



Sen. Iris Y. Martinez

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1 AMENDMENT TO SENATE BILL 2895

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2895 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Public Aid Code is amended by  
5 changing Sections 10-1 and 10-3.1 as follows:

6 (305 ILCS 5/10-1) (from Ch. 23, par. 10-1)

7 Sec. 10-1. Declaration of Public Policy - Persons Eligible  
8 for Child Support Enforcement Services - Fees for  
9 Non-Applicants and Non-Recipients.) It is the intent of this  
10 Code that the financial aid and social welfare services herein  
11 provided supplement rather than supplant the primary and  
12 continuing obligation of the family unit for self-support to  
13 the fullest extent permitted by the resources available to it.  
14 This primary and continuing obligation applies whether the  
15 family unit of parents and children or of husband and wife  
16 remains intact and resides in a common household or whether the  
17 unit has been broken by absence of one or more members of the  
18 unit. The obligation of the family unit is particularly  
19 applicable when a member is in necessitous circumstances and  
20 lacks the means of a livelihood compatible with health and  
21 well-being.

22 It is the purpose of this Article to provide for locating  
23 an absent parent or spouse, for determining his financial  
24 circumstances, and for enforcing his legal obligation of  
25 support, if he is able to furnish support, in whole or in part.

1 The Illinois Department of Public Aid shall give priority to  
2 establishing, enforcing and collecting the current support  
3 obligation, and then to past due support owed to the family  
4 unit, except with respect to collections effected through the  
5 intercept programs provided for in this Article.

6 The child support enforcement services provided hereunder  
7 shall be furnished dependents of an absent parent or spouse who  
8 are applicants for or recipients of financial aid under this  
9 Code. It is not, however, a condition of eligibility for  
10 financial aid that there be no responsible relatives who are  
11 reasonably able to provide support. Nor, except as provided in  
12 Sections 4-1.7 and 10-8, shall the existence of such relatives  
13 or their payment of support contributions disqualify a needy  
14 person for financial aid.

15 By accepting financial aid under this Code, a spouse or a  
16 parent or other person having custody of a child shall be  
17 deemed to have made assignment to the Illinois Department for  
18 aid under Articles III, IV, V and VII or to a local  
19 governmental unit for aid under Article VI of any and all  
20 rights, title, and interest in any support obligation up to the  
21 amount of financial aid provided. The rights to support  
22 assigned to the Illinois Department of Public Aid or local  
23 governmental unit shall constitute an obligation owed the State  
24 or local governmental unit by the person who is responsible for  
25 providing the support, and shall be collectible under all  
26 applicable processes.

27 The Illinois Department of Public Aid shall also furnish  
28 the child support enforcement services established under this  
29 Article in behalf of persons who are not applicants for or  
30 recipients of financial aid under this Code in accordance with  
31 the requirements of Title IV, Part D of the Social Security  
32 Act. The Department may establish a schedule of reasonable  
33 fees, to be paid for the services provided and may deduct a  
34 collection fee, not to exceed 10% of the amount collected, from

1 such collection. The Illinois Department of Public Aid shall  
2 cause to be published and distributed publications reasonably  
3 calculated to inform the public that individuals who are not  
4 recipients of or applicants for public aid under this Code are  
5 eligible for the child support enforcement services under this  
6 Article X. The Illinois Department shall also cause to be  
7 published and distributed a publication reasonably calculated  
8 to inform members of the National Guard and the Reserves of the  
9 United States Armed Forces of the CSMM program established in  
10 Section 10-3.1 of this Act. Such publications shall set forth  
11 an explanation, in plain language, that the child support  
12 enforcement services program is independent of any public aid  
13 program under the Code and that the receiving of child support  
14 enforcement services in no way implies that the person  
15 receiving such services is receiving public aid.

16 (Source: P.A. 92-590, eff. 7-1-02.)

17 (305 ILCS 5/10-3.1) (from Ch. 23, par. 10-3.1)

18 Sec. 10-3.1. Child and Spouse Support Unit. The Illinois  
19 Department shall establish within its administrative staff a  
20 Child and Spouse Support Unit to search for and locate absent  
21 parents and spouses liable for the support of persons resident  
22 in this State and to exercise the support enforcement powers  
23 and responsibilities assigned the Department by this Article.  
24 The unit shall cooperate with all law enforcement officials in  
25 this State and with the authorities of other States in locating  
26 persons responsible for the support of persons resident in  
27 other States and shall invite the cooperation of these  
28 authorities in the performance of its duties.

