

SB0485



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0485

Introduced 2/8/2007, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

750 ILCS 5/505

from Ch. 40, par. 505

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

LRB095 06559 AJO 26661 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.

1 finding shall state the amount of support that would have
2 been required under the guidelines, if determinable. The
3 court shall include the reason or reasons for the variance
4 from the guidelines.

5 (3) "Net income" is defined as the total of all income
6 from all sources, minus the following deductions:

7 (a) Federal income tax (properly calculated
8 withholding or estimated payments);

9 (b) State income tax (properly calculated
10 withholding or estimated payments);

11 (c) Social Security (FICA payments);

12 (d) Mandatory retirement contributions required by
13 law or as a condition of employment;

14 (e) Union dues;

15 (f) Dependent and individual
16 health/hospitalization insurance premiums;

17 (g) Prior obligations of support or maintenance
18 actually paid pursuant to a court order;

19 (h) Expenditures for repayment of debts that
20 represent reasonable and necessary expenses for the
21 production of income, medical expenditures necessary
22 to preserve life or health, reasonable expenditures
23 for the benefit of the child and the other parent,
24 exclusive of gifts. The court shall reduce net income
25 in determining the minimum amount of support to be
26 ordered only for the period that such payments are due

1 and shall enter an order containing provisions for its
2 self-executing modification upon termination of such
3 payment period.

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

13 (4.5) In a proceeding for child support following
14 dissolution of the marriage by a court that lacked personal
15 jurisdiction over the absent spouse, and in which the court
16 is requiring payment of support for the period before the
17 date an order for current support is entered, there is a
18 rebuttable presumption that the supporting party's net
19 income for the prior period was the same as his or her net
20 income at the time the order for current support is
21 entered.

22 (5) If the net income cannot be determined because of
23 default or any other reason, the court shall order support
24 in an amount considered reasonable in the particular case.
25 The final order in all cases shall state the support level
26 in dollar amounts. However, if the court finds that the

1 child support amount cannot be expressed exclusively as a
2 dollar amount because all or a portion of the payor's net
3 income is uncertain as to source, time of payment, or
4 amount, the court may order a percentage amount of support
5 in addition to a specific dollar amount and enter such
6 other orders as may be necessary to determine and enforce,
7 on a timely basis, the applicable support ordered.

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

21 (a-5) In an action to enforce an order for support based on
22 the respondent's failure to make support payments as required
23 by the order, notice of proceedings to hold the respondent in
24 contempt for that failure may be served on the respondent by
25 personal service or by regular mail addressed to the
26 respondent's last known address. The respondent's last known

1 address may be determined from records of the clerk of the
2 court, from the Federal Case Registry of Child Support Orders,
3 or by any other reasonable means.

4 (b) Failure of either parent to comply with an order to pay
5 support shall be punishable as in other cases of contempt. In
6 addition to other penalties provided by law the Court may,
7 after finding the parent guilty of contempt, order that the
8 parent be:

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

11 (2) sentenced to periodic imprisonment for a period not
12 to exceed 6 months; provided, however, that the Court may
13 permit the parent to be released for periods of time during
14 the day or night to:

15 (A) work; or

16 (B) conduct a business or other self-employed
17 occupation.

18 The Court may further order any part or all of the earnings
19 of a parent during a sentence of periodic imprisonment paid to
20 the Clerk of the Circuit Court or to the parent having custody
21 or to the guardian having custody of the children of the
22 sentenced parent for the support of said children until further
23 order of the Court.

24 If there is a unity of interest and ownership sufficient to
25 render no financial separation between a non-custodial parent
26 and another person or persons or business entity, the court may

1 pierce the ownership veil of the person, persons, or business
2 entity to discover assets of the non-custodial parent held in
3 the name of that person, those persons, or that business
4 entity. The following circumstances are sufficient to
5 authorize a court to order discovery of the assets of a person,
6 persons, or business entity and to compel the application of
7 any discovered assets toward payment on the judgment for
8 support:

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

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

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

17 With respect to assets which are real property, no order
18 entered under this paragraph shall affect the rights of bona
19 fide purchasers, mortgagees, judgment creditors, or other lien
20 holders who acquire their interests in the property prior to
21 the time a notice of lis pendens pursuant to the Code of Civil
22 Procedure or a copy of the order is placed of record in the
23 office of the recorder of deeds for the county in which the
24 real property is located.

25 The court may also order in cases where the parent is 90
26 days or more delinquent in payment of support or has been

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

19 In addition to the penalties or punishment that may be
20 imposed under this Section, any person whose conduct
21 constitutes a violation of Section 15 of the Non-Support
22 Punishment Act may be prosecuted under that Act, and a person
23 convicted under that Act may be sentenced in accordance with
24 that Act. The sentence may include but need not be limited to a
25 requirement that the person perform community service under
26 Section 50 of that Act or participate in a work alternative

1 program under Section 50 of that Act. A person may not be
2 required to participate in a work alternative program under
3 Section 50 of that Act if the person is currently participating
4 in a work program pursuant to Section 505.1 of this Act.

