

FIRST REGULAR SESSION

HOUSE BILL NO. 997

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KIRKTON.

2042L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof two new sections relating to child support.

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

Section A. Section 452.340, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 452.339 and 452.340, to read as follows:

452.339. 1. As used in this section, the following terms shall mean:

(1) "Higher education", any community college, college, or university at which the child attends classes regularly;

(2) "Institution of vocational education", any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly.

2. In any action for dissolution of marriage, legal separation, or action to establish or modify child support, the court may order either or both parents owing a duty of support to a child to provide for the educational expenses of the child or children of the parties for costs associated with attendance at an institution of vocational education or higher education, whether such child is of minor or majority age. Nothing in this section shall preclude the court from requiring the child to be responsible for a portion of such child's educational expenses.

3. An application for educational expenses may be made before or within one hundred twenty days after the child has graduated from a secondary school or completed a graduation equivalence degree program, or reached the age of eighteen, whichever is later. The authority under this section to make provisions for a child's educational expenses extends only to periods of college education or vocational or other training after

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 graduation from high school. The educational expenses may include, but shall not be
19 limited to, room, board, dues, tuition, transportation, books, nondiscretionary fees,
20 registration and application costs, medical expenses including medical insurance, dental
21 expenses, and living expenses during the school year and periods of recess, which sums may
22 be ordered payable to the child, to either parent, or to the educational institution directly
23 or through a special account or trust created for such purpose, at the discretion of the
24 court.

25 4. The following shall apply for a child to remain eligible for such continued
26 educational parental support:

27 (1) If the child enrolls for and completes at least twelve hours of credit each
28 semester, not including summer semester, at an institution of vocational education or
29 higher education and achieves grades sufficient to reenroll at such institution, the
30 educational parental support obligation shall continue until the child completes his or her
31 education or until the child reaches the age of twenty-two, whichever first occurs; and

32 (2) Each parent and the child shall sign any consents necessary for the educational
33 institution to provide the supporting parent or parents with access to the child's academic
34 transcripts, records, and grade reports. The consents shall not apply to any nonacademic
35 records. Failure to execute the required consent may be a basis for a modification or
36 termination of any order entered under this section. Unless the court specifically finds that
37 the child's safety would be jeopardized, each parent is entitled to be informed of the name
38 of the educational institution the child attends.

39 5. When enrolled in at least twelve credit hours, if the child receives failing grades
40 in half or more of his or her courseload in any one semester, payment of educational
41 support shall be terminated.

42 6. The court shall determine the cost of postsecondary education based upon the
43 cost of attending an in-state public institution for a course of instruction leading to an
44 undergraduate degree and shall include the reasonable costs for only necessary
45 postsecondary education expenses.

46 7. When considering the amount of educational support for each parent or the
47 minor child, the court shall consider the following:

48 (1) The financial resources of both parents;

49 (2) The standard of living the child would have enjoyed had the marriage not been
50 dissolved;

51 (3) The child's financial resources, including but not limited to the availability of
52 financial aid whether in the form of scholarships, grants, or student loans, and the ability
53 of the child to earn income while attending school;

54 **(4) The child's academic performance;**

55 **(5) Any available financial aid or student loans available to each parent; and**

56 **(6) The ability of each parent to meet such expenses.**

57 **8. Any contribution by the child for financial aid in the form of scholarships,**
58 **grants, or other form of need-based performance-based assistance shall first be deducted**
59 **from the cost of postsecondary education and the court shall apportion responsibility for**
60 **the remaining cost of postsecondary education to each parent.**

61 **9. A postsecondary educational support shall not be made if the child has**
62 **repudiated the parent by publicly disowning the parent, refusing to acknowledge the**
63 **parent, or by acting in a similar manner.**

64 **10. A child who has been diagnosed with a developmental disability, as defined in**
65 **section 630.005, or whose physical disability or diagnosed health problem limits the child's**
66 **ability to carry the number of credit hours prescribed in this section shall remain eligible**
67 **for educational child support so long as such child is enrolled in and attending an**
68 **institution of vocational education or higher education, and the child continues to meet the**
69 **other requirements of this section.**

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

6 (1) The financial needs and resources of the child;

7 (2) The financial resources and needs of the parents;

8 (3) The standard of living the child would have enjoyed had the marriage not been
9 dissolved;

10 (4) The physical and emotional condition of the child, and the child's educational needs;

11 (5) The child's physical and legal custody arrangements, including the amount of time
12 the child spends with each parent and the reasonable expenses associated with the custody or
13 visitation arrangements; and

14 (6) The reasonable work-related child care expenses of each parent.