29 In addition to other duties assigned the Child and Spouse  
30 Support Unit by this Article, the Unit may refer to the  
31 Attorney General or units of local government with the approval  
32 of the Attorney General, any actions under this Section,  
33 Section ~~Sections~~ 10-10, and Section 10-15 for judicial

1 enforcement or modification of the support liability. The Child  
2 and Spouse Support Unit shall act for the Department in  
3 referring to the Attorney General support matters requiring  
4 judicial enforcement under other laws. If requested by the  
5 Attorney General to so act, as provided in Section 12-16,  
6 attorneys of the Unit may assist the Attorney General or  
7 themselves institute actions in behalf of the Illinois  
8 Department under the Revised Uniform Reciprocal Enforcement of  
9 Support Act; under the Illinois Parentage Act of 1984; under  
10 the Non-Support of Spouse and Children Act; under the  
11 Non-Support Punishment Act; or under any other law, State or  
12 Federal, providing for support of a spouse or dependent child.

13 The Illinois Department shall also have the authority to  
14 enter into agreements with local governmental units or  
15 individuals, with the approval of the Attorney General, for the  
16 collection of moneys owing because of the failure of a parent  
17 to make child support payments for any child receiving services  
18 under this Article. Such agreements may be on a contingent fee  
19 basis, but such contingent fee shall not exceed 25% of the  
20 total amount collected.

21 An attorney who provides representation pursuant to this  
22 Section shall represent the Illinois Department exclusively.  
23 Regardless of the designation of the plaintiff in an action  
24 brought pursuant to this Section, an attorney-client  
25 relationship does not exist for purposes of that action between  
26 that attorney and (i) an applicant for or recipient of child  
27 support enforcement services or (ii) any other party to the  
28 action other than the Illinois Department. Nothing in this  
29 Section shall be construed to modify any power or duty  
30 (including a duty to maintain confidentiality) of the Child and  
31 Spouse Support Unit or the Illinois Department otherwise  
32 provided by law.

33 The Illinois Department may also enter into agreements with  
34 local governmental units for the Child and Spouse Support Unit

1 to exercise the investigative and enforcement powers  
2 designated in this Article, including the issuance of  
3 administrative orders under Section 10-11, in locating  
4 responsible relatives and obtaining support for persons  
5 applying for or receiving aid under Article VI. Payments for  
6 defrayment of administrative costs and support payments  
7 obtained shall be deposited into the DHS Recoveries Trust Fund.  
8 Support payments shall be paid over to the General Assistance  
9 Fund of the local governmental unit at such time or times as  
10 the agreement may specify.

11 With respect to those cases in which it has support  
12 enforcement powers and responsibilities under this Article,  
13 the Illinois Department may provide by rule for periodic or  
14 other review of each administrative and court order for support  
15 to determine whether a modification of the order should be  
16 sought. The Illinois Department shall provide for and conduct  
17 such review in accordance with any applicable federal law and  
18 regulation.

19 As part of its process for review of orders for support,  
20 the Illinois Department, through written notice, may require  
21 the responsible relative to disclose his or her Social Security  
22 Number and past and present information concerning the  
23 relative's address, employment, gross wages, deductions from  
24 gross wages, net wages, bonuses, commissions, number of  
25 dependent exemptions claimed, individual and dependent health  
26 insurance coverage, and any other information necessary to  
27 determine the relative's ability to provide support in a case  
28 receiving child support enforcement services under this  
29 Article X.

30 The Illinois Department may send a written request for the  
31 same information to the relative's employer. The employer shall  
32 respond to the request for information within 15 days after the  
33 date the employer receives the request. If the employer  
34 willfully fails to fully respond within the 15-day period, the

1 employer shall pay a penalty of \$100 for each day that the  
2 response is not provided to the Illinois Department after the  
3 15-day period has expired. The penalty may be collected in a  
4 civil action which may be brought against the employer in favor  
5 of the Illinois Department.

