



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5167

Introduced 2/1/2010, by Rep. Linda Chapa LaVia

SYNOPSIS AS INTRODUCED:

750 ILCS 5/505

from Ch. 40, par. 505

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that for purposes of determining the amount of child support that should be paid, an additional deduction from "net income" is allowed for military allowances, special pays, and allowance pays that are issued, disbursed, granted, or otherwise paid pursuant to specified federal statutes. Effective immediately.

LRB096 17997 AJO 33368 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 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
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 (1) The Court shall determine the minimum amount of
2 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%
6 or more	50%

11 (2) The above guidelines shall be applied in each case
12 unless the court makes a finding that application of the
13 guidelines would be inappropriate, after considering the
14 best interests of the child in light of evidence including
15 but not limited to one or more of the following relevant
16 factors:

17 (a) the financial resources and needs of the child;

18 (b) the financial resources and needs of the
19 custodial parent;

20 (c) the standard of living the child would have
21 enjoyed had the marriage not been dissolved;

22 (d) the physical and emotional condition of the
23 child, and his educational needs; and

24 (e) the financial resources and needs of the
25 non-custodial parent.

26 If the court deviates from the guidelines, the court's

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 (i) Military allowances, special pays, and
5 allowance pays that are issued, disbursed, granted, or
6 otherwise paid pursuant to 37 U.S.C. 301, 37 U.S.C.
7 305, 37 U.S.C. 310, 37 U.S.C. 402, 37 U.S.C.
8 403(a)-(c), (e)-(o), 37 U.S.C. 403b, 37 U.S.C. 407, 37
9 U.S.C. 415, 37 U.S.C. 416, 37 U.S.C. 418, 37 U.S.C.
10 419, and 37 U.S.C. 427.

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

1 income at the time the order for current support is
2 entered.

3 (5) If the net income cannot be determined because of
4 default or any other reason, the court shall order support
5 in an amount considered reasonable in the particular case.
6 The final order in all cases shall state the support level
7 in dollar amounts. However, if the court finds that the
8 child support amount cannot be expressed exclusively as a
9 dollar amount because all or a portion of the payor's net
10 income is uncertain as to source, time of payment, or
11 amount, the court may order a percentage amount of support
12 in addition to a specific dollar amount and enter such
13 other orders as may be necessary to determine and enforce,
14 on a timely basis, the applicable support ordered.

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

1 its admission.

2 (a-5) In an action to enforce an order for support based on
3 the respondent's failure to make support payments as required
4 by the order, notice of proceedings to hold the respondent in
5 contempt for that failure may be served on the respondent by
6 personal service or by regular mail addressed to the
7 respondent's last known address. The respondent's last known
8 address may be determined from records of the clerk of the
9 court, from the Federal Case Registry of Child Support Orders,
10 or by any other reasonable means.

11 (b) Failure of either parent to comply with an order to pay
12 support shall be punishable as in other cases of contempt. In
13 addition to other penalties provided by law the Court may,
14 after finding the parent guilty of contempt, order that the
15 parent be:

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

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

22 (A) work; or

23 (B) conduct a business or other self-employed
24 occupation.

25 The Court may further order any part or all of the earnings
26 of a parent during a sentence of periodic imprisonment paid to

1 the Clerk of the Circuit Court or to the parent having custody
2 or to the guardian having custody of the children of the
3 sentenced parent for the support of said children until further
4 order of the Court.

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

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

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

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

24 With respect to assets which are real property, no order
25 entered under this paragraph shall affect the rights of bona
26 fide purchasers, mortgagees, judgment creditors, or other lien

1 holders who acquire their interests in the property prior to
2 the time a notice of lis pendens pursuant to the Code of Civil
3 Procedure or a copy of the order is placed of record in the
4 office of the recorder of deeds for the county in which the
5 real property is located.

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

26 In addition to the penalties or punishment that may be

1 imposed under this Section, any person whose conduct
2 constitutes a violation of Section 15 of the Non-Support
3 Punishment Act may be prosecuted under that Act, and a person
4 convicted under that Act may be sentenced in accordance with
5 that Act. The sentence may include but need not be limited to a
6 requirement that the person perform community service under
7 Section 50 of that Act or participate in a work alternative
8 program under Section 50 of that Act. A person may not be
9 required to participate in a work alternative program under
10 Section 50 of that Act if the person is currently participating
11 in a work program pursuant to Section 505.1 of this Act.

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

1 accrual of interest as provided in this Section.

2 (c) A one-time charge of 20% is imposable upon the amount
3 of past-due child support owed on July 1, 1988 which has
4 accrued under a support order entered by the court. The charge
5 shall be imposed in accordance with the provisions of Section
6 10-21 of the Illinois Public Aid Code and shall be enforced by
7 the court upon petition.

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

20 (e) When child support is to be paid through the clerk of
21 the court in a county of 1,000,000 inhabitants or less, the
22 order shall direct the obligor to pay to the clerk, in addition
23 to the child support payments, all fees imposed by the county
24 board under paragraph (3) of subsection (u) of Section 27.1 of
25 the Clerks of Courts Act. Unless paid in cash or pursuant to an
26 order for withholding, the payment of the fee shall be by a

1 separate instrument from the support payment and shall be made
2 to the order of the Clerk.

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

21 (g) An order for support shall include a date on which the
22 current support obligation terminates. The termination date
23 shall be no earlier than the date on which the child covered by
24 the order will attain the age of 18. However, if the child will
25 not graduate from high school until after attaining the age of
26 18, then the termination date shall be no earlier than the

1 earlier of the date on which the child's high school graduation
2 will occur or the date on which the child will attain the age
3 of 19. The order for support shall state that the termination
4 date does not apply to any arrearage that may remain unpaid on
5 that date. Nothing in this subsection shall be construed to
6 prevent the court from modifying the order or terminating the
7 order in the event the child is otherwise emancipated.

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

1 General Assembly must contain a statement notifying the parties
2 of the requirements of this subsection. Failure to include the
3 statement in the order for support does not affect the validity
4 of the order or the operation of the provisions of this
5 subsection with regard to the order. This subsection shall not
6 be construed to prevent or affect the establishment or
7 modification of an order for support of a minor child or the
8 establishment or modification of an order for support of a
9 non-minor child or educational expenses under Section 513 of
10 this Act.

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

1 finds that the physical, mental, or emotional health of a party
2 or that of a child, or both, would be seriously endangered by
3 disclosure of the party's address.

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

9 (Source: P.A. 94-90, eff. 1-1-06; 95-331, eff. 8-21-07.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.