



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5078

Introduced 1/29/2010, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607
750 ILCS 5/610

from Ch. 40, par. 607
from Ch. 40, par. 610

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that if a person petitioning to modify a custody judgment or visitation order owes past due child support to a custodial parent in an amount in excess of \$10,000, the person shall post a bond in the amount of past due child support owed before the filing of the petition. Provides that the court shall hold the bond in escrow until the modification proceedings have been concluded, at which time the bond shall be transmitted to the State Disbursement Unit for disbursement to the custodial parent. Effective immediately.

LRB096 16083 AJO 31332 b

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 Sections 607 and 610 as
6 follows:

7 (750 ILCS 5/607) (from Ch. 40, par. 607)

8 Sec. 607. Visitation.

9 (a) A parent not granted custody of the child is entitled
10 to reasonable visitation rights unless the court finds, after a
11 hearing, that visitation would endanger seriously the child's
12 physical, mental, moral or emotional health. If the custodian's
13 street address is not identified, pursuant to Section 708, the
14 court shall require the parties to identify reasonable
15 alternative arrangements for visitation by a non-custodial
16 parent, including but not limited to visitation of the minor
17 child at the residence of another person or at a local public
18 or private facility.

19 (1) "Visitation" means in-person time spent between a
20 child and the child's parent. In appropriate
21 circumstances, it may include electronic communication
22 under conditions and at times determined by the court.

23 (2) "Electronic communication" means time that a

1 parent spends with his or her child during which the child
2 is not in the parent's actual physical custody, but which
3 is facilitated by the use of communication tools such as
4 the telephone, electronic mail, instant messaging, video
5 conferencing or other wired or wireless technologies via
6 the Internet, or another medium of communication.

7 (a-3) Grandparents, great-grandparents, and siblings of a
8 minor child, who is one year old or older, have standing to
9 bring an action in circuit court by petition, requesting
10 visitation in accordance with this Section. The term "sibling"
11 in this Section means a brother, sister, stepbrother, or
12 stepsister of the minor child. Grandparents,
13 great-grandparents, and siblings also have standing to file a
14 petition for visitation and any electronic communication
15 rights in a pending dissolution proceeding or any other
16 proceeding that involves custody or visitation issues,
17 requesting visitation in accordance with this Section. A
18 petition for visitation with a child by a person other than a
19 parent must be filed in the county in which the child resides.
20 Nothing in this subsection (a-3) and subsection (a-5) of this
21 Section shall apply to a child in whose interests a petition is
22 pending under Section 2-13 of the Juvenile Court Act of 1987 or
23 a petition to adopt an unrelated child is pending under the
24 Adoption Act.

25 (a-5) (1) Except as otherwise provided in this subsection
26 (a-5), any grandparent, great-grandparent, or sibling may file

1 a petition for visitation rights to a minor child if there is
2 an unreasonable denial of visitation by a parent and at least
3 one of the following conditions exists:

4 (A) (Blank);

5 (A-5) the child's other parent is deceased or has been
6 missing for at least 3 months. For the purposes of this
7 Section a parent is considered to be missing if the
8 parent's location has not been determined and the parent
9 has been reported as missing to a law enforcement agency;

10 (A-10) a parent of the child is incompetent as a matter
11 of law;

12 (A-15) a parent has been incarcerated in jail or prison
13 during the 3 month period preceding the filing of the
14 petition;

15 (B) the child's mother and father are divorced or have
16 been legally separated from each other or there is pending
17 a dissolution proceeding involving a parent of the child or
18 another court proceeding involving custody or visitation
19 of the child (other than any adoption proceeding of an
20 unrelated child) and at least one parent does not object to
21 the grandparent, great-grandparent, or sibling having
22 visitation with the child. The visitation of the
23 grandparent, great-grandparent, or sibling must not
24 diminish the visitation of the parent who is not related to
25 the grandparent, great-grandparent, or sibling seeking
26 visitation;

1 (C) (Blank);

2 (D) the child is born out of wedlock, the parents are
3 not living together, and the petitioner is a maternal
4 grandparent, great-grandparent, or sibling of the child
5 born out of wedlock; or

6 (E) the child is born out of wedlock, the parents are
7 not living together, the petitioner is a paternal
8 grandparent, great-grandparent, or sibling, and the
9 paternity has been established by a court of competent
10 jurisdiction.