6 A written request for information sent to an employer  
7 pursuant to this Section shall consist of (i) a citation of  
8 this Section as the statutory authority for the request and for  
9 the employer's obligation to provide the requested  
10 information, (ii) a returnable form setting forth the  
11 employer's name and address and listing the name of the  
12 employee with respect to whom information is requested, and  
13 (iii) a citation of this Section as the statutory authority  
14 authorizing the employer to withhold a fee of up to \$20 from  
15 the wages or income to be paid to each responsible relative for  
16 providing the information to the Illinois Department within the  
17 15-day period. If the employer is withholding support payments  
18 from the responsible relative's income pursuant to an order for  
19 withholding, the employer may withhold the fee provided for in  
20 this Section only after withholding support as required under  
21 the order. Any amounts withheld from the responsible relative's  
22 income for payment of support and the fee provided for in this  
23 Section shall not be in excess of the amounts permitted under  
24 the federal Consumer Credit Protection Act.

25 In a case receiving child support enforcement services, the  
26 Illinois Department may request and obtain information from a  
27 particular employer under this Section no more than once in any  
28 12-month period, unless the information is necessary to conduct  
29 a review of a court or administrative order for support at the  
30 request of the person receiving child support enforcement  
31 services.

32 The Illinois Department shall establish and maintain an  
33 administrative unit to receive and transmit to the Child and  
34 Spouse Support Unit information supplied by persons applying

1 for or receiving child support enforcement services under  
2 Section 10-1. In addition, the Illinois Department shall  
3 address and respond to any alleged deficiencies that persons  
4 receiving or applying for services from the Child and Spouse  
5 Support Unit may identify concerning the Child and Spouse  
6 Support Unit's provision of child support enforcement  
7 services. Within 60 days after an action or failure to act by  
8 the Child and Spouse Support Unit that affects his or her case,  
9 a recipient of or applicant for child support enforcement  
10 services under Article X of this Code may request an  
11 explanation of the Unit's handling of the case. At the  
12 requestor's option, the explanation may be provided either  
13 orally in an interview, in writing, or both. If the Illinois  
14 Department fails to respond to the request for an explanation  
15 or fails to respond in a manner satisfactory to the applicant  
16 or recipient within 30 days from the date of the request for an  
17 explanation, the applicant or recipient may request a  
18 conference for further review of the matter by the Office of  
19 the Administrator of the Child and Spouse Support Unit. A  
20 request for a conference may be submitted at any time within 60  
21 days after the explanation has been provided by the Child and  
22 Spouse Support Unit or within 60 days after the time for  
23 providing the explanation has expired.

24 The applicant or recipient may request a conference  
25 concerning any decision denying or terminating child support  
26 enforcement services under Article X of this Code, and the  
27 applicant or recipient may also request a conference concerning  
28 the Unit's failure to provide services or the provision of  
29 services in an amount or manner that is considered inadequate.  
30 For purposes of this Section, the Child and Spouse Support Unit  
31 includes all local governmental units or individuals with whom  
32 the Illinois Department has contracted under Section 10-3.1.

33 Upon receipt of a timely request for a conference, the  
34 Office of the Administrator shall review the case. The

1 applicant or recipient requesting the conference shall be  
2 entitled, at his or her option, to appear in person or to  
3 participate in the conference by telephone. The applicant or  
4 recipient requesting the conference shall be entitled to be  
5 represented and to be afforded a reasonable opportunity to  
6 review the Illinois Department's file before or at the  
7 conference. At the conference, the applicant or recipient  
8 requesting the conference shall be afforded an opportunity to  
9 present all relevant matters in support of his or her claim.  
10 Conferences shall be without cost to the applicant or recipient  
11 requesting the conference and shall be conducted by a  
12 representative of the Child or Spouse Support Unit who did not  
13 participate in the action or inaction being reviewed.

14 The Office of the Administrator shall conduct a conference  
15 and inform all interested parties, in writing, of the results  
16 of the conference within 60 days from the date of filing of the  
17 request for a conference.

18 In addition to its other powers and responsibilities  
19 established by this Article, the Child and Spouse Support Unit  
20 shall conduct an annual assessment of each institution's  
21 program for institution based paternity establishment under  
22 Section 12 of the Vital Records Act.

