

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1814

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MONACO, JOHNSON (90) (Co-sponsors) AND BYRD.

Read 1st time February 6, 2002, and 1000 copies ordered printed.

Read 2nd time February 7, 2002, and referred to the Committee on Judiciary, February 21, 2002.

Reported from the Committee on Judiciary February 28, 2002, with recommendation that the bill Do Pass by Consent.

Perfectured by Consent March 11, 2002.

TED WEDEL, Chief Clerk

4487L.01P

AN ACT

To repeal sections 455.027, 455.060, 455.067, 455.075, 455.504 and 455.508, RSMo, and to enact in lieu thereof five new sections relating to orders of protection.

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

Section A. Sections 455.027, 455.060, 455.067, 455.075, 455.504 and 455.508, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 455.027, 455.060, 455.067, 455.075 and 455.504, to read as follows:

455.027. [1. No advance filing fees or bond shall be required for filing a petition in an action commenced under sections 455.010 to 455.085.

2. The clerk shall advise the petitioner of his right to file a financial statement indicating the petitioner's income and liabilities. This information may be required by the court and shall be considered before assessment of court costs.

3. Assessment of court costs or a determination of indigency shall be considered by the court at the time of a termination of the proceeding.] **No filing fees, court costs, or bond shall be assessed in an action commenced pursuant to sections 455.010 to 455.085.**

455.060. 1. After notice and hearing, the court may modify an order of protection at any time, upon subsequent motion filed by the guardian ad litem, the court-appointed special advocate or by either party together with an affidavit showing a change in circumstances

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

4 sufficient to warrant the modification. All full orders of protection shall be final orders and
5 appealable and shall be for a fixed period of time as provided in section 455.040.

6 2. Any order for child support, custody, temporary custody, visitation or maintenance
7 entered under sections 455.010 to 455.085 shall terminate prior to the time fixed in the order
8 upon the issuance of a subsequent order pursuant to chapter 452, RSMo, or any other Missouri
9 statute.

10 3. No order entered pursuant to sections 455.010 to 455.085 shall be res judicata to any
11 subsequent proceeding, including, but not limited to, any action brought under chapter 452,
12 RSMo, 1978 as amended.

13 4. All provisions of an order of protection shall terminate upon entry of a decree of
14 dissolution of marriage or legal separation except as to those provisions which require the
15 respondent to participate in a court-approved counseling program or enjoin the respondent from
16 abusing, molesting, stalking or disturbing the peace of the petitioner and which enjoin the
17 respondent from entering the premises of the dwelling unit of the petitioner as described in the
18 order of protection when the petitioner continues to reside in that dwelling unit unless the
19 respondent is awarded possession of the dwelling unit pursuant to a decree of dissolution of
20 marriage or legal separation.

21 5. Any order of protection or order for child support, custody, temporary custody,
22 visitation or maintenance entered under sections 455.010 to 455.085 shall terminate [when the
23 parties voluntarily consent to the termination of the order by a written consent filed with the
24 court which entered the order] **upon the filing of a motion to terminate the order of
25 protection by the petitioner; except that, in cases where the order grants custody of a minor
26 child to the respondent, the order shall terminate only upon consent of both parties or
27 upon the respondent's failure to object within ten days of receiving the petitioner's notice
28 of the filing of the motion to dismiss. If the respondent timely objects to the dismissal, the
29 court shall set the motion to dismiss for hearing and both parties shall have an opportunity
30 to be heard.**

31 6. The order of protection may not change the custody of children when an action for
32 dissolution of marriage has been filed or the custody has previously been awarded by a court of
33 competent jurisdiction.

455.067. 1. Any order of protection issued by any other state, **tribe**, territory or
2 possession of the United States, the Commonwealth of Puerto Rico, or the District of
3 Columbia[,] shall be given full faith and credit throughout the state in all courts, and by all law
4 enforcement officials and agencies, and all public officials **and shall be enforceable in the same
5 manner as any order of protection issued by a court in this state.**

6 2. A person entitled to protection under a foreign order of protection as described in

7 subsection 1 of this section may file a [petition seeking registration of the foreign order in the
8 circuit court having jurisdiction. A certified copy of the foreign order of protection shall be
9 attached to such petition. The petition shall set forth the date of the entry of the foreign order
10 of protection and a record of any subsequent orders affecting such foreign order of protection,
11 and shall state that to the best of such person's knowledge, the order filed with the petition is in
12 effect. The court shall receive and consider such petition in the manner provided by sections
13 455.025 to 455.035, and its inquiry shall be limited to whether and the extent that the foreign
14 order of protection is in effect. If the court decides such issues in the affirmative, the court shall
15 issue an order giving full faith and credit to the foreign order of protection throughout the state,
16 as if such foreign order was originally issued by a court of this state] **certified copy of the
17 foreign order of protection and an affidavit or sworn statement from the petitioner that the
18 copy of the foreign order is a true and accurate copy and has not been altered in the circuit
19 court having jurisdiction. If the foreign order of protection terminates prior to the
20 expiration date on the order, the petitioner shall notify the circuit court.** A foreign order
21 of protection as described in subsection 1 of this section shall be enforceable in this state so long
22 as it is in effect in the issuing state.

