

FIRST REGULAR SESSION

# HOUSE BILL NO. 1038

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BEARD.

2286H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 452.370 and 454.500, RSMo, and to enact in lieu thereof two new sections relating to motions to modify child support obligations.

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

Section A. Sections 452.370 and 454.500, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 452.370 and 454.500, to read as follows:

452.370. 1. Except as otherwise provided in subsection 6 of section 452.325, the provisions of any judgment respecting maintenance or support may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable. In a proceeding for modification of any child support or maintenance judgment, the court, in determining whether or not a substantial change in circumstances has occurred, shall consider all financial resources of both parties, including the extent to which the reasonable expenses of either party are, or should be, shared by a spouse or other person with whom he or she cohabits, and the earning capacity of a party who is not employed. If the application of the child support guidelines and criteria set forth in section 452.340 and applicable supreme court rules to the financial circumstances of the parties would result in a change of child support from the existing amount by twenty percent or more, a prima facie showing has been made of a change of circumstances so substantial and continuing as to make the present terms unreasonable, if the existing amount was based upon the presumed amount pursuant to the child support guidelines.

2. When the party seeking modification has met the burden of proof set forth in subsection 1 of this section, the child support shall be determined in conformity with criteria set forth in section 452.340 and applicable supreme court rules.

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.

17           3. Unless otherwise agreed in writing or expressly provided in the judgment, the  
18 obligation to pay future statutory maintenance is terminated upon the death of either party or the  
19 remarriage of the party receiving maintenance.

20           4. Unless otherwise agreed in writing or expressly provided in the judgment, provisions  
21 for the support of a child are terminated by emancipation of the child. The parent entitled to  
22 receive child support shall have the duty to notify the parent obligated to pay support of the  
23 child's emancipation and failing to do so, the parent entitled to receive child support shall be  
24 liable to the parent obligated to pay support for child support paid following emancipation of a  
25 minor child, plus interest.

26           5. If a parent has made an assignment of support rights to the family support division on  
27 behalf of the state as a condition of eligibility for benefits pursuant to the Temporary Assistance  
28 for Needy Families program and either party initiates a motion to modify the support obligation  
29 by reducing it, the state of Missouri shall be named as a party to the proceeding. The state shall  
30 be served with a copy of the motion by sending it by certified mail to the director of the family  
31 support division.

32           6. The court shall have continuing personal jurisdiction over both the obligee and the  
33 obligor of a court order for child support or maintenance for the purpose of modifying such  
34 order. Both obligee and obligor shall notify, in writing, the clerk of the court in which the  
35 support or maintenance order was entered of any change of mailing address. If personal service  
36 of the motion cannot be had in this state, the motion to modify and notice of hearing shall be  
37 served outside the state as provided by supreme court rule 54.14. The order may be modified  
38 only as to support or maintenance installments which accrued subsequent to the date of personal  
39 service. For the purpose of 42 U.S.C. Section 666(a)(9)(C), the circuit clerk shall be considered  
40 the appropriate agent to receive notice of the motion to modify for the obligee or the obligor, but  
41 only in those instances in which personal service could not be had in this state.

42           7. [If] A responsive pleading raising the issues of custody or visitation [is] **shall be** filed  
43 in response to a motion to modify child support filed at the request of the family support division  
44 by a prosecuting attorney or circuit attorney or an attorney under contract with the division[,] **and**  
45 such responsive pleading shall be severed upon request.

46           8. Notwithstanding any provision of this section which requires a showing of substantial  
47 and continuing change in circumstances, in a IV-D case filed pursuant to this section by the  
48 family support division as provided in section 454.400, the court shall modify a support order  
49 in accordance with the guidelines and criteria set forth in supreme court rule 88.01 and any  
50 regulations thereunder if the amount in the current order differs from the amount which would  
51 be ordered in accordance with such guidelines or regulations.