11 (2) Any visitation rights granted pursuant to this Section
12 before the filing of a petition for adoption of a child shall
13 automatically terminate by operation of law upon the entry of
14 an order terminating parental rights or granting the adoption
15 of the child, whichever is earlier. If the person or persons
16 who adopted the child are related to the child, as defined by
17 Section 1 of the Adoption Act, any person who was related to
18 the child as grandparent, great-grandparent, or sibling prior
19 to the adoption shall have standing to bring an action pursuant
20 to this Section requesting visitation with the child.

21 (3) In making a determination under this subsection (a-5),
22 there is a rebuttable presumption that a fit parent's actions
23 and decisions regarding grandparent, great-grandparent, or
24 sibling visitation are not harmful to the child's mental,
25 physical, or emotional health. The burden is on the party
26 filing a petition under this Section to prove that the parent's

1 actions and decisions regarding visitation times are harmful to
2 the child's mental, physical, or emotional health.

3 (4) In determining whether to grant visitation, the court
4 shall consider the following:

5 (A) the preference of the child if the child is
6 determined to be of sufficient maturity to express a
7 preference;

8 (B) the mental and physical health of the child;

9 (C) the mental and physical health of the grandparent,
10 great-grandparent, or sibling;

11 (D) the length and quality of the prior relationship
12 between the child and the grandparent, great-grandparent,
13 or sibling;

14 (E) the good faith of the party in filing the petition;

15 (F) the good faith of the person denying visitation;

16 (G) the quantity of the visitation time requested and
17 the potential adverse impact that visitation would have on
18 the child's customary activities;

19 (H) whether the child resided with the petitioner for
20 at least 6 consecutive months with or without the current
21 custodian present;

22 (I) whether the petitioner had frequent or regular
23 contact or visitation with the child for at least 12
24 consecutive months;

25 (J) any other fact that establishes that the loss of
26 the relationship between the petitioner and the child is

1 likely to harm the child's mental, physical, or emotional
2 health; and

3 (K) whether the grandparent, great-grandparent, or
4 sibling was a primary caretaker of the child for a period
5 of not less than 6 consecutive months.

6 (5) The court may order visitation rights for the
7 grandparent, great-grandparent, or sibling that include
8 reasonable access without requiring overnight or possessory
9 visitation.

10 (a-7) (1) Unless by stipulation of the parties, no motion to
11 modify a grandparent, great-grandparent, or sibling visitation
12 order may be made earlier than 2 years after the date the order
13 was filed, unless the court permits it to be made on the basis
14 of affidavits that there is reason to believe the child's
15 present environment may endanger seriously the child's mental,
16 physical, or emotional health.

17 (2) The court shall not modify an order that grants
18 visitation to a grandparent, great-grandparent, or sibling
19 unless it finds by clear and convincing evidence, upon the
20 basis of facts that have arisen since the prior visitation
21 order or that were unknown to the court at the time of entry of
22 the prior visitation, that a change has occurred in the
23 circumstances of the child or his or her custodian, and that
24 the modification is necessary to protect the mental, physical,
25 or emotional health of the child. The court shall state in its
26 decision specific findings of fact in support of its

1 modification or termination of the grandparent,
2 great-grandparent, or sibling visitation. A child's parent may
3 always petition to modify visitation upon changed
4 circumstances when necessary to promote the child's best
5 interest.

6 (3) Attorney fees and costs shall be assessed against a
7 party seeking modification of the visitation order if the court
8 finds that the modification action is vexatious and constitutes
9 harassment.

10 (4) Notice under this subsection (a-7) shall be given as
11 provided in subsections (c) and (d) of Section 601.

12 (b) (1) (Blank.)

