

**SB1744**



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**SB1744**

Introduced 2/25/2005, by Sen. Kwame Raoul

**SYNOPSIS AS INTRODUCED:**

750 ILCS 5/505

from Ch. 40, par. 505

Amends the Illinois Marriage and Dissolution of Marriage Act. Makes a technical change in a Section concerning child support.

LRB094 11344 LCB 42194 b

**A BILL FOR**

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 505 as follows:

6 (750 ILCS 5/505) (from Ch. 40, par. 505)

7 Sec. 505. Child support; contempt; penalties.

8 (a) In a proceeding for dissolution of marriage, legal  
9 separation, declaration of invalidity of marriage, a  
10 proceeding for child support following dissolution of the ~~the~~  
11 marriage by a court which lacked personal jurisdiction over the  
12 absent spouse, a proceeding for modification of a previous  
13 order for child support under Section 510 of this Act, or any  
14 proceeding authorized under Section 501 or 601 of this Act, the  
15 court may order either or both parents owing a duty of support  
16 to a child of the marriage to pay an amount reasonable and  
17 necessary for his support, without regard to marital  
18 misconduct. The duty of support owed to a child includes the  
19 obligation to provide for the reasonable and necessary  
20 physical, mental and emotional health needs of the child. For  
21 purposes of this Section, the term "child" shall include any  
22 child under age 18 and any child under age 19 who is still  
23 attending high school.

24 (1) The Court shall determine the minimum amount of  
25 support by using the following guidelines:

Number of Children	Percent of Supporting Party's
	Net Income
1	20%
2	28%
3	32%
4	40%
5	45%



1 represent reasonable and necessary expenses for the  
2 production of income, medical expenditures necessary  
3 to preserve life or health, reasonable expenditures  
4 for the benefit of the child and the other parent,  
5 exclusive of gifts. The court shall reduce net income  
6 in determining the minimum amount of support to be  
7 ordered only for the period that such payments are due  
8 and shall enter an order containing provisions for its  
9 self-executing modification upon termination of such  
10 payment period.

11 (4) In cases where the court order provides for  
12 health/hospitalization insurance coverage pursuant to  
13 Section 505.2 of this Act, the premiums for that insurance,  
14 or that portion of the premiums for which the supporting  
15 party is responsible in the case of insurance provided  
16 through an employer's health insurance plan where the  
17 employer pays a portion of the premiums, shall be  
18 subtracted from net income in determining the minimum  
19 amount of support to be ordered.

20 (4.5) In a proceeding for child support following  
21 dissolution of the marriage by a court that lacked personal  
22 jurisdiction over the absent spouse, and in which the court  
23 is requiring payment of support for the period before the  
24 date an order for current support is entered, there is a  
25 rebuttable presumption that the supporting party's net  
26 income for the prior period was the same as his or her net  
27 income at the time the order for current support is  
28 entered.

29 (5) If the net income cannot be determined because of  
30 default or any other reason, the court shall order support  
31 in an amount considered reasonable in the particular case.  
32 The final order in all cases shall state the support level  
33 in dollar amounts. However, if the court finds that the  
34 child support amount cannot be expressed exclusively as a  
35 dollar amount because all or a portion of the payor's net  
36 income is uncertain as to source, time of payment, or

1 amount, the court may order a percentage amount of support  
2 in addition to a specific dollar amount and enter such  
3 other orders as may be necessary to determine and enforce,  
4 on a timely basis, the applicable support ordered.

5 (6) If (i) the non-custodial parent was properly served  
6 with a request for discovery of financial information  
7 relating to the non-custodial parent's ability to provide  
8 child support, (ii) the non-custodial parent failed to  
9 comply with the request, despite having been ordered to do  
10 so by the court, and (iii) the non-custodial parent is not  
11 present at the hearing to determine support despite having  
12 received proper notice, then any relevant financial  
13 information concerning the non-custodial parent's ability  
14 to provide child support that was obtained pursuant to  
15 subpoena and proper notice shall be admitted into evidence  
16 without the need to establish any further foundation for  
17 its admission.

18 (a-5) In an action to enforce an order for support based on  
19 the respondent's failure to make support payments as required  
20 by the order, notice of proceedings to hold the respondent in  
21 contempt for that failure may be served on the respondent by  
22 personal service or by regular mail addressed to the  
23 respondent's last known address. The respondent's last known  
24 address may be determined from records of the clerk of the  
25 court, from the Federal Case Registry of Child Support Orders,  
26 or by any other reasonable means.

27 (b) Failure of either parent to comply with an order to pay  
28 support shall be punishable as in other cases of contempt. In  
29 addition to other penalties provided by law the Court may,  
30 after finding the parent guilty of contempt, order that the  
31 parent be:

32 (1) placed on probation with such conditions of  
33 probation as the Court deems advisable;

34 (2) sentenced to periodic imprisonment for a period not  
35 to exceed 6 months; provided, however, that the Court may  
36 permit the parent to be released for periods of time during

1 the day or night to:

2 (A) work; or

3 (B) conduct a business or other self-employed  
4 occupation.

