima facie evidence of the amount of support paid.**

**9. Whenever an employee of the division, circuit clerk or an employee of the payment center is served with a subpoena, subpoena duces tecum or an order to produce such records, the employee or clerk may comply by transmitting a certified copy of the record to the party requesting the subpoena or order. No party shall be permitted to offer such records into evidence in response to a subpoena pursuant to this subsection unless all other parties to the action have been served with copies of such records and certification at least seven days prior to the day upon which trial of the cause commences. A copy of the records properly certified shall be admissible as evidence in all courts and administrative proceedings.**

**10. Copies of judicial orders and other documents on file with a court, when transmitted to the division including by facsimile or other electronic means, are rebuttably presumed to be true and correct copies of the original document and may be offered into evidence without authentication or verification in any hearings or proceedings pursuant to this chapter. A person contesting the authenticity of the document may rebut the presumption with a certified copy. The clerk shall furnish the division certified copies upon request and without charge.**

**11. In addition to any fees pursuant to section 454.425, and if allowed by federal law, the division may charge and collect from support received through the payment center a fee of ten dollars for each order for each year or part of year during which**

payments are received by the payment center. The fee is to reimburse the state for the costs associated with processing the support payments.

12. (1) The division may require after notice to the obligor that any check paid to the payment center by the obligor be certified or guaranteed for payment. An originator of a check other than a payor may not be required to pay by certified or guaranteed check unless an insufficient funds check has been received and the provisions of this subsection have been followed.

(2) In addition to any fees pursuant to section 454.425, the payment center, when authorized by the division, or the state may charge a fee not to exceed twenty-five dollars for processing insufficient funds checks to reimburse for the costs of processing the insufficient funds checks and issue a notice to the originator of any insufficient funds check that no further checks will be accepted unless the check is certified or guaranteed for payment. The division may collect the fee which shall be considered a support order for enforcement pursuant to this chapter.

13. If not required by an existing order, the division or circuit clerk shall notify by first class mail any obligor under a support order and any employer or other payor who has or will be withholding income to direct support payments to the payment center. The division may file a copy of the notice with the court having jurisdiction over the support order. Any obligor, employer or other payor who receives a notice to direct payments to the payment center and thereafter fails to direct payments to the payment center shall receive a second written notice by certified mail. Failure to pay to the payment center after a second notice shall be grounds for contempt and a motion for contempt may be filed in the county or city not within a county where the support order is filed.

14. Current support obligations shall no longer be recorded in the records maintained in the automated child support system established pursuant to this chapter:

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

**(2) In a IV-D case with a support order entered by a court, when the court that issued the support order terminates the support order and notifies the division and the division shall also cease enforcing the order if no past support is due; or**

**(3) In all cases when the child becomes twenty-two years of age unless a court orders that support continue. The obligor or obligee may contest the decision of the division to terminate accruing current support orders by requesting a hearing within thirty days of the mailing of a notice by the division. The hearing shall be pursuant to the provisions of section 454.475. The issue at the hearing, if any, shall be limited to a mistake of fact as to the age of the child or the existence of a court order requiring support after the age of twenty-two;**

**Nothing in this section shall affect or terminate amounts due for unpaid past support.**

**15. A court shall order payments to be made to the payment center upon request of the division or attorneys representing the division.**

**16. Payment on a support order to the payment center shall authorize the division or its contractor to endorse a negotiable instrument made payable to the obligee, the circuit clerk, the state or a state agency.**

454.810. 1. For all IV-D cases as defined by section 452.345, RSMo, the division of child support enforcement shall determine support arrearages and credits by consent of the parties to the support order or by use of the administrative order process set out in section 454.476.

2. Notwithstanding any provisions of section 454.475 to the contrary, hearings under this section may be requested by either party and may be conducted by nonattorney hearing officers specially designated by the department of social services. Any person adversely affected by any hearing decisions under this section may obtain judicial review under sections 536.100 to 536.140, RSMo.

3. Any support arrearage and credit determination established pursuant to this section and all documentation that forms the basis for the determination shall be filed with the circuit clerk and shall be considered part of the official trusteeship record **if filed prior to October 1, 1999, or if filed after that date, part of the records of the payment center pursuant to this chapter** for all purposes.

483.163. 1. Each circuit clerk, except the circuit clerk in any city not within a county, shall cooperate with the prosecuting attorney and division of child support enforcement in the investigation and documentation of possible criminal nonsupport under section 568.040, RSMo[, which involves any case or cases for which the clerk is trustee].

2. Other provisions of law to the contrary notwithstanding, for the performance of the duties prescribed in subsection 1 of this section, each circuit clerk, except the circuit clerk in any city not within a county, in addition to any other compensation provided by law, shall receive five thousand dollars per year beginning January 1, 1997. Such compensation shall be payable in equal installments in the same manner and at the same time as other compensation is paid to the

circuit clerk.

3. For every year beginning July 1, 1998, the amount of increased compensation established in subsection 2 of this section shall be adjusted by any salary adjustment authorized under section 476.405, RSMo.

516.350. 1. Every judgment, order or decree of any court of record of the United States, or of this or any other state, territory or country, except for any judgment, order, or decree awarding child support or maintenance which mandates the making of payments over a period of time, shall be presumed to be paid and satisfied after the expiration of ten years from the date of the original rendition thereof, or if the same has been revived upon personal service duly had upon the defendant or defendants therein, then after ten years from and after such revival, or in case a payment has been made on such judgment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years from the date of the original rendition or revival upon personal service, or from the date of the last payment, such judgment shall be conclusively presumed to be paid, and no execution, order or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever.

2. In any judgment, order, or decree awarding child support or maintenance, each periodic payment shall be presumed paid and satisfied after the expiration of ten years from the date that periodic payment is due, unless the judgment has been otherwise revived as set out in subsection 1 of this section. This subsection shall take effect as to all such judgments, orders, or decrees which have not been presumed paid under subsection 1 of this section as of August 31, 1982.

**3. In any judgment, order, or decree awarding child support or maintenance, payment duly entered upon the record as provided in subsection 1 of this section shall include recording of payments or credits in the automated child support system created pursuant to chapter 454, RSMo, by the division of child support enforcement or payment center pursuant to chapter 454, RSMo.**

Section B. Because of the need to comply with federal mandates, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

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