13 (1.5) The Court may grant reasonable visitation privileges
14 to a stepparent upon petition to the court by the stepparent,
15 with notice to the parties required to be notified under
16 Section 601 of this Act, if the court determines that it is in
17 the best interests and welfare of the child, and may issue any
18 necessary orders to enforce those visitation privileges. A
19 petition for visitation privileges may be filed under this
20 paragraph (1.5) whether or not a petition pursuant to this Act
21 has been previously filed or is currently pending if the
22 following circumstances are met:

23 (A) the child is at least 12 years old;

24 (B) the child resided continuously with the parent and
25 stepparent for at least 5 years;

26 (C) the parent is deceased or is disabled and is unable

1 to care for the child;

2 (D) the child wishes to have reasonable visitation with
3 the stepparent; and

4 (E) the stepparent was providing for the care, control,
5 and welfare to the child prior to the initiation of the
6 petition for visitation.

7 (2) (A) A petition for visitation privileges shall not be
8 filed pursuant to this subsection (b) by the parents or
9 grandparents of a putative father if the paternity of the
10 putative father has not been legally established.

11 (B) A petition for visitation privileges may not be filed
12 under this subsection (b) if the child who is the subject of
13 the grandparents' or great-grandparents' petition has been
14 voluntarily surrendered by the parent or parents, except for a
15 surrender to the Illinois Department of Children and Family
16 Services or a foster care facility, or has been previously
17 adopted by an individual or individuals who are not related to
18 the biological parents of the child or is the subject of a
19 pending adoption petition by an individual or individuals who
20 are not related to the biological parents of the child.

21 (3) (Blank).

22 (c) The court may modify an order granting or denying
23 visitation rights of a parent whenever modification would serve
24 the best interest of the child; but the court shall not
25 restrict a parent's visitation rights unless it finds that the
26 visitation would endanger seriously the child's physical,

1 mental, moral or emotional health.

2 (d) If any court has entered an order prohibiting a
3 non-custodial parent of a child from any contact with a child
4 or restricting the non-custodial parent's contact with the
5 child, the following provisions shall apply:

6 (1) If an order has been entered granting visitation
7 privileges with the child to a grandparent or
8 great-grandparent who is related to the child through the
9 non-custodial parent, the visitation privileges of the
10 grandparent or great-grandparent may be revoked if:

11 (i) a court has entered an order prohibiting the
12 non-custodial parent from any contact with the child,
13 and the grandparent or great-grandparent is found to
14 have used his or her visitation privileges to
15 facilitate contact between the child and the
16 non-custodial parent; or

17 (ii) a court has entered an order restricting the
18 non-custodial parent's contact with the child, and the
19 grandparent or great-grandparent is found to have used
20 his or her visitation privileges to facilitate contact
21 between the child and the non-custodial parent in a
22 manner that violates the terms of the order restricting
23 the non-custodial parent's contact with the child.

24 Nothing in this subdivision (1) limits the authority of
25 the court to enforce its orders in any manner permitted by
26 law.

1 (2) Any order granting visitation privileges with the
2 child to a grandparent or great-grandparent who is related
3 to the child through the non-custodial parent shall contain
4 the following provision:

5 "If the (grandparent or great-grandparent, whichever
6 is applicable) who has been granted visitation privileges
7 under this order uses the visitation privileges to
8 facilitate contact between the child and the child's
9 non-custodial parent, the visitation privileges granted
10 under this order shall be permanently revoked."

11 (e) No parent, not granted custody of the child, or
12 grandparent, or great-grandparent, or stepparent, or sibling
13 of any minor child, convicted of any offense involving an
14 illegal sex act perpetrated upon a victim less than 18 years of
15 age including but not limited to offenses for violations of
16 Article 12 of the Criminal Code of 1961, is entitled to
17 visitation rights while incarcerated or while on parole,
18 probation, conditional discharge, periodic imprisonment, or
19 mandatory supervised release for that offense, and upon
20 discharge from incarceration for a misdemeanor offense or upon
21 discharge from parole, probation, conditional discharge,
22 periodic imprisonment, or mandatory supervised release for a
23 felony offense, visitation shall be denied until the person
24 successfully completes a treatment program approved by the
25 court.

