

SECOND REGULAR SESSION

SENATE BILL NO. 649

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHAMPION.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3302S.021

AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof one new section relating to parental child support obligations for children attending institutions of vocational or higher education.

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

Section A. Section 452.340, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 452.340, to read as follows:

452.340. 1. In a proceeding for dissolution of marriage, legal separation
2 or child support, the court may order either or both parents owing a duty of
3 support to a child of the marriage to pay an amount reasonable or necessary for
4 the support of the child, including an award retroactive to the date of filing the
5 petition, without regard to marital misconduct, after considering all relevant
6 factors including:

- 7 (1) The financial needs and resources of the child;
- 8 (2) The financial resources and needs of the parents;
- 9 (3) The standard of living the child would have enjoyed had the marriage
10 not been dissolved;
- 11 (4) The physical and emotional condition of the child, and the child's
12 educational needs;
- 13 (5) The child's physical and legal custody arrangements, including the
14 amount of time the child spends with each parent and the reasonable expenses
15 associated with the custody or visitation arrangements; and
- 16 (6) The reasonable work-related child care expenses of each parent.

17 2. The obligation of the parent ordered to make support payments shall
18 abate, in whole or in part, for such periods of time in excess of thirty consecutive

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

19 days that the other parent has voluntarily relinquished physical custody of a
20 child to the parent ordered to pay child support, notwithstanding any periods of
21 visitation or temporary physical and legal or physical or legal custody pursuant
22 to a judgment of dissolution or legal separation or any modification thereof. In
23 a IV-D case, the division of child support enforcement may determine the amount
24 of the abatement pursuant to this subsection for any child support order and
25 shall record the amount of abatement in the automated child support system
26 record established pursuant to chapter 454, RSMo. If the case is not a IV-D case
27 and upon court order, the circuit clerk shall record the amount of abatement in
28 the automated child support system record established in chapter 454, RSMo.

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

32 (1) Dies;

33 (2) Marries;

34 (3) Enters active duty in the military;

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

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

39 (6) Reaches age twenty-two, unless the provisions of the child support
40 order specifically extend the parental support order past the child's twenty-second
41 birthday for reasons provided by subsection 4 of this section.

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

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

55 reenroll at such institution, the parental support obligation shall continue until
56 the child completes his or her education, or until the child reaches the age of
57 twenty-two, whichever first occurs. [To remain eligible for such continued
58 parental support, at the beginning of each semester] **Upon written request by**
59 **the parent obligated to pay support, sent by certified mail to the child**
60 **and to the parent entitled to receive support,** the child shall submit to each
61 parent a transcript or similar official document provided by the institution of
62 vocational or higher education which includes the courses the child is enrolled in
63 and has completed for each term, the grades and credits received for each such
64 course, and an official document from the institution listing the courses which the
65 child is enrolled in for the upcoming term and the number of credits for each such
66 course. **If the child fails to provide a copy of the requested documents**
67 **within twenty days of the receipt of such request, the child support**
68 **shall be abated until such time as the child provides the documents, or**
69 **until such time as the child provides evidence that he or she attempted**
70 **to obtain the information from the institution. An attempt by the**
71 **parent obligated to pay support to send such a written request for**
72 **documents to the parent entitled to receive support shall be sufficient**
73 **to meet the requirements of this subsection, as long as the child**
74 **receives the request. An attempt by the child to send the requested**
75 **documents to the parent entitled to receive support shall be sufficient**
76 **to meet the requirements of this subsection, as long as the documents**
77 **are received by the parent obligated to pay support.** If the circumstances
78 of the child manifestly dictate, the court may waive the October first deadline for
79 enrollment required by this subsection. If the child has pursued a path of
80 continuous attendance and has demonstrated evidence of a plan to continue to do
81 so, the court may enter a judgment abating support for a period of up to five
82 months for any semester in which the child completes at least six but less than
83 [twelve] **nine** credit hours; however, such five-month period of abatement shall
84 only be granted one time for each child. If the child is enrolled in such an
85 institution, the child or parent obligated to pay support may petition the court to
86 amend the order to direct the obligated parent to make the payments directly to
87 the child. As used in this section, an "institution of vocational education" means
88 any postsecondary training or schooling for which the student is assessed a fee
89 and attends classes regularly. "Higher education" means any junior college,
90 community college, college, or university at which the child attends classes

91 regularly. A child who has been diagnosed with a learning disability, or whose
92 physical disability or diagnosed health problem limits the child's ability to carry
93 the number of credit hours prescribed in this subsection, shall remain eligible for
94 child support so long as such child is enrolled in and attending an institution of
95 vocational or higher education, and the child continues to meet the other
96 requirements of this subsection. [A child who is employed at least fifteen hours
97 per week during the semester may take as few as nine credit hours per semester
98 and remain eligible for child support so long as all other requirements of this
99 subsection are complied with.]

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

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

119 8. The Missouri supreme court shall have in effect a rule establishing
120 guidelines by which any award of child support shall be made in any judicial or
121 administrative proceeding. Said guidelines shall contain specific, descriptive and
122 numeric criteria which will result in a computation of the support obligation. The
123 guidelines shall address how the amount of child support shall be calculated
124 when an award of joint physical custody results in the child or children spending
125 substantially equal time with both parents. Not later than October 1, 1998, the
126 Missouri supreme court shall publish child support guidelines and specifically list

127 and explain the relevant factors and assumptions that were used to calculate the
128 child support guidelines. Any rule made pursuant to this subsection shall be
129 reviewed by the promulgating body not less than once every four years to ensure
130 that its application results in the determination of appropriate child support
131 award amounts.

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

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

163 subsection 1 of this section, that there is sufficient cause to rebut the presumed
164 amount.

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

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

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

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

188 (4) The obligation shall be terminated as provided by this subdivision by
189 the court which entered the order establishing the child support obligation, or the
190 division of child support enforcement, when the parent paying child support files
191 a sworn statement or affidavit with the court which entered the order
192 establishing the child support obligation, or the division of child support
193 enforcement, stating that the child is emancipated and reciting the factual basis
194 for such statement; and which statement or affidavit is served by the court or
195 division on the child support obligee. If the obligee denies the statement or
196 affidavit, the court or division shall thereupon treat the sworn statement or
197 affidavit as a motion to modify the support obligation pursuant to section 452.370
198 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion

199 as provided by law; provided that the court may require the payment of a deposit
200 as security for court costs and any accrued court costs, as provided by law, in
201 relation to such motion to modify.

202 12. The court may enter a judgment terminating child support pursuant
203 to subdivisions (1) to (3) of subsection 11 of this section without necessity of a
204 court appearance by either party. The clerk of the court shall mail a copy of a
205 judgment terminating child support entered pursuant to subsection 11 of this
206 section on both the obligor and obligee parents. The supreme court may
207 promulgate uniform forms for sworn statements and affidavits to terminate
208 orders of child support obligations for use pursuant to subsection 11 of this
209 section and subsection 4 of section 452.370.

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Bill

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