23 The Child and Spouse Support Unit shall establish a program  
24 to modify the child support paid by any member of the National  
25 Guard or Reserves of the United States Armed Forces called up  
26 to military active duty for more than 30 continuous days. This  
27 program shall be known as the Child Support Military  
28 Modification program or CSMM. The CSMM program shall be  
29 available regardless of whether the custodial parent of the  
30 child for whose benefit the support is paid is an applicant or  
31 recipient of financial aid under this Code in accordance with  
32 the requirements of Title IV, Part D of the Social Security  
33 Act. The Unit shall establish an application for soldiers who  
34 wish to avail themselves of the CSMM program. The application



1 shall consist of an instruction sheet and one or more forms  
2 that the soldier must complete. The forms may include a form  
3 that the soldier must sign authorizing the Unit to obtain  
4 income information from the soldier's military employer. The  
5 application shall be made available on the internet, at all  
6 military Mobilization Centers, and elsewhere at the discretion  
7 of the Unit. Any soldier, who believes his or her military  
8 active duty income will be less than his or her civilian  
9 income, may avail himself or herself of the CSMM program by  
10 filling out the CSMM application and submitting it to the Unit  
11 or to his or her Mobilization Center Officer-in-Charge, who  
12 shall forward the application to the Unit.

13 If the Unit determines the applicant's military income will  
14 be less than his or her civilian income and the applicant is  
15 paying court-ordered child support, the Unit shall seek a  
16 temporary modification in the child support paid by the  
17 applicant during his or her military active duty by filing a  
18 motion on behalf of the Department in the court in which the  
19 child support order was entered. The motion shall seek to  
20 modify the child support paid by the applicant by the same  
21 proportion that the applicant's military pay falls below his or  
22 her civilian pay. The court may make the modification  
23 retroactive to the date the applicant submitted his or her  
24 application to the Unit or to the Mobilization Center  
25 Officer-in-Charge.

26 If the Unit determines the applicant's military income will  
27 be less than his or her civilian income and the applicant is  
28 paying child support under an Administrative Order entered  
29 pursuant to this Article X, the Unit shall temporarily modify  
30 the child support paid by the applicant by the same proportion  
31 that the applicant's military pay falls below his or her  
32 civilian pay. The Unit may make the modification retroactive to  
33 the date the applicant submitted his or her application to the  
34 Unit or to the Mobilization Center Officer-in-Charge.

1        The Department shall promulgate any rules necessary for the  
2 Child and Spouse Support Unit to carry out the Child Support  
3 Military Modification program.

4        (Source: P.A. 91-24, eff. 7-1-99; 91-613, eff. 10-1-99; 92-16,  
5 eff. 6-28-01; 92-590, eff. 7-1-02.)

6        Section 10. The Illinois Marriage and Dissolution of  
7 Marriage Act is amended by changing Section 510 as follows:

8            (750 ILCS 5/510) (from Ch. 40, par. 510)

9        Sec. 510. Modification and termination of provisions for  
10 maintenance, support, educational expenses, and property  
11 disposition.

12        (a) Except as otherwise provided in paragraph (f) of  
13 Section 502, ~~and~~ in subsection (b), clause (3) of Section  
14 505.2, and in Section 10-3.1 of the Illinois Public Aid Code  
15 the provisions of any judgment respecting maintenance or  
16 support may be modified only as to installments accruing  
17 subsequent to due notice by the moving party of the filing of  
18 the motion for modification. An order for child support may be  
19 modified as follows:

20            (1) upon a showing of a substantial change in  
21 circumstances; and

22            (2) without the necessity of showing a substantial  
23 change in circumstances, as follows:

24            (A) upon a showing of an inconsistency of at least  
25 20%, but no less than \$10 per month, between the amount  
26 of the existing order and the amount of child support  
27 that results from application of the guidelines  
28 specified in Section 505 of this Act unless the  
29 inconsistency is due to the fact that the amount of the  
30 existing order resulted from a deviation from the  
31 guideline amount and there has not been a change in the  
32 circumstances that resulted in that deviation; or

1           (B) Upon a showing of a need to provide for the  
2 health care needs of the child under the order through  
3 health insurance or other means. In no event shall the  
4 eligibility for or receipt of medical assistance be  
5 considered to meet the need to provide for the child's  
6 health care needs.

