

**CHAPTER 161****(HB 123)**

AN ACT relating to the welfare of children and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 403.213 is amended to read as follows:

- (1) The Kentucky child support guidelines may be used by the parent, custodian, or agency substantially contributing to the support of the child as the basis for periodic updates of child support obligations and for modification of child support orders for health care. The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing.
- (2) Application of the Kentucky child support guidelines to the circumstances of the parties at the time of the filing of a motion or petition for modification of the child support order which results in equal to or greater than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed to be a material change in circumstances. Application which results in less than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed not to be a material change in circumstances. For the one (1) year period immediately following enactment of this statute, the presumption of material change shall be a twenty-five percent (25%) change in the amount of child support due rather than the fifteen percent (15%) stated above.
- (3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child unless the child is a high school student when he reaches the age of eighteen (18). In cases where the child becomes emancipated because of age, but not due to marriage, while still a high school student, the court-ordered support shall continue while the child is a high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years. Provisions for the support of the child shall not be terminated by the death of a parent obligated to support the child. If a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances. Emancipation of the child shall not terminate the obligation of child support arrearages that accrued while the child was an unemancipated minor.
- (4) The child support guidelines table shall be reviewed at least once every four (4) years by a commission consisting of the following persons:
  - (a) The secretary of the Cabinet for Families and Children or a supervisory staff person designated by him;
  - (b) Two (2) members of the Kentucky Bar Association who have at least six (6) consecutive years' experience and are presently practicing domestic relations cases, one (1) member from a metropolitan or large urban area and one (1) member from a less populated area;
  - (c) Two (2) Circuit Judges appointed by the Chief Justice of the Kentucky Supreme Court, one (1) from a metropolitan or large urban area, and one (1) from a less populated area;

- (d) One (1) District Judge appointed by the Chief Justice of the Kentucky Supreme Court;
- (e) Two (2) county attorneys appointed by the president of the County Attorneys Association, one (1) from a metropolitan or large urban area and one (1) from a less populated area;~~and~~
- (f) The Attorney General or his designee, who shall be an attorney from his office;
- (g) **One (1) person who is a custodial parent;**
- (h) **One (1) person who is a noncustodial parent;**
- (i) **One (1) person who is a parent with split custody; and**
- (j) **One (1) child advocate.**

***The members designated in paragraphs (g) to (j) of this subsection shall be appointed by the Governor from a list of three (3) names for each category submitted by the Cabinet for Families and Children. If the status of one (1) of these members changes, the member shall be replaced through appointment by the Governor from a list of three (3) names submitted by the cabinet.***

- (5) The commission shall make a recommendation to the Kentucky General Assembly to ensure that the child support guidelines table results in a determination of appropriate child support amounts.

Section 2. KRS 403.340 is amended to read as follows:

- (1) ***As used in this section, "custody" means sole or joint custody, whether ordered by a court or agreed to by the parties.***
- (2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:
  - (a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or
  - (b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
- ~~(3)~~~~(2)~~ If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless ***after hearing*** it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. ***When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following***~~[In applying these standards, the court shall retain the custodian appointed pursuant to the prior decree unless]:~~
  - (a) ***Whether*** the custodian agrees to the modification;
  - (b) ***Whether*** the child has been integrated into the family of the petitioner with consent of the custodian;~~or~~
  - (c) ***The factors set forth in KRS 403.270(2) to determine the best interests of the child;***

- (d) *Whether* the child's present environment endangers seriously his physical, mental, moral, or emotional health;~~[-and]~~
- (e) *Whether* the harm likely to be caused by a change of environment is outweighed by its advantages to him~~[-]; and~~~~[-or]~~
- (f)~~(d)~~ *Whether* the custodian has placed the child with a de facto custodian.
- (4)~~(3)~~ In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
- (a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
- (b) The mental and physical health of all individuals involved;
- (c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;
- (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (5)~~(4)~~ Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Section 3. Whereas the welfare of Kentucky's children is threatened by child support and child custody arrangements that do not serve their best interests, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 21, 2001**