



Rep. Mary E. Flowers

Filed: 5/14/2021

10200SB2136ham001

LRB102 17328 KMF 26519 a

1 AMENDMENT TO SENATE BILL 2136

2 AMENDMENT NO. _____. Amend Senate Bill 2136 on page 53,
3 line 2, by deleting "and by adding Section 122-9"; and

4 on page 56, by replacing line 17 through line 2 on page 57 with
5 the following:

6 "Section 15. The Code of Civil Procedure is amended by
7 changing Section 2-1401 as follows:

8 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

9 Sec. 2-1401. Relief from judgments.

10 (a) Relief from final orders and judgments, after 30 days
11 from the entry thereof, may be had upon petition as provided in
12 this Section. Writs of error coram nobis and coram vobis,
13 bills of review and bills in the nature of bills of review are
14 abolished. All relief heretofore obtainable and the grounds
15 for such relief heretofore available, whether by any of the

1 foregoing remedies or otherwise, shall be available in every
2 case, by proceedings hereunder, regardless of the nature of
3 the order or judgment from which relief is sought or of the
4 proceedings in which it was entered. Except as provided in the
5 Illinois Parentage Act of 2015, there shall be no distinction
6 between actions and other proceedings, statutory or otherwise,
7 as to availability of relief, grounds for relief or the relief
8 obtainable.

9 (b) The petition must be filed in the same proceeding in
10 which the order or judgment was entered but is not a
11 continuation thereof. The petition must be supported by
12 affidavit or other appropriate showing as to matters not of
13 record. A petition to reopen a foreclosure proceeding must
14 include as parties to the petition, but is not limited to, all
15 parties in the original action in addition to the current
16 record title holders of the property, current occupants, and
17 any individual or entity that had a recorded interest in the
18 property before the filing of the petition. All parties to the
19 petition shall be notified as provided by rule.

20 (b-5) A movant may present a meritorious claim under this
21 Section if the allegations in the petition establish each of
22 the following by a preponderance of the evidence:

23 (1) the movant was convicted of a forcible felony;

24 (2) the movant's participation in the offense was
25 related to him or her previously having been a victim of
26 domestic violence as perpetrated by an intimate partner;

1 (3) no evidence of domestic violence against the
2 movant was presented at the movant's sentencing hearing;

3 (4) the movant was unaware of the mitigating nature of
4 the evidence of the domestic violence at the time of
5 sentencing and could not have learned of its significance
6 sooner through diligence; and

7 (5) the new evidence of domestic violence against the
8 movant is material and noncumulative to other evidence
9 offered at the sentencing hearing, and is of such a
10 conclusive character that it would likely change the
11 sentence imposed by the original trial court.

12 Nothing in this subsection (b-5) shall prevent a movant
13 from applying for any other relief under this Section or any
14 other law otherwise available to him or her.

15 As used in this subsection (b-5):

16 "Domestic violence" means abuse as defined in Section
17 103 of the Illinois Domestic Violence Act of 1986.

18 "Forcible felony" has the meaning ascribed to the term
19 in Section 2-8 of the Criminal Code of 2012.

20 "Intimate partner" means a spouse or former spouse,
21 persons who have or allegedly have had a child in common,
22 or persons who have or have had a dating or engagement
23 relationship.

24 (b-10) A movant may present a meritorious claim under this
25 Section if the allegations in the petition establish each of
26 the following by a preponderance of the evidence:

1 (A) she was convicted of a forcible felony;

2 (B) her participation in the offense was a direct
3 result of her suffering from post-partum depression or
4 post-partum psychosis;

5 (C) no evidence of post-partum depression or
6 post-partum psychosis was presented by a qualified medical
7 person at trial or sentencing, or both;

8 (D) she was unaware of the mitigating nature of the
9 evidence or, if aware, was at the time unable to present
10 this defense due to suffering from post-partum depression
11 or post-partum psychosis, or, at the time of trial or
12 sentencing, neither was a recognized mental illness and as
13 such, she was unable to receive proper treatment; and

14 (E) evidence of post-partum depression or post-partum
15 psychosis as suffered by the person is material and
16 noncumulative to other evidence offered at the time of
17 trial or sentencing, and it is of such a conclusive
18 character that it would likely change the sentence imposed
19 by the original court.

20 Nothing in this subsection (b-10) prevents a person from
21 applying for any other relief under this Article or any other
22 law otherwise available to her.

23 As used in this subsection (b-10):

24 "Post-partum depression" means a mood disorder which
25 strikes many women during and after pregnancy and usually
26 occurs during pregnancy and up to 12 months after

1 delivery. This depression can include anxiety disorders.

2 "Post-partum psychosis" means an extreme form of
3 post-partum depression which can occur during pregnancy
4 and up to 12 months after delivery. This can include
5 losing touch with reality, distorted thinking, delusions,
6 auditory and visual hallucinations, paranoia,
7 hyperactivity and rapid speech, or mania.

8 (c) Except as provided in Section 20b of the Adoption Act
9 and Section 2-32 of the Juvenile Court Act of 1987 or in a
10 petition based upon Section 116-3 of the Code of Criminal
11 Procedure of 1963 or subsection (b-10) of this Section, or in a
12 motion to vacate and expunge convictions under the Cannabis
13 Control Act as provided by subsection (i) of Section 5.2 of the
14 Criminal Identification Act, the petition must be filed not
15 later than 2 years after the entry of the order or judgment.
16 Time during which the person seeking relief is under legal
17 disability or duress or the ground for relief is fraudulently
18 concealed shall be excluded in computing the period of 2
19 years.

20 (c-5) Any individual may at any time file a petition and
21 institute proceedings under this Section, if his or her final
22 order or judgment, which was entered based on a plea of guilty
23 or nolo contendere, has potential consequences under federal
24 immigration law.

25 (d) The filing of a petition under this Section does not
26 affect the order or judgment, or suspend its operation.

1 (e) Unless lack of jurisdiction affirmatively appears from
2 the record proper, the vacation or modification of an order or
3 judgment pursuant to the provisions of this Section does not
4 affect the right, title or interest in or to any real or
5 personal property of any person, not a party to the original
6 action, acquired for value after the entry of the order or
7 judgment but before the filing of the petition, nor affect any
8 right of any person not a party to the original action under
9 any certificate of sale issued before the filing of the
10 petition, pursuant to a sale based on the order or judgment.
11 When a petition is filed pursuant to this Section to reopen a
12 foreclosure proceeding, notwithstanding the provisions of
13 Section 15-1701 of this Code, the purchaser or successor
14 purchaser of real property subject to a foreclosure sale who
15 was not a party to the mortgage foreclosure proceedings is
16 entitled to remain in possession of the property until the
17 foreclosure action is defeated or the previously foreclosed
18 defendant redeems from the foreclosure sale if the purchaser
19 has been in possession of the property for more than 6 months.

20 (f) Nothing contained in this Section affects any existing
21 right to relief from a void order or judgment, or to employ any
22 existing method to procure that relief.

23 (Source: P.A. 100-1048, eff. 8-23-18; 101-27, eff. 6-25-19;
24 101-411, eff. 8-16-19; revised 9-17-19.)".