26 (f) Unless the court determines, after considering all

1 relevant factors, including but not limited to those set forth
2 in Section 602(a), that it would be in the best interests of
3 the child to allow visitation, the court shall not enter an
4 order providing visitation rights and pursuant to a motion to
5 modify visitation shall revoke visitation rights previously
6 granted to any person who would otherwise be entitled to
7 petition for visitation rights under this Section who has been
8 convicted of first degree murder of the parent, grandparent,
9 great-grandparent, or sibling of the child who is the subject
10 of the order. Until an order is entered pursuant to this
11 subsection, no person shall visit, with the child present, a
12 person who has been convicted of first degree murder of the
13 parent, grandparent, great-grandparent, or sibling of the
14 child without the consent of the child's parent, other than a
15 parent convicted of first degree murder as set forth herein, or
16 legal guardian.

17 (g) (Blank).

18 (h) If a person filing a petition for modification of a
19 visitation order owes past due child support to a custodial
20 parent in an amount in excess of \$10,000, the person shall post
21 a bond in the amount of past due child support owed before the
22 filing of the petition. The court shall hold the bond in escrow
23 until the modification proceedings pursuant to this Section
24 have been concluded, at which time the bond shall be
25 transmitted to the State Disbursement Unit established under
26 Section 10-26 of the Illinois Public Aid Code for disbursement

1 to the custodial parent.

2 (Source: P.A. 96-331, eff. 1-1-10.)

3 (750 ILCS 5/610) (from Ch. 40, par. 610)

4 Sec. 610. Modification.

5 (a) Unless by stipulation of the parties or except as
6 provided in subsection (a-5), no motion to modify a custody
7 judgment may be made earlier than 2 years after its date,
8 unless the court permits it to be made on the basis of
9 affidavits that there is reason to believe the child's present
10 environment may endanger seriously his physical, mental, moral
11 or emotional health.

12 (a-5) A motion to modify a custody judgment may be made at
13 any time by a party who has been informed of the existence of
14 facts requiring notice to be given under Section 609.5.

15 (b) The court shall not modify a prior custody judgment
16 unless it finds by clear and convincing evidence, upon the
17 basis of facts that have arisen since the prior judgment or
18 that were unknown to the court at the time of entry of the
19 prior judgment, that a change has occurred in the circumstances
20 of the child or his custodian, or in the case of a joint
21 custody arrangement that a change has occurred in the
22 circumstances of the child or either or both parties having
23 custody, and that the modification is necessary to serve the
24 best interest of the child. The existence of facts requiring
25 notice to be given under Section 609.5 of this Act shall be

1 considered a change in circumstance. In the case of joint
2 custody, if the parties agree to a termination of a joint
3 custody arrangement, the court shall so terminate the joint
4 custody and make any modification which is in the child's best
5 interest. The court shall state in its decision specific
6 findings of fact in support of its modification or termination
7 of joint custody if either parent opposes the modification or
8 termination.

9 (c) Attorney fees and costs shall be assessed against a
10 party seeking modification if the court finds that the
11 modification action is vexatious and constitutes harassment.

12 (d) Notice under this Section shall be given as provided in
13 subsections (c) and (d) of Section 601.

14 (e) A party's absence, relocation, or failure to comply
15 with the court's orders on custody, visitation, or parenting
16 time may not, by itself, be sufficient to justify a
17 modification of a prior order if the reason for the absence,
18 relocation, or failure to comply is the party's deployment as a
19 member of the United States Armed Forces.

20 (f) If a person filing a petition for modification of a
21 custody judgment owes past due child support to a custodial
22 parent in an amount in excess of \$10,000, the person shall post
23 a bond in the amount of past due child support owed before the
24 filing of the petition. The court shall hold the bond in escrow
25 until the modification proceedings pursuant to this Section
26 have been concluded, at which time the bond shall be

1 transmitted to the State Disbursement Unit established under
2 Section 10-26 of the Illinois Public Aid Code for disbursement
3 to the custodial parent.

4 (Source: P.A. 96-676, eff. 1-1-10.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.