454.500. 1. At any time after the entry of an order pursuant to sections 454.470 and 2 454.475, the obligated parent, the division, or the person or agency having custody of the 3 dependent child may file a motion for modification with the director. Such motion shall be in 4 writing, shall set forth the reasons for modification, and shall state the address of the moving 5 party. The motion shall be served by the moving party in the manner provided for in subsection 6 5 of section 454.465 upon the obligated parent or the party holding the support rights, as 7 appropriate. In addition, if the support rights are held by the family support division on behalf 8 of the state, a true copy of the motion shall be mailed by the moving party by certified mail to 9 the person having custody of the dependent child at the last known address of that person. **The 10 obligated parent or the party holding the support rights shall file a pleading in response 11 to the motion to modify.** A hearing on the motion shall then be provided in the same manner, 12 and determinations shall be based on considerations set out in section 454.475, unless the party 13 served fails to respond within thirty days, in which case the director may enter an order by 14 default. If the child for whom the order applies is no longer in the custody of a person receiving 15 public assistance or receiving support enforcement services from the department, or a division 16 thereof, pursuant to section 454.425, the director may certify the matter for hearing to the circuit 17 court in which the order was filed pursuant to section 454.490 in lieu of holding a hearing 18 pursuant to section 454.475. If the director certifies the matter for hearing to the circuit court, 19 service of the motion to modify shall be had in accordance with the provisions of subsection 5 20 of section 452.370. If the director does not certify the matter for hearing to the circuit court, 21 service of the motion to modify shall be considered complete upon personal service, or on the 22 date of mailing, if sent by certified mail. For the purpose of 42 U.S.C. Section 666(a)(9)(C), the 23 director shall be considered the appropriate agent to receive the notice of the motion to modify 24 for the obligee or the obligor, but only in those instances in which the matter is not certified to 25 circuit court for hearing, and only when service of the motion is attempted on the obligee or 26 obligor by certified mail.

27 2. A motion for modification made pursuant to this section shall not stay the director 28 from enforcing and collecting upon the existing order pending the modification proceeding 29 unless so ordered by the court.

30 3. Only payments accruing subsequent to the service of the motion for modification upon 31 all named parties to the motion may be modified. Modification may be granted only upon a 32 showing of a change of circumstances so substantial and continuing as to make the terms 33 unreasonable. In a proceeding for modification of any child support award, the director, in 34 determining whether or not a substantial change in circumstances has occurred, shall consider 35 all financial resources of both parties, including the extent to which the reasonable expenses of 36 either party are, or should be, shared by a spouse or other person with whom he or she cohabits,

37 and the earning capacity of a party who is not employed. If the application of the guidelines and  
38 criteria set forth in supreme court rule 88.01 to the financial circumstances of the parties would  
39 result in a change of child support from the existing amount by twenty percent or more, then a  
40 prima facie showing has been made of a change of circumstances so substantial and continuing  
41 as to make the present terms unreasonable.

42 4. If the division has entered an order under section 454.470 or 454.500, and an  
43 additional child or children not the subject of the order are born to the parties, the division may,  
44 following the filing of a motion to modify, service of process, and opportunity for a hearing  
45 pursuant to this section, modify the underlying child support order to include a single child  
46 support obligation for all children of the parties in conformity with the criteria set forth in  
47 supreme court rule 88.01.

48 5. The circuit court may, upon such terms as may be just, relieve a parent from an  
49 administrative order entered against that parent because of mistake, inadvertence, surprise, or  
50 excusable neglect.

51 6. No order entered pursuant to section 454.476 shall be modifiable pursuant to this  
52 section, except that an order entered pursuant to section 454.476 shall be amended by the director  
53 to conform with any modification made by the court that entered the court order upon which the  
54 director based his or her order.

55 7. When the party seeking modifications has met the burden of proof set forth in  
56 subsection 3 of this section, then the child support shall be determined in conformity with the  
57 criteria set forth in supreme court rule 88.01.

58 8. The last four digits of the Social Security number of the parents shall be recorded on  
59 any order entered pursuant to this section. The full Social Security number of each party and  
60 each child shall be retained in the manner required by section 509.520.

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