5 A support obligation, or any portion of a support
6 obligation, which becomes due and remains unpaid as of the end
7 of each month, excluding the child support that was due for
8 that month to the extent that it was not paid in that month,
9 shall accrue simple interest as set forth in Section 12-109 of
10 the Code of Civil Procedure. An order for support entered or
11 modified on or after January 1, 2006 shall contain a statement
12 that a support obligation required under the order, or any
13 portion of a support obligation required under the order, that
14 becomes due and remains unpaid as of the end of each month,
15 excluding the child support that was due for that month to the
16 extent that it was not paid in that month, shall accrue simple
17 interest as set forth in Section 12-109 of the Code of Civil
18 Procedure. Failure to include the statement in the order for
19 support does not affect the validity of the order or the
20 accrual of interest as provided in this Section.

21 (c) A one-time charge of 20% is imposable upon the amount
22 of past-due child support owed on July 1, 1988 which has
23 accrued under a support order entered by the court. The charge
24 shall be imposed in accordance with the provisions of Section
25 10-21 of the Illinois Public Aid Code and shall be enforced by
26 the court upon petition.

1 (d) Any new or existing support order entered by the court
2 under this Section shall be deemed to be a series of judgments
3 against the person obligated to pay support thereunder, each
4 such judgment to be in the amount of each payment or
5 installment of support and each such judgment to be deemed
6 entered as of the date the corresponding payment or installment
7 becomes due under the terms of the support order. Each such
8 judgment shall have the full force, effect and attributes of
9 any other judgment of this State, including the ability to be
10 enforced. A lien arises by operation of law against the real
11 and personal property of the noncustodial parent for each
12 installment of overdue support owed by the noncustodial parent.

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

22 (f) All orders for support, when entered or modified, shall
23 include a provision requiring the obligor to notify the court
24 and, in cases in which a party is receiving child and spouse
25 services under Article X of the Illinois Public Aid Code, the
26 ~~Illinois~~ Department of Healthcare and Family Services ~~Public~~

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

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

1 order in the event the child is otherwise emancipated.

2 (g-5) If there is an unpaid arrearage or delinquency (as
3 those terms are defined in the Income Withholding for Support
4 Act) equal to at least one month's support obligation on the
5 termination date stated in the order for support or, if there
6 is no termination date stated in the order, on the date the
7 child attains the age of majority or is otherwise emancipated,
8 the periodic amount required to be paid for current support of
9 that child immediately prior to that date shall automatically
10 continue to be an obligation, not as current support but as
11 periodic payment toward satisfaction of the unpaid arrearage or
12 delinquency. That periodic payment shall be in addition to any
13 periodic payment previously required for satisfaction of the
14 arrearage or delinquency. The total periodic amount to be paid
15 toward satisfaction of the arrearage or delinquency may be
16 enforced and collected by any method provided by law for
17 enforcement and collection of child support, including but not
18 limited to income withholding under the Income Withholding for
19 Support Act. Each order for support entered or modified on or
20 after the effective date of this amendatory Act of the 93rd
21 General Assembly must contain a statement notifying the parties
22 of the requirements of this subsection. Failure to include the
23 statement in the order for support does not affect the validity
24 of the order or the operation of the provisions of this
25 subsection with regard to the order. This subsection shall not
26 be construed to prevent or affect the establishment or

1 modification of an order for support of a minor child or the
2 establishment or modification of an order for support of a
3 non-minor child or educational expenses under Section 513 of
4 this Act.

5 (h) An order entered under this Section shall include a
6 provision requiring the obligor to report to the obligee and to
7 the clerk of court within 10 days each time the obligor obtains
8 new employment, and each time the obligor's employment is
9 terminated for any reason. The report shall be in writing and
10 shall, in the case of new employment, include the name and
11 address of the new employer. Failure to report new employment
12 or the termination of current employment, if coupled with
13 nonpayment of support for a period in excess of 60 days, is
14 indirect criminal contempt. For any obligor arrested for
15 failure to report new employment bond shall be set in the
16 amount of the child support that should have been paid during
17 the period of unreported employment. An order entered under
18 this Section shall also include a provision requiring the
19 obligor and obligee parents to advise each other of a change in
20 residence within 5 days of the change except when the court
21 finds that the physical, mental, or emotional health of a party
22 or that of a child, or both, would be seriously endangered by
23 disclosure of the party's address.

24 (i) The court does not lose the powers of contempt,
25 driver's license suspension, or other child support
26 enforcement mechanisms, including, but not limited to,

1 criminal prosecution as set forth in this Act, upon the
2 emancipation of the minor child or children.

3 (Source: P.A. 93-148, eff. 7-10-03; 93-1061, eff. 1-1-05;
4 94-90, eff. 1-1-06; revised 12-15-05.)