



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2395

by Rep. Robert W. Pritchard

SYNOPSIS AS INTRODUCED:

750 ILCS 5/504

from Ch. 40, par. 504

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that notwithstanding any other provision of law, federal veterans' disability benefits received by a party shall not be considered to be income of that party for purposes of any maintenance determination under this Section. Provides that the court may not require that a party use federal veterans' disability benefits to pay maintenance.

LRB100 06980 HEP 17031 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 504 as follows:

6 (750 ILCS 5/504) (from Ch. 40, par. 504)

7 Sec. 504. Maintenance.

8 (a) Entitlement to maintenance. In a proceeding for
9 dissolution of marriage or legal separation or declaration of
10 invalidity of marriage, or a proceeding for maintenance
11 following dissolution of the marriage by a court which lacked
12 personal jurisdiction over the absent spouse, the court may
13 grant a maintenance award for either spouse in amounts and for
14 periods of time as the court deems just, without regard to
15 marital misconduct, and the maintenance may be paid from the
16 income or property of the other spouse. The court shall first
17 determine whether a maintenance award is appropriate, after
18 consideration of all relevant factors, including:

19 (1) the income and property of each party, including
20 marital property apportioned and non-marital property
21 assigned to the party seeking maintenance as well as all
22 financial obligations imposed on the parties as a result of
23 the dissolution of marriage;

1 (2) the needs of each party;

2 (3) the realistic present and future earning capacity
3 of each party;

4 (4) any impairment of the present and future earning
5 capacity of the party seeking maintenance due to that party
6 devoting time to domestic duties or having forgone or
7 delayed education, training, employment, or career
8 opportunities due to the marriage;

9 (5) any impairment of the realistic present or future
10 earning capacity of the party against whom maintenance is
11 sought;

12 (6) the time necessary to enable the party seeking
13 maintenance to acquire appropriate education, training,
14 and employment, and whether that party is able to support
15 himself or herself through appropriate employment or any
16 parental responsibility arrangements and its effect on the
17 party seeking employment;

18 (7) the standard of living established during the
19 marriage;

20 (8) the duration of the marriage;

21 (9) the age, health, station, occupation, amount and
22 sources of income, vocational skills, employability,
23 estate, liabilities, and the needs of each of the parties;

24 (10) all sources of public and private income
25 including, without limitation, disability and retirement
26 income;

1 (11) the tax consequences of the property division upon
2 the respective economic circumstances of the parties;

3 (12) contributions and services by the party seeking
4 maintenance to the education, training, career or career
5 potential, or license of the other spouse;

6 (13) any valid agreement of the parties; and

7 (14) any other factor that the court expressly finds to
8 be just and equitable.

9 (b) (Blank).

10 (b-1) Amount and duration of maintenance. If the court
11 determines that a maintenance award is appropriate, the court
12 shall order maintenance in accordance with either paragraph (1)
13 or (2) of this subsection (b-1):

14 (1) Maintenance award in accordance with guidelines.

15 In situations when the combined gross income of the parties
16 is less than \$250,000 and the payor has no obligation to
17 pay child support or maintenance or both from a prior
18 relationship, maintenance payable after the date the
19 parties' marriage is dissolved shall be in accordance with
20 subparagraphs (A) and (B) of this paragraph (1), unless the
21 court makes a finding that the application of the
22 guidelines would be inappropriate.

23 (A) The amount of maintenance under this paragraph

24 (1) shall be calculated by taking 30% of the payor's
25 gross income minus 20% of the payee's gross income. The
26 amount calculated as maintenance, however, when added

1 to the gross income of the payee, may not result in the
2 payee receiving an amount that is in excess of 40% of
3 the combined gross income of the parties.

4 (B) The duration of an award under this paragraph
5 (1) shall be calculated by multiplying the length of
6 the marriage at the time the action was commenced by
7 whichever of the following factors applies: 5 years or
8 less (.20); more than 5 years but less than 10 years
9 (.40); 10 years or more but less than 15 years (.60);
10 or 15 years or more but less than 20 years (.80). For a
11 marriage of 20 or more years, the court, in its
12 discretion, shall order either permanent maintenance
13 or maintenance for a period equal to the length of the
14 marriage.

15 (2) Maintenance award not in accordance with
16 guidelines. Any non-guidelines award of maintenance shall
17 be made after the court's consideration of all relevant
18 factors set forth in subsection (a) of this Section.

19 (b-2) Findings. In each case involving the issue of
20 maintenance, the court shall make specific findings of fact, as
21 follows:

22 (1) the court shall state its reasoning for awarding or
23 not awarding maintenance and shall include references to
24 each relevant factor set forth in subsection (a) of this
25 Section; and

26 (2) if the court deviates from otherwise applicable

1 guidelines under paragraph (1) of subsection (b-1), it
2 shall state in its findings the amount of maintenance (if
3 determinable) or duration that would have been required
4 under the guidelines and the reasoning for any variance
5 from the guidelines.

6 (b-3) Gross income. For purposes of this Section, the term
7 "gross income" means all income from all sources, within the
8 scope of that phrase in Section 505 of this Act.

9 (b-4) Unallocated maintenance. Unless the parties
10 otherwise agree, the court may not order unallocated
11 maintenance and child support in any dissolution judgment or in
12 any post-dissolution order. In its discretion, the court may
13 order unallocated maintenance and child support in any
14 pre-dissolution temporary order.

