

SECOND REGULAR SESSION

HOUSE BILL NO. 1360

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

3372H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 454.475, 536.100, and 536.110, RSMo, and to enact in lieu thereof three new sections relating to the filing of petitions for review of certain decisions.

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

Section A. Sections 454.475, 536.100, and 536.110, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 454.475, 536.100, and 536.110, to read as follows:

454.475. 1. Hearings provided for in this section shall be conducted pursuant to chapter 536 by administrative hearing officers designated by the Missouri department of social services. The hearing officer shall provide the parents, the person having custody of the child, or other appropriate agencies or their attorneys with notice of any proceeding in which support obligations may be established or modified. The department shall not be stayed from enforcing and collecting upon the administrative order during the hearing process and during any appeal to the courts of this state, unless specifically enjoined by court order.

2. If no factual issue has been raised by the application for hearing, or the issues raised have been previously litigated or do not constitute a defense to the action, the director may enter an order without an evidentiary hearing, which order shall be a final decision entitled to judicial review as provided in sections 536.100 to 536.140.

3. After full and fair hearing, the hearing officer shall make specific findings regarding the liability and responsibility, if any, of the alleged responsible parent for the support of the dependent child, and for repayment of accrued state debt or arrearages, and the costs of collection, and shall enter an order consistent therewith. In making the determination of the

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.

16 amount the parent shall contribute toward the future support of a dependent child, the hearing
17 officer shall consider the factors set forth in section 452.340.

18 4. If the person who requests the hearing fails to appear at the time and place set for the
19 hearing, upon a showing of proper notice to that person, the hearing officer shall enter findings
20 and order in accordance with the provisions of the notice or motion unless the hearing officer
21 determines that no good cause therefor exists.

22 5. In contested cases, the findings and order of the hearing officer shall be the decision
23 of the director. Any parent or person having custody of the child adversely affected by such
24 decision may obtain judicial review pursuant to sections 536.100 to 536.140 by filing a petition
25 for review in the circuit court of proper venue within thirty days of mailing of the decision. **Such**
26 **thirty days shall be calculated as provided under Missouri supreme court rule 44.01(e).**
27 Copies of the decision or order of the hearing officer shall be mailed to any parent, person having
28 custody of the child and the division within fourteen days of issuance.

29 6. If a hearing has been requested, and upon request of a parent, a person having custody
30 of the child, the division or a IV-D agency, the director shall enter a temporary order requiring
31 the provision of child support pending the final decision or order pursuant to this section if there
32 is clear and convincing evidence establishing a presumption of paternity pursuant to section
33 210.822. In determining the amount of child support, the director shall consider the factors set
34 forth in section 452.340. The temporary order, effective upon filing pursuant to section 454.490,
35 is not subject to a hearing pursuant to this section. The temporary order may be stayed by a court
36 of competent jurisdiction only after a hearing and a finding by the court that the order fails to
37 comply with rule 88.01.

38 7. (1) Any administrative decision or order issued under this section containing clerical
39 mistakes arising from oversight or omission, except proposed administrative modifications of
40 judicial orders, may be corrected by an agency administrative hearing officer at any time upon
41 ~~their~~ **his or her** own initiative or written motion filed by the division or any party to the action
42 provided the written motion is mailed to all parties. Any objection or response to the written
43 motion shall be made in writing and filed with the hearing officer within fifteen days from the
44 mailing date of the motion. Proposed administrative modifications of judicial orders may be
45 corrected by an agency administrative hearing officer prior to the filing of the proposed
46 administrative modification of a judicial order with the court that entered the underlying judicial
47 order as required in section 454.496, or upon express order of the court that entered the
48 underlying judicial order. No correction shall be made during the court's review of the
49 administrative decision, order, or proposed order as authorized under sections 536.100 to
50 536.140, except in response to an express order from the reviewing court.