15 2. The obligation of the parent ordered to make support payments shall abate, in whole
16 or in part, for such periods of time in excess of thirty consecutive days that the other parent has
17 voluntarily relinquished physical custody of a child to the parent ordered to pay child support,
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. If the case is not a
23 IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the
24 automated child support system record established in chapter 454.

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

57 course. When enrolled in at least twelve credit hours, if the child receives failing grades in half
58 or more of his or her courseload in any one semester, payment of child support may be
59 terminated and shall not be eligible for reinstatement. Upon request for notification of the child's
60 grades by the noncustodial parent, the child shall produce the required documents to the
61 noncustodial parent within thirty days of receipt of grades from the education institution. If the
62 child fails to produce the required documents, payment of child support may terminate without
63 the accrual of any child support arrearage and shall not be eligible for reinstatement. If the
64 circumstances of the child manifestly dictate, the court may waive the October first deadline for
65 enrollment required by this subsection. If the child is enrolled in such an institution, the child
66 or parent obligated to pay support may petition the court to amend the order to direct the
67 obligated parent to make the payments directly to the child. As used in this section, an
68 "institution of vocational education" means any postsecondary training or schooling for which
69 the student is assessed a fee and attends classes regularly. "Higher education" means any
70 community college, college, or university at which the child attends classes regularly. A child
71 who has been diagnosed with a developmental disability, as defined in section 630.005, or whose
72 physical disability or diagnosed health problem limits the child's ability to carry the number of
73 credit hours prescribed in this subsection, shall remain eligible for child support so long as such
74 child is enrolled in and attending an institution of vocational or higher education, and the child
75 continues to meet the other requirements of this subsection. A child who is employed at least
76 fifteen hours per week during the semester may take as few as nine credit hours per semester and
77 remain eligible for child support so long as all other requirements of this subsection are complied
78 with.] **The court may order either or both parents owing a duty of support to a child to**
79 **provide for the educational expenses of the child in accordance with section 452.339.**

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

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

93 terms of a judgment of dissolution, legal separation or modifications thereof. The court shall
94 also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court
95 costs incurred by the prevailing party.

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

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

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

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

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

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

141 (2) The obligation shall be deemed terminated without further judicial or administrative
142 process when the parent receiving child support furnishes a sworn statement or affidavit
143 notifying the obligor parent of the child's emancipation in accordance with the requirements of
144 subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the
145 court which entered the order establishing the child support obligation, or the family support
146 division for an order entered under section 454.470;

147 (3) The obligation shall be deemed terminated without further judicial or administrative
148 process when the parent paying child support files a sworn statement or affidavit with the court
149 which entered the order establishing the child support obligation, or the family support division
150 for an order entered under section 454.470, stating that the child is emancipated and reciting the
151 factual basis for such statement; which statement or affidavit is served by the court or division,
152 as applicable, on the child support obligee; and which is either acknowledged and affirmed by
153 the child support obligee in writing, or which is not responded to in writing within thirty days
154 of receipt by the child support obligee;

155 (4) The obligation shall be terminated as provided by this subdivision by the court which
156 entered the order establishing the child support obligation, or the family support division for an
157 order entered under section 454.470, when the parent paying child support files a sworn
158 statement or affidavit with the court which entered the order establishing the child support
159 obligation, or the family support division, as applicable, stating that the child is emancipated and
160 reciting the factual basis for such statement; and which statement or affidavit is served by the
161 court or division, as applicable, on the child support obligee. If the obligee denies the statement
162 or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a
163 request for hearing and shall proceed to hear and adjudicate such request for hearing as provided
164 by law; provided that the court may require the payment of a deposit as security for court costs

165 and any accrued court costs, as provided by law, in relation to such request for hearing. When
166 the division receives a request for hearing, the hearing shall be held in the manner provided by
167 section 454.475.

168 12. The court may enter a judgment terminating child support pursuant to subdivisions
169 (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party.
170 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
171 to subsection 11 of this section on both the obligor and obligee parents. The supreme court may
172 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
173 support obligations for use pursuant to subsection 11 of this section and subsection 4 of section
174 452.370.

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