

FIRST REGULAR SESSION

HOUSE BILL NO. 832

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KRAUS (Sponsor), DAY, COOPER AND ATKINS (Co-sponsors).

1402L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof one new section relating to family support motions.

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Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows: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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 notwithstanding any periods of visitation or temporary physical and legal or physical or legal
19 custody pursuant to a judgment of dissolution or legal separation or any modification thereof.
20 In a IV-D case, the family support division may determine the amount of the abatement pursuant
21 to this subsection for any child support order and shall record the amount of abatement in the
22 automated child support system record established pursuant to chapter 454, RSMo. If the case
23 is not a IV-D case and upon court order, the circuit clerk shall record the amount of abatement
24 in the automated child support system record established in chapter 454, RSMo.

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

28 (1) Dies;

29 (2) Marries;

30 (3) Enters active duty in the military;

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

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

34 or

35 (6) Reaches age twenty-one, unless the provisions of the child support order specifically
36 extend the parental support order past the child's twenty-first birthday for reasons provided by
37 subsection 4 of this section.

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

41 5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary
42 school program of instruction, the parental support obligation shall continue, if the child
43 continues to attend and progresses toward completion of said program, until the child completes
44 such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an
45 institution of vocational or higher education not later than October first following graduation
46 from a secondary school or completion of a graduation equivalence degree program and so long
47 as the child enrolls for and completes at least twelve hours of credit each semester, not including
48 the summer semester, at an institution of vocational or higher education and achieves grades
49 sufficient to reenroll at such institution, the parental support obligation shall continue until the
50 child completes his or her education, or until the child reaches the age of twenty-one, whichever
51 first occurs. To remain eligible for such continued parental support, at the beginning of each
52 semester the child shall submit to each parent a transcript or similar official document provided
53 by the institution of vocational or higher education which includes the courses the child is

54 enrolled in and has completed for each term, the grades and credits received for each such
55 course, and an official document from the institution listing the courses which the child is
56 enrolled in for the upcoming term and the number of credits for each such course. When
57 enrolled in at least twelve credit hours, if the child receives failing grades in half or more of his
58 or her courseload in any one semester, payment of child support may be terminated and shall not
59 be eligible for reinstatement. Upon request for notification of the child's grades by the
60 noncustodial parent, the child shall produce the required documents to the noncustodial parent
61 within thirty days of receipt of grades from the education institution. If the child fails to produce
62 the required documents, payment of child support may terminate without the accrual of any child
63 support arrearage and shall not be eligible for reinstatement. If the circumstances of the child
64 manifestly dictate, the court may waive the October first deadline for enrollment required by this
65 subsection. If the child is enrolled in such an institution, the child or parent obligated to pay
66 support may petition the court to amend the order to direct the obligated parent to make the
67 payments directly to the child. As used in this section, an "institution of vocational education"
68 means any postsecondary training or schooling for which the student is assessed a fee and attends
69 classes regularly. "Higher education" means any community college, college, or university at
70 which the child attends classes regularly. A child who has been diagnosed with a developmental
71 disability, as defined in section 630.005, RSMo, or whose physical disability or diagnosed health
72 problem limits the child's ability to carry the number of credit hours prescribed in this subsection,
73 shall remain eligible for child support so long as such child is enrolled in and attending an
74 institution of vocational or higher education, and the child continues to meet the other
75 requirements of this subsection. A child who is employed at least fifteen hours per week during
76 the semester may take as few as nine credit hours per semester and remain eligible for child
77 support so long as all other requirements of this subsection are complied with.

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

82 7. The general assembly finds and declares that it is the public policy of this state that
83 frequent, continuing and meaningful contact with both parents after the parents have separated
84 or dissolved their marriage is in the best interest of the child except for cases where the court
85 specifically finds that such contact is not in the best interest of the child. In order to effectuate
86 this public policy, a court with jurisdiction shall enforce visitation, custody and child support
87 orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or
88 future obligation of support and may transfer the physical and legal or physical or legal custody
89 of one or more children if it finds that a parent has, without good cause, failed to provide

90 visitation or physical and legal or physical or legal custody to the other parent pursuant to the
91 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall
92 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court
93 costs incurred by the prevailing party.

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

105 9. There shall be a rebuttable presumption, in any judicial or administrative proceeding
106 for the award of child support, that the amount of the award which would result from the
107 application of the guidelines established pursuant to subsection 8 of this section is the correct
108 amount of child support to be awarded. A written finding or specific finding on the record in a
109 judicial or administrative proceeding that the application of the guidelines would be unjust or
110 inappropriate in a particular case, after considering all relevant factors, including the factors set
111 out in subsection 1 of this section, is required if requested by a party and shall be sufficient to
112 rebut the presumption in the case. The written finding or specific finding on the record shall
113 detail the specific relevant factors that required a deviation from the application of the guidelines.

114 10. Pursuant to this or any other chapter, when a court determines the amount owed by
115 a parent for support provided to a child by another person, other than a parent, prior to the date
116 of filing of a petition requesting support, or when the director of the family support division
117 establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section
118 454.465, RSMo, the court or director shall use the guidelines established pursuant to subsection
119 8 of this section. The amount of child support resulting from the application of the guidelines
120 shall be applied retroactively for a period prior to the establishment of a support order and the
121 length of the period of retroactivity shall be left to the discretion of the court or director. There
122 shall be a rebuttable presumption that the amount resulting from application of the guidelines
123 under subsection 8 of this section constitutes the amount owed by the parent for the period prior
124 to the date of the filing of the petition for support or the period for which state debt is being
125 established. In applying the guidelines to determine a retroactive support amount, when

126 information as to average monthly income is available, the court or director may use the average
127 monthly income of the noncustodial parent, as averaged over the period of retroactivity, in
128 determining the amount of presumed child support owed for the period of retroactivity. The
129 court or director may enter a different amount in a particular case upon finding, after
130 consideration of all relevant factors, including the factors set out in subsection 1 of this section,
131 that there is sufficient cause to rebut the presumed amount.

