

**SB0454**



**95TH GENERAL ASSEMBLY**

**State of Illinois**

**2007 and 2008**

**SB0454**

Introduced 2/8/2007, by Sen. Ira I. Silverstein

**SYNOPSIS AS INTRODUCED:**

750 ILCS 5/503

from Ch. 40, par. 503

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that the court in a dissolution judgment may also set aside a portion of the joint or separate estates of the parties in a fund or trust for the physical and mental health (at present, for the support, maintenance, education, and general welfare) of any minor, dependent, or incompetent child of the parties.

LRB095 03689 AJO 23716 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 503 as follows:

6 (750 ILCS 5/503) (from Ch. 40, par. 503)

7 Sec. 503. Disposition of property.

8 (a) For purposes of this Act, "marital property" means all  
9 property acquired by either spouse subsequent to the marriage,  
10 except the following, which is known as "non-marital property":

11 (1) property acquired by gift, legacy or descent;

12 (2) property acquired in exchange for property  
13 acquired before the marriage or in exchange for property  
14 acquired by gift, legacy or descent;

15 (3) property acquired by a spouse after a judgment of  
16 legal separation;

17 (4) property excluded by valid agreement of the  
18 parties;

19 (5) any judgment or property obtained by judgment  
20 awarded to a spouse from the other spouse;

21 (6) property acquired before the marriage;

22 (7) the increase in value of property acquired by a  
23 method listed in paragraphs (1) through (6) of this

1 subsection, irrespective of whether the increase results  
2 from a contribution of marital property, non-marital  
3 property, the personal effort of a spouse, or otherwise,  
4 subject to the right of reimbursement provided in  
5 subsection (c) of this Section; and

6 (8) income from property acquired by a method listed in  
7 paragraphs (1) through (7) of this subsection if the income  
8 is not attributable to the personal effort of a spouse.

9 (b) (1) For purposes of distribution of property pursuant to  
10 this Section, all property acquired by either spouse after the  
11 marriage and before a judgment of dissolution of marriage or  
12 declaration of invalidity of marriage, including non-marital  
13 property transferred into some form of co-ownership between the  
14 spouses, is presumed to be marital property, regardless of  
15 whether title is held individually or by the spouses in some  
16 form of co-ownership such as joint tenancy, tenancy in common,  
17 tenancy by the entirety, or community property. The presumption  
18 of marital property is overcome by a showing that the property  
19 was acquired by a method listed in subsection (a) of this  
20 Section.

21 (2) For purposes of distribution of property pursuant to  
22 this Section, all pension benefits (including pension benefits  
23 under the Illinois Pension Code) acquired by either spouse  
24 after the marriage and before a judgment of dissolution of  
25 marriage or declaration of invalidity of the marriage are  
26 presumed to be marital property, regardless of which spouse

1 participates in the pension plan. The presumption that these  
2 pension benefits are marital property is overcome by a showing  
3 that the pension benefits were acquired by a method listed in  
4 subsection (a) of this Section. The right to a division of  
5 pension benefits in just proportions under this Section is  
6 enforceable under Section 1-119 of the Illinois Pension Code.

7 The value of pension benefits in a retirement system  
8 subject to the Illinois Pension Code shall be determined in  
9 accordance with the valuation procedures established by the  
10 retirement system.

11 The recognition of pension benefits as marital property and  
12 the division of those benefits pursuant to a Qualified Illinois  
13 Domestic Relations Order shall not be deemed to be a  
14 diminishment, alienation, or impairment of those benefits. The  
15 division of pension benefits is an allocation of property in  
16 which each spouse has a species of common ownership.