23 3. [A copy of the Missouri court's order recognizing a foreign order of protection shall
24 be sent by the court to the respondent by certified mail, at his last known address, with a copy
25 of the petition and foreign order of protection. At any time during the duration of the order
26 recognizing the foreign order of protection, the respondent may move the court to modify or set
27 aside its order recognizing the foreign order of protection. Such motion shall be heard only if
28 a copy of the motion and a summons indicating a date and time certain for such hearing is
29 personally served on the petitioner, and the respondent shall not be entitled to a continuance of
30 such hearing. Such motion shall be sustained only if the respondent demonstrates to the court
31 by clear and convincing evidence that the Missouri court's order was not issued in compliance
32 with this section. The petitioner shall not be required to appear or to deny or rebut the
33 allegations or evidence submitted by respondent in order for the court to deny respondent's
34 motion.] **Filing of the foreign order of protection shall be without fee or cost.**

35 4. Registration and a Missouri court order recognizing a foreign order of protection shall
36 not be required for the enforcement of a certified foreign order of protection in this state.

455.075. The court may order a party to pay a reasonable amount [for the cost] to the
2 other party [of maintaining or defending any proceeding under sections 455.010 to 455.085 and]
3 for attorney's fees[, including sums for legal services rendered and costs] incurred prior to the
4 commencement of the proceeding or after entry of judgment. The court shall consider all
5 relevant factors, including the financial resources of both parties, and may order that the amount
6 be paid directly to the attorney, who may enforce the order in his name.

455.504. 1. **The clerk of the court shall make available to the petitioner the uniform forms adopted by the supreme court pursuant to section 455.073. Except as provided in section 455.510,** clerks under the supervision of a circuit clerk shall explain to litigants not represented by counsel the procedures for filing all forms and pleadings necessary for the presentation of their petition filed pursuant to the provisions of sections 455.500 to 455.538 to the court. Notice of the fact that clerks will provide such assistance shall be conspicuously posted in the clerks' offices. The location of the office where a petition can be filed shall be conspicuously posted in the court building. The performance of duties prescribed in this section shall not constitute the practice of law as defined in section 484.010, RSMo. All duties of the clerk prescribed in this section shall be performed without cost to the litigants. The supreme court may promulgate rules as necessary to govern conduct of court clerks under sections 455.500 to 455.538, and shall provide forms for petitions and written instructions on filling out all forms and pleadings necessary for the presentation of the petition to the court.

2. No [advance] filing fees, **court costs**, or bond shall be [required for filing a petition] **assessed** in an action commenced under sections 455.500 to 455.538.

3. [The clerk shall advise the petitioner of his right to file a financial statement indicating the petitioner's income and liabilities. This information may be required by the court and shall be considered before assessment of court costs.

4. Assessment of court costs or a determination of indigency shall be considered by the court at the time of a termination of the proceeding] **The clerk shall immediately notify the guardian ad litem or court-appointed special advocate of appointment and shall provide such guardian or advocate with a copy of the petition for the order of protection for the child. The clerk shall provide such guardian or advocate with the names, addresses, and telephone numbers of the parties within twenty-four hours of entry of the order appointing the guardian ad litem or court-appointed special advocate.**

[455.508. 1. Except as provided under section 455.510, clerks under the supervision of a circuit clerk shall explain to litigants not represented by counsel the procedures for filing all forms and pleadings necessary for the presentation of their petition to the court. The clerk shall advise the petitioner of his right to file a motion and affidavit to sue in forma pauperis pursuant to the Missouri Rules of Civil Procedure. Notice of the fact that clerks will provide such assistance shall be conspicuously posted in the clerks' offices. The location of the office where a petition can be filed shall be conspicuously posted in the court building. The performance of duties prescribed in this section shall not constitute the practice of law as defined in section 484.010, RSMo. All duties of the clerk prescribed in this section shall be performed without cost to the litigants. The supreme court may promulgate rules as necessary to govern conduct of court clerks under sections 455.500 to 455.538, and shall provide forms for petitions and written instructions on

14 filling out all forms and pleadings necessary for the presentation of the petition to the
15 court.
16 2. The clerk shall immediately notify the guardian ad litem or court-
17 appointed special advocate of appointment and shall provide the guardian ad litem
18 or court-appointed special advocate with a copy of the petition for the order of
19 protection for the child. The clerk shall provide the guardian ad litem or
20 court-appointed special advocate with the names, addresses and telephone numbers
21 of the parties within twenty-four hours of entry of the order appointing the guardian
22 ad litem or court-appointed special advocate.]