15 (b-4.5) Fixed-term maintenance in marriages of less than 10
16 years. If a court grants maintenance for a fixed period under
17 subsection (a) of this Section at the conclusion of a case
18 commenced before the tenth anniversary of the marriage, the
19 court may also designate the termination of the period during
20 which this maintenance is to be paid as a "permanent
21 termination". The effect of this designation is that
22 maintenance is barred after the ending date of the period
23 during which maintenance is to be paid.

24 (b-5) Interest on maintenance. Any maintenance obligation
25 including any unallocated maintenance and child support
26 obligation, or any portion of any support obligation, that

1 becomes due and remains unpaid shall accrue simple interest as
2 set forth in Section 505 of this Act.

3 (b-7) Maintenance judgments. Any new or existing
4 maintenance order including any unallocated maintenance and
5 child support order entered by the court under this Section
6 shall be deemed to be a series of judgments against the person
7 obligated to pay support thereunder. Each such judgment to be
8 in the amount of each payment or installment of support and
9 each such judgment to be deemed entered as of the date the
10 corresponding payment or installment becomes due under the
11 terms of the support order, except no judgment shall arise as
12 to any installment coming due after the termination of
13 maintenance as provided by Section 510 of the Illinois Marriage
14 and Dissolution of Marriage Act or the provisions of any order
15 for maintenance. Each such judgment shall have the full force,
16 effect and attributes of any other judgment of this State,
17 including the ability to be enforced. Notwithstanding any other
18 State or local law to the contrary, a lien arises by operation
19 of law against the real and personal property of the obligor
20 for each installment of overdue support owed by the obligor.

21 (b-8) Upon review of any previously ordered maintenance
22 award, the court may extend maintenance for further review,
23 extend maintenance for a fixed non-modifiable term, extend
24 maintenance for an indefinite term, or permanently terminate
25 maintenance in accordance with subdivision (b-1) (1) (A) of this
26 Section.

1 (c) Maintenance during an appeal. The court may grant and
2 enforce the payment of maintenance during the pendency of an
3 appeal as the court shall deem reasonable and proper.

4 (d) Maintenance during imprisonment. No maintenance shall
5 accrue during the period in which a party is imprisoned for
6 failure to comply with the court's order for the payment of
7 such maintenance.

8 (e) Fees when maintenance is paid through the clerk. When
9 maintenance is to be paid through the clerk of the court in a
10 county of 1,000,000 inhabitants or less, the order shall direct
11 the obligor to pay to the clerk, in addition to the maintenance
12 payments, all fees imposed by the county board under paragraph
13 (3) of subsection (u) of Section 27.1 of the Clerks of Courts
14 Act. Unless paid in cash or pursuant to an order for
15 withholding, the payment of the fee shall be by a separate
16 instrument from the support payment and shall be made to the
17 order of the Clerk.

18 (f) Maintenance secured by life insurance. An award ordered
19 by a court upon entry of a dissolution judgment or upon entry
20 of an award of maintenance following a reservation of
21 maintenance in a dissolution judgment may be reasonably
22 secured, in whole or in part, by life insurance on the payor's
23 life on terms as to which the parties agree, or, if they do not
24 agree, on such terms determined by the court, subject to the
25 following:

26 (1) With respect to existing life insurance, provided

1 the court is apprised through evidence, stipulation, or
2 otherwise as to level of death benefits, premium, and other
3 relevant data and makes findings relative thereto, the
4 court may allocate death benefits, the right to assign
5 death benefits, or the obligation for future premium
6 payments between the parties as it deems just.

7 (2) To the extent the court determines that its award
8 should be secured, in whole or in part, by new life
9 insurance on the payor's life, the court may only order:

10 (i) that the payor cooperate on all appropriate
11 steps for the payee to obtain such new life insurance;
12 and

13 (ii) that the payee, at his or her sole option and
14 expense, may obtain such new life insurance on the
15 payor's life up to a maximum level of death benefit
16 coverage, or descending death benefit coverage, as is
17 set by the court, such level not to exceed a reasonable
18 amount in light of the court's award, with the payee or
19 the payee's designee being the beneficiary of such life
20 insurance.

21 In determining the maximum level of death benefit coverage,
22 the court shall take into account all relevant facts and
23 circumstances, including the impact on access to life
24 insurance by the maintenance payor. If in resolving any
25 issues under paragraph (2) of this subsection (f) a court
26 reviews any submitted or proposed application for new

1 insurance on the life of a maintenance payor, the review
2 shall be in camera.

3 (3) A judgment shall expressly set forth that all death
4 benefits paid under life insurance on a payor's life
5 maintained or obtained pursuant to this subsection to
6 secure maintenance are designated as excludable from the
7 gross income of the maintenance payee under Section
8 71(b)(1)(B) of the Internal Revenue Code, unless an
9 agreement or stipulation of the parties otherwise
10 provides.

11 (g) Federal veterans' benefits. Notwithstanding any other
12 provision of law, federal veterans' disability benefits
13 received by a party shall not be considered to be income of
14 that party for purposes of any maintenance determination under
15 this Section. The court may not require that a party use
16 federal veterans' disability benefits to pay maintenance.

17 (Source: P.A. 98-961, eff. 1-1-15; 99-90, eff. 1-1-16; 99-763,
18 eff. 1-1-17.)