17 (3) For purposes of distribution of property under this  
18 Section, all stock options granted to either spouse after the  
19 marriage and before a judgment of dissolution of marriage or  
20 declaration of invalidity of marriage, whether vested or  
21 non-vested or whether their value is ascertainable, are  
22 presumed to be marital property. This presumption of marital  
23 property is overcome by a showing that the stock options were  
24 acquired by a method listed in subsection (a) of this Section.  
25 The court shall allocate stock options between the parties at  
26 the time of the judgment of dissolution of marriage or

1 declaration of invalidity of marriage recognizing that the  
2 value of the stock options may not be then determinable and  
3 that the actual division of the options may not occur until a  
4 future date. In making the allocation between the parties, the  
5 court shall consider, in addition to the factors set forth in  
6 subsection (d) of this Section, the following:

7 (i) All circumstances underlying the grant of the stock  
8 option including but not limited to whether the grant was  
9 for past, present, or future efforts, or any combination  
10 thereof.

11 (ii) The length of time from the grant of the option to  
12 the time the option is exercisable.

13 (c) Commingled marital and non-marital property shall be  
14 treated in the following manner, unless otherwise agreed by the  
15 spouses:

16 (1) When marital and non-marital property are  
17 commingled by contributing one estate of property into  
18 another resulting in a loss of identity of the contributed  
19 property, the classification of the contributed property  
20 is transmuted to the estate receiving the contribution,  
21 subject to the provisions of paragraph (2) of this  
22 subsection; provided that if marital and non-marital  
23 property are commingled into newly acquired property  
24 resulting in a loss of identity of the contributing  
25 estates, the commingled property shall be deemed  
26 transmuted to marital property, subject to the provisions

1 of paragraph (2) of this subsection.

2 (2) When one estate of property makes a contribution to  
3 another estate of property, or when a spouse contributes  
4 personal effort to non-marital property, the contributing  
5 estate shall be reimbursed from the estate receiving the  
6 contribution notwithstanding any transmutation; provided,  
7 that no such reimbursement shall be made with respect to a  
8 contribution which is not retraceable by clear and  
9 convincing evidence, or was a gift, or, in the case of a  
10 contribution of personal effort of a spouse to non-marital  
11 property, unless the effort is significant and results in  
12 substantial appreciation of the non-marital property.  
13 Personal effort of a spouse shall be deemed a contribution  
14 by the marital estate. The court may provide for  
15 reimbursement out of the marital property to be divided or  
16 by imposing a lien against the non-marital property which  
17 received the contribution.

18 (d) In a proceeding for dissolution of marriage or  
19 declaration of invalidity of marriage, or in a proceeding for  
20 disposition of property following dissolution of marriage by a  
21 court which lacked personal jurisdiction over the absent spouse  
22 or lacked jurisdiction to dispose of the property, the court  
23 shall assign each spouse's non-marital property to that spouse.  
24 It also shall divide the marital property without regard to  
25 marital misconduct in just proportions considering all  
26 relevant factors, including:

1           (1) the contribution of each party to the acquisition,  
2           preservation, or increase or decrease in value of the  
3           marital or non-marital property, including the  
4           contribution of a spouse as a homemaker or to the family  
5           unit;

6           (2) the dissipation by each party of the marital or  
7           non-marital property;

8           (3) the value of the property assigned to each spouse;

9           (4) the duration of the marriage;

10          (5) the relevant economic circumstances of each spouse  
11          when the division of property is to become effective,  
12          including the desirability of awarding the family home, or  
13          the right to live therein for reasonable periods, to the  
14          spouse having custody of the children;

15          (6) any obligations and rights arising from a prior  
16          marriage of either party;

17          (7) any antenuptial agreement of the parties;

18          (8) the age, health, station, occupation, amount and  
19          sources of income, vocational skills, employability,  
20          estate, liabilities, and needs of each of the parties;

21          (9) the custodial provisions for any children;

22          (10) whether the apportionment is in lieu of or in  
23          addition to maintenance;

24          (11) the reasonable opportunity of each spouse for  
25          future acquisition of capital assets and income; and

26          (12) the tax consequences of the property division upon

1 the respective economic circumstances of the parties.

2 (e) Each spouse has a species of common ownership in the  
3 marital property which vests at the time dissolution  
4 proceedings are commenced and continues only during the  
5 pendency of the action. Any such interest in marital property  
6 shall not encumber that property so as to restrict its  
7 transfer, assignment or conveyance by the title holder unless  
8 such title holder is specifically enjoined from making such  
9 transfer, assignment or conveyance.