7           The provisions of subparagraph (a)(2)(A) shall apply only  
8 in cases in which a party is receiving child support  
9 enforcement services from the Illinois Department of Public Aid  
10 under Article X of the Illinois Public Aid Code, and only when  
11 at least 36 months have elapsed since the order for child  
12 support was entered or last modified.

13          (a-5) An order for maintenance may be modified or  
14 terminated only upon a showing of a substantial change in  
15 circumstances. In all such proceedings, as well as in  
16 proceedings in which maintenance is being reviewed, the court  
17 shall consider the applicable factors set forth in subsection  
18 (a) of Section 504 and the following factors:

19           (1) any change in the employment status of either party  
20 and whether the change has been made in good faith;

21           (2) the efforts, if any, made by the party receiving  
22 maintenance to become self-supporting, and the  
23 reasonableness of the efforts where they are appropriate;

24           (3) any impairment of the present and future earning  
25 capacity of either party;

26           (4) the tax consequences of the maintenance payments  
27 upon the respective economic circumstances of the parties;

28           (5) the duration of the maintenance payments  
29 previously paid (and remaining to be paid) relative to the  
30 length of the marriage;

31           (6) the property, including retirement benefits,  
32 awarded to each party under the judgment of dissolution of  
33 marriage, judgment of legal separation, or judgment of  
34 declaration of invalidity of marriage and the present

1 status of the property;

2 (7) the increase or decrease in each party's income  
3 since the prior judgment or order from which a review,  
4 modification, or termination is being sought;

5 (8) the property acquired and currently owned by each  
6 party after the entry of the judgment of dissolution of  
7 marriage, judgment of legal separation, or judgment of  
8 declaration of invalidity of marriage; and

9 (9) any other factor that the court expressly finds to  
10 be just and equitable.

11 (b) The provisions as to property disposition may not be  
12 revoked or modified, unless the court finds the existence of  
13 conditions that justify the reopening of a judgment under the  
14 laws of this State.

15 (c) Unless otherwise agreed by the parties in a written  
16 agreement set forth in the judgment or otherwise approved by  
17 the court, the obligation to pay future maintenance is  
18 terminated upon the death of either party, or the remarriage of  
19 the party receiving maintenance, or if the party receiving  
20 maintenance cohabits with another person on a resident,  
21 continuing conjugal basis.

22 (d) Unless otherwise provided in this Act, or as agreed in  
23 writing or expressly provided in the judgment, provisions for  
24 the support of a child are terminated by emancipation of the  
25 child, or if the child has attained the age of 18 and is still  
26 attending high school, provisions for the support of the child  
27 are terminated upon the date that the child graduates from high  
28 school or the date the child attains the age of 19, whichever  
29 is earlier, but not by the death of a parent obligated to  
30 support or educate the child. An existing obligation to pay for  
31 support or educational expenses, or both, is not terminated by  
32 the death of a parent. When a parent obligated to pay support  
33 or educational expenses, or both, dies, the amount of support  
34 or educational expenses, or both, may be enforced, modified,

1     revoked or commuted to a lump sum payment, as equity may  
2     require, and that determination may be provided for at the time  
3     of the dissolution of the marriage or thereafter.

4     (e) The right to petition for support or educational  
5     expenses, or both, under Sections 505 and 513 is not  
6     extinguished by the death of a parent. Upon a petition filed  
7     before or after a parent's death, the court may award sums of  
8     money out of the decedent's estate for the child's support or  
9     educational expenses, or both, as equity may require. The time  
10    within which a claim may be filed against the estate of a  
11    decedent under Sections 505 and 513 and subsection (d) and this  
12    subsection shall be governed by the provisions of the Probate  
13    Act of 1975, as a barrable, noncontingent claim.

14    (f) A petition to modify or terminate child support,  
15    custody, or visitation shall not delay any child support  
16    enforcement litigation or supplementary proceeding on behalf  
17    of the obligee, including, but not limited to, a petition for a  
18    rule to show cause, for non-wage garnishment, or for a  
19    restraining order.

20    (Source: P.A. 92-289, eff. 8-9-01; 92-590, eff. 7-1-02; 92-651,  
21    eff. 7-11-02; 92-876, eff. 6-1-03; 93-353, eff. 1-1-04.)

22    Section 99. Effective date. This Act takes effect upon  
23    becoming law."