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

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

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

144 (3) The obligation shall be deemed terminated without further judicial or administrative
145 process when the parent paying child support files a sworn statement or affidavit with the court
146 which entered the order establishing the child support obligation, or the family support division,
147 stating that the child is emancipated and reciting the factual basis for such statement; which
148 statement or affidavit is served by the court or division on the child support obligee; and which
149 is either acknowledged and affirmed by the child support obligee in writing, or which is not
150 responded to in writing within thirty days of receipt by the child support obligee;

151 (4) The obligation shall be terminated as provided by this subdivision by the court which
152 entered the order establishing the child support obligation, or the family support division, when
153 the parent paying child support files a sworn statement or affidavit with the court which entered
154 the order establishing the child support obligation, or the family support division, stating that the
155 child is emancipated and reciting the factual basis for such statement; and which statement or
156 affidavit is served by the court or division on the child support obligee. If the obligee denies the
157 statement or affidavit, the court or division shall thereupon treat the sworn statement or affidavit
158 as a motion to modify the support obligation pursuant to section 452.370 or section 454.496,
159 RSMo, and shall proceed to hear and adjudicate such motion as provided by law; provided that
160 the court may require the payment of a deposit as security for court costs and any accrued court
161 costs, as provided by law, in relation to such motion to modify.

162 12. The court may enter a judgment terminating child support pursuant to subdivisions
163 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.
164 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
165 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may
166 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
167 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section
168 452.370.

169 **13. (1) If the income of the party obligated to pay child support increases or**
170 **decreases by twenty percent or more, either party may file a family support motion to have**
171 **the court-ordered child support amount increased or decreased based on a verified change**
172 **in income of the obligor party. The motion shall be accompanied by a sworn statement or**
173 **affidavit of the filing party and documentation evidencing the obligor's change in income.**
174 **The state courts administrator shall develop a simple form for pro se motions, which shall**
175 **be provided to the person by the circuit clerk. Clerks, under the supervision of a circuit**
176 **clerk, shall explain to the filing party the procedures for filing the form. Notice of the fact**
177 **that clerks will provide such assistance shall be conspicuously posted in the clerk's offices.**
178 **The location of the office where the family support motion may be filed shall be**
179 **conspicuously posted in the court building. The performance of duties described in this**
180 **section shall not constitute the practice of law as defined in section 484.010, RSMo. Such**
181 **form for pro se motions shall not require the assistance of legal counsel to prepare and file.**
182 **The cost of filing the motion shall be the standard court costs otherwise due for instituting**
183 **a civil action in the circuit court.**

184 **(2) Within ten court days after the filing of the family support motion under**
185 **subdivision (1) of this subsection, the clerk of the court shall provide notice to the**
186 **respondent under applicable state law, and applicable local or supreme court rules. A copy**
187 **of the motion shall be personally served upon the respondent by personal process server**
188 **as provided by law or by any sheriff. Such service shall be served at the earliest time and**
189 **shall take priority over service in other civil actions, except those of an emergency nature**
190 **or those filed under chapter 455, RSMo. The motion shall contain the following statement**
191 **in boldface type: "PURSUANT TO SECTION 452.340, RSMO, A FAMILY SUPPORT**
192 **MOTION HAS BEEN FILED TO MODIFY THE COURT-ORDERED CHILD SUPPORT**
193 **OBLIGATION OF THE OBLIGOR PARENT. IF YOU DISPUTE THE ALLEGED**
194 **CHANGE IN INCOME OF THE OBLIGOR PARENT, YOU MUST RESPOND TO THE**
195 **CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF SERVICE. FAILURE TO**
196 **RESPOND TO THE CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF**
197 **SERVICE MAY RESULT IN A DEFAULT ORDER WHICH MODIFIES THE AMOUNT**

198 **OF THE COURT-ORDERED CHILD SUPPORT OBLIGATION OF THE OBLIGOR**
199 **PARENT."**

200 **(3) Upon verification of the modified income of an obligor party and a finding by**
201 **the court that the income of the obligor party has increased or decreased by twenty percent**
202 **or more, the court shall recalculate the amount of child support to be paid by the obligor**
203 **party and order the appropriate change in the amount of child support owed by the obligor**
204 **party. The court shall use the same Form 14 calculations used in the original child support**
205 **order and shall recalculate the required support by substituting the modified income of the**
206 **obligor party only. No other child support factor shall be considered when determining**
207 **the modified child support amount obligation.**

208 **(4) Final disposition of a motion for a family support order filed under this**
209 **subsection shall take place not more than ninety days after the service of such motion,**
210 **unless waived by the parties or determined to be in the best interest of the child. Final**
211 **disposition shall not include appellate review.**

212 **(5) Motions filed under this subsection shall not be deemed an independent civil**
213 **action from the original action under which the child support judgment or order was**
214 **entered.**

215 **(6) No party shall file more than one family support motion in a twelve-month**
216 **period. If a party files a family support motion under this section and two such motions**
217 **are denied by the court within a ten-year period, such party shall be prohibited from filing**
218 **any additional family support motions under this subsection.**

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