5 The Court may further order any part or all of the earnings  
6 of a parent during a sentence of periodic imprisonment paid to  
7 the Clerk of the Circuit Court or to the parent having custody  
8 or to the guardian having custody of the children of the  
9 sentenced parent for the support of said children until further  
10 order of the Court.

11 If there is a unity of interest and ownership sufficient to  
12 render no financial separation between a non-custodial parent  
13 and another person or persons or business entity, the court may  
14 pierce the ownership veil of the person, persons, or business  
15 entity to discover assets of the non-custodial parent held in  
16 the name of that person, those persons, or that business  
17 entity. The following circumstances are sufficient to  
18 authorize a court to order discovery of the assets of a person,  
19 persons, or business entity and to compel the application of  
20 any discovered assets toward payment on the judgment for  
21 support:

22 (1) the non-custodial parent and the person, persons,  
23 or business entity maintain records together.

24 (2) the non-custodial parent and the person, persons,  
25 or business entity fail to maintain an arms length  
26 relationship between themselves with regard to any assets.

27 (3) the non-custodial parent transfers assets to the  
28 person, persons, or business entity with the intent to  
29 perpetrate a fraud on the custodial parent.

30 With respect to assets which are real property, no order  
31 entered under this paragraph shall affect the rights of bona  
32 fide purchasers, mortgagees, judgment creditors, or other lien  
33 holders who acquire their interests in the property prior to  
34 the time a notice of lis pendens pursuant to the Code of Civil  
35 Procedure or a copy of the order is placed of record in the  
36 office of the recorder of deeds for the county in which the

1 real property is located.

2 The court may also order in cases where the parent is 90  
3 days or more delinquent in payment of support or has been  
4 adjudicated in arrears in an amount equal to 90 days obligation  
5 or more, that the parent's Illinois driving privileges be  
6 suspended until the court determines that the parent is in  
7 compliance with the order of support. The court may also order  
8 that the parent be issued a family financial responsibility  
9 driving permit that would allow limited driving privileges for  
10 employment and medical purposes in accordance with Section  
11 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit  
12 court shall certify the order suspending the driving privileges  
13 of the parent or granting the issuance of a family financial  
14 responsibility driving permit to the Secretary of State on  
15 forms prescribed by the Secretary. Upon receipt of the  
16 authenticated documents, the Secretary of State shall suspend  
17 the parent's driving privileges until further order of the  
18 court and shall, if ordered by the court, subject to the  
19 provisions of Section 7-702.1 of the Illinois Vehicle Code,  
20 issue a family financial responsibility driving permit to the  
21 parent.

22 In addition to the penalties or punishment that may be  
23 imposed under this Section, any person whose conduct  
24 constitutes a violation of Section 15 of the Non-Support  
25 Punishment Act may be prosecuted under that Act, and a person  
26 convicted under that Act may be sentenced in accordance with  
27 that Act. The sentence may include but need not be limited to a  
28 requirement that the person perform community service under  
29 Section 50 of that Act or participate in a work alternative  
30 program under Section 50 of that Act. A person may not be  
31 required to participate in a work alternative program under  
32 Section 50 of that Act if the person is currently participating  
33 in a work program pursuant to Section 505.1 of this Act.

34 A support obligation, or any portion of a support  
35 obligation, which becomes due and remains unpaid for 30 days or  
36 more shall accrue simple interest at the rate of 9% per annum.

1 An order for support entered or modified on or after January 1,  
2 2002 shall contain a statement that a support obligation  
3 required under the order, or any portion of a support  
4 obligation required under the order, that becomes due and  
5 remains unpaid for 30 days or more shall accrue simple interest  
6 at the rate of 9% per annum. Failure to include the statement  
7 in the order for support does not affect the validity of the  
8 order or the accrual of interest as provided in this Section.

9 (c) A one-time charge of 20% is imposable upon the amount  
10 of past-due child support owed on July 1, 1988 which has  
11 accrued under a support order entered by the court. The charge  
12 shall be imposed in accordance with the provisions of Section  
13 10-21 of the Illinois Public Aid Code and shall be enforced by  
14 the court upon petition.

15 (d) Any new or existing support order entered by the court  
16 under this Section shall be deemed to be a series of judgments  
17 against the person obligated to pay support thereunder, each  
18 such judgment to be in the amount of each payment or  
19 installment of support and each such judgment to be deemed  
20 entered as of the date the corresponding payment or installment  
21 becomes due under the terms of the support order. Each such  
22 judgment shall have the full force, effect and attributes of  
23 any other judgment of this State, including the ability to be  
24 enforced. A lien arises by operation of law against the real  
25 and personal property of the noncustodial parent for each  
26 installment of overdue support owed by the noncustodial parent.