10 (f) In a proceeding for dissolution of marriage or  
11 declaration of invalidity of marriage or in a proceeding for  
12 disposition of property following dissolution of marriage by a  
13 court that lacked personal jurisdiction over the absent spouse  
14 or lacked jurisdiction to dispose of the property, the court,  
15 in determining the value of the marital and non-marital  
16 property for purposes of dividing the property, shall value the  
17 property as of the date of trial or some other date as close to  
18 the date of trial as is practicable.

19 (g) The court if necessary to protect and promote the best  
20 interests of the children may set aside a portion of the  
21 jointly or separately held estates of the parties in a separate  
22 fund or trust for the support, maintenance, education, physical  
23 and mental health, and general welfare of any minor, dependent,  
24 or incompetent child of the parties. In making a determination  
25 under this subsection, the court may consider, among other  
26 things, the conviction of a party of any of the offenses set



1     forth in Section 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13,  
2     12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 if  
3     the victim is a child of one or both of the parties, and there  
4     is a need for, and cost of, care, healing and counseling for  
5     the child who is the victim of the crime.

6           (h) Unless specifically directed by a reviewing court, or  
7     upon good cause shown, the court shall not on remand consider  
8     any increase or decrease in the value of any "marital" or  
9     "non-marital" property occurring since the assessment of such  
10    property at the original trial or hearing, but shall use only  
11    that assessment made at the original trial or hearing.

12           (i) The court may make such judgments affecting the marital  
13    property as may be just and may enforce such judgments by  
14    ordering a sale of marital property, with proceeds therefrom to  
15    be applied as determined by the court.

16           (j) After proofs have closed in the final hearing on all  
17    other issues between the parties (or in conjunction with the  
18    final hearing, if all parties so stipulate) and before judgment  
19    is entered, a party's petition for contribution to fees and  
20    costs incurred in the proceeding shall be heard and decided, in  
21    accordance with the following provisions:

22           (1) A petition for contribution, if not filed before  
23    the final hearing on other issues between the parties,  
24    shall be filed no later than 30 days after the closing of  
25    proofs in the final hearing or within such other period as  
26    the court orders.

1           (2) Any award of contribution to one party from the  
2 other party shall be based on the criteria for division of  
3 marital property under this Section 503 and, if maintenance  
4 has been awarded, on the criteria for an award of  
5 maintenance under Section 504.

6           (3) The filing of a petition for contribution shall not  
7 be deemed to constitute a waiver of the attorney-client  
8 privilege between the petitioning party and current or  
9 former counsel; and such a waiver shall not constitute a  
10 prerequisite to a hearing for contribution. If either  
11 party's presentation on contribution, however, includes  
12 evidence within the scope of the attorney-client  
13 privilege, the disclosure or disclosures shall be narrowly  
14 construed and shall not be deemed by the court to  
15 constitute a general waiver of the privilege as to matters  
16 beyond the scope of the presentation.

17           (4) No finding on which a contribution award is based  
18 or denied shall be asserted against counsel or former  
19 counsel for purposes of any hearing under subsection (c) or  
20 (e) of Section 508.

21           (5) A contribution award (payable to either the  
22 petitioning party or the party's counsel, or jointly, as  
23 the court determines) may be in the form of either a set  
24 dollar amount or a percentage of fees and costs (or a  
25 portion of fees and costs) to be subsequently agreed upon  
26 by the petitioning party and counsel or, alternatively,

1           thereafter determined in a hearing pursuant to subsection  
2           (c) of Section 508 or previously or thereafter determined  
3           in an independent proceeding under subsection (e) of  
4           Section 508.

5           (6) The changes to this Section 503 made by this  
6           amendatory Act of 1996 apply to cases pending on or after  
7           June 1, 1997, except as otherwise provided in Section 508.

8           (Source: P.A. 91-445, eff. 1-1-00; 92-306, eff. 1-1-02.)