51 (2) Any administrative decision or order or proposed administrative modification of
52 judicial order issued under this section containing errors arising from mistake, surprise, fraud,
53 misrepresentation, excusable neglect or inadvertence, may be corrected prior to being filed with
54 the court by an agency administrative hearing officer upon ~~[their]~~ **his or her** own initiative or
55 by written motion filed by the division or any party to the action provided the written motion is
56 mailed to all parties and filed within sixty days of the administrative decision, order, or proposed
57 decision and order. Any objection or response to the written motion shall be made in writing and
58 filed with the hearing officer within fifteen days from the mailing date of the motion. No
59 decision, order, or proposed administrative modification of judicial order may be corrected after
60 ninety days from the mailing of the administrative decision, order, or proposed order or during
61 the court's review of the administrative decision, order, or proposed order as authorized under
62 sections 536.100 to 536.140, except in response to an express order from the reviewing court.

63 (3) Any administrative decision or order or proposed administrative modification of
64 judicial order issued under this section may be vacated by an agency administrative hearing
65 officer upon ~~[their]~~ **his or her** own initiative or by written motion filed by the division or any
66 party to the action provided the written motion is mailed to all parties, if the administrative
67 hearing officer determines that the decision or order was issued without subject matter
68 jurisdiction, without personal jurisdiction, or without affording the parties due process. Any
69 objection or response to the written motion shall be made in writing and filed with the hearing
70 officer within fifteen days from the mailing date of the motion. A proposed administrative
71 modification of a judicial order may only be vacated prior to being filed with the court. No
72 decision, order, or proposed administrative modification of a judicial order may be vacated
73 during the court's review of the administrative decision, order, or proposed order as authorized
74 under sections 536.100 to 536.140, except in response to an express order from the reviewing
75 court.

536.100. Any person who has exhausted all administrative remedies provided by law and
2 who is aggrieved by a final decision in a contested case, whether such decision is affirmative or
3 negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to
4 536.140, unless some other provision for judicial review is provided by statute; provided,
5 however, that nothing in this chapter contained shall prevent any person from attacking any void
6 order of an agency at any time or in any manner that would be proper in the absence of this
7 section. If the agency or any board, other than the administrative hearing commission,
8 established to provide independent review of the decisions of a department or division that is
9 authorized to promulgate rules and regulations under this chapter fails to issue a final decision
10 in a contested case within the earlier of:

11 (1) Sixty days after the conclusion of a hearing on the contested case; or

12 (2) One hundred eighty days after the receipt by the agency of a written request for the
13 issuance of a final decision,
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15 then the person shall be considered to have exhausted all administrative remedies and shall be
16 considered to have received a final decision in favor of the agency and shall be entitled to
17 immediate judicial review as provided in sections 536.100 to 536.140 or other provision for
18 judicial review provided by statute. In cases, whether contested or not, where the law provides
19 for an independent review of an agency's decision by a board other than the administrative
20 hearing commission and further provides for a de novo review of the board's decision by the
21 circuit court, a party aggrieved by the agency's decision may, within thirty days after it receives
22 notice of that decision, waive independent review by the board and instead file a petition in the
23 circuit court for the de novo review of the agency's decision. **Such thirty days shall be**
24 **calculated as provided under Missouri supreme court rule 44.01(e).** The party filing the
25 petition under this section shall be considered to have exhausted all administrative remedies.

536.110. 1. Proceedings for review may be instituted by filing a petition in the circuit
2 court of the county of proper venue within thirty days after the mailing or delivery of the notice
3 of the agency's final decision. **Such thirty days shall be calculated as provided under**
4 **Missouri supreme court rule 44.01(e).**

5 2. Such petition may be filed without first seeking a rehearing, but in cases where
6 agencies have authority to entertain motions for rehearing and such a motion is duly filed, the
7 thirty-day period aforesaid shall run from the date of the delivery or mailing of notice of the
8 agency's decision on such motion. No summons shall issue in such case, but copies of the
9 petition shall be delivered to the agency and to each party of record in the proceedings before the
10 agency or to his attorney of record, or shall be mailed to the agency and to such party or his said
11 attorney by registered mail, and proof of such delivery or mailing shall be filed in the case.

12 3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of
13 Cole County or in the county of the plaintiff or of one of the plaintiff's residence or if any
14 plaintiff is a corporation, domestic or foreign, having a registered office or business office in this
15 state, in the county of such registered office or business office, except that, in cases involving
16 real property or improvements thereto, the venue shall be the circuit court of the county where
17 such real property is located. The court in its discretion may permit other interested persons to
18 intervene.

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