27 (e) When child support is to be paid through the clerk of  
28 the court in a county of 1,000,000 inhabitants or less, the  
29 order shall direct the obligor to pay to the clerk, in addition  
30 to the child support payments, all fees imposed by the county  
31 board under paragraph (3) of subsection (u) of Section 27.1 of  
32 the Clerks of Courts Act. Unless paid in cash or pursuant to an  
33 order for withholding, the payment of the fee shall be by a  
34 separate instrument from the support payment and shall be made  
35 to the order of the Clerk.

36 (f) All orders for support, when entered or modified, shall



1 include a provision requiring the obligor to notify the court  
2 and, in cases in which a party is receiving child and spouse  
3 services under Article X of the Illinois Public Aid Code, the  
4 Illinois Department of Public Aid, within 7 days, (i) of the  
5 name and address of any new employer of the obligor, (ii)  
6 whether the obligor has access to health insurance coverage  
7 through the employer or other group coverage and, if so, the  
8 policy name and number and the names of persons covered under  
9 the policy, and (iii) of any new residential or mailing address  
10 or telephone number of the non-custodial parent. In any  
11 subsequent action to enforce a support order, upon a sufficient  
12 showing that a diligent effort has been made to ascertain the  
13 location of the non-custodial parent, service of process or  
14 provision of notice necessary in the case may be made at the  
15 last known address of the non-custodial parent in any manner  
16 expressly provided by the Code of Civil Procedure or this Act,  
17 which service shall be sufficient for purposes of due process.

18 (g) An order for support shall include a date on which the  
19 current support obligation terminates. The termination date  
20 shall be no earlier than the date on which the child covered by  
21 the order will attain the age of 18. However, if the child will  
22 not graduate from high school until after attaining the age of  
23 18, then the termination date shall be no earlier than the  
24 earlier of the date on which the child's high school graduation  
25 will occur or the date on which the child will attain the age  
26 of 19. The order for support shall state that the termination  
27 date does not apply to any arrearage that may remain unpaid on  
28 that date. Nothing in this subsection shall be construed to  
29 prevent the court from modifying the order or terminating the  
30 order in the event the child is otherwise emancipated.

31 (g-5) If there is an unpaid arrearage or delinquency (as  
32 those terms are defined in the Income Withholding for Support  
33 Act) equal to at least one month's support obligation on the  
34 termination date stated in the order for support or, if there  
35 is no termination date stated in the order, on the date the  
36 child attains the age of majority or is otherwise emancipated,

1 the periodic amount required to be paid for current support of  
2 that child immediately prior to that date shall automatically  
3 continue to be an obligation, not as current support but as  
4 periodic payment toward satisfaction of the unpaid arrearage or  
5 delinquency. That periodic payment shall be in addition to any  
6 periodic payment previously required for satisfaction of the  
7 arrearage or delinquency. The total periodic amount to be paid  
8 toward satisfaction of the arrearage or delinquency may be  
9 enforced and collected by any method provided by law for  
10 enforcement and collection of child support, including but not  
11 limited to income withholding under the Income Withholding for  
12 Support Act. Each order for support entered or modified on or  
13 after the effective date of this amendatory Act of the 93rd  
14 General Assembly must contain a statement notifying the parties  
15 of the requirements of this subsection. Failure to include the  
16 statement in the order for support does not affect the validity  
17 of the order or the operation of the provisions of this  
18 subsection with regard to the order. This subsection shall not  
19 be construed to prevent or affect the establishment or  
20 modification of an order for support of a minor child or the  
21 establishment or modification of an order for support of a  
22 non-minor child or educational expenses under Section 513 of  
23 this Act.

24 (h) An order entered under this Section shall include a  
25 provision requiring the obligor to report to the obligee and to  
26 the clerk of court within 10 days each time the obligor obtains  
27 new employment, and each time the obligor's employment is  
28 terminated for any reason. The report shall be in writing and  
29 shall, in the case of new employment, include the name and  
30 address of the new employer. Failure to report new employment  
31 or the termination of current employment, if coupled with  
32 nonpayment of support for a period in excess of 60 days, is  
33 indirect criminal contempt. For any obligor arrested for  
34 failure to report new employment bond shall be set in the  
35 amount of the child support that should have been paid during  
36 the period of unreported employment. An order entered under

1 this Section shall also include a provision requiring the  
2 obligor and obligee parents to advise each other of a change in  
3 residence within 5 days of the change except when the court  
4 finds that the physical, mental, or emotional health of a party  
5 or that of a child, or both, would be seriously endangered by  
6 disclosure of the party's address.

7 (i) The court does not lose the powers of contempt,  
8 driver's license suspension, or other child support  
9 enforcement mechanisms, including, but not limited to,  
10 criminal prosecution as set forth in this Act, upon the  
11 emancipation of the minor child or children.

12 (Source: P.A. 92-16, eff. 6-28-01; 92-203, eff. 8-1-01; 92-374,  
13 eff. 8-15-01; 92-651, eff. 7-11-02; 92-876, eff. 6-1-03;  
14 93-148, eff. 7-10-03; 93-1061, eff. 1-1-05.)