

SB1428



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1428

Introduced 2/9/2011, by Sen. Christine Radogno

SYNOPSIS AS INTRODUCED:

750 ILCS 5/503

from Ch. 40, par. 503

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

LRB097 09588 AJO 49725 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 ~~the~~
10 marriage, except the following, which is known as "non-marital
11 property":

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

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

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

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

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

22 (6) property acquired before the marriage;

23 (7) the increase in value of property acquired by a

1 method listed in paragraphs (1) through (6) of this
2 subsection, irrespective of whether the increase results
3 from a contribution of marital property, non-marital
4 property, the personal effort of a spouse, or otherwise,
5 subject to the right of reimbursement provided in
6 subsection (c) of this Section; and

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

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

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

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

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

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

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

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

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

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

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

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

1 transmuted to marital property, subject to the provisions
2 of paragraph (2) of this subsection.

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

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

1 relevant factors, including:

2 (1) the contribution of each party to the acquisition,
3 preservation, or increase or decrease in value of the
4 marital or non-marital property, including (i) any such
5 decrease attributable to a payment deemed to have been an
6 advance from the parties' marital estate under subsection
7 (c-1)(2) of Section 501 and (ii) the contribution of a
8 spouse as a homemaker or to the family unit;

9 (2) the dissipation by each party of the marital or
10 non-marital property;

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

12 (4) the duration of the marriage;

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

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

20 (7) any antenuptial agreement of the parties;

21 (8) the age, health, station, occupation, amount and
22 sources of income, vocational skills, employability,
23 estate, liabilities, and needs of each of the parties;

24 (9) the custodial provisions for any children;

25 (10) whether the apportionment is in lieu of or in
26 addition to maintenance;

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

3 (12) the tax consequences of the property division upon
4 the respective economic circumstances of the parties.

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

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

22 (g) The court if necessary to protect and promote the best
23 interests of the children may set aside a portion of the
24 jointly or separately held estates of the parties in a separate
25 fund or trust for the support, maintenance, education, physical
26 and mental health, and general welfare of any minor, dependent,

1 or incompetent child of the parties. In making a determination
2 under this subsection, the court may consider, among other
3 things, the conviction of a party of any of the offenses set
4 forth in Section 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13,
5 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 if
6 the victim is a child of one or both of the parties, and there
7 is a need for, and cost of, care, healing and counseling for
8 the child who is the victim of the crime.

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

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

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

25 (1) A petition for contribution, if not filed before
26 the final hearing on other issues between the parties,

1 shall be filed no later than 30 days after the closing of
2 proofs in the final hearing or within such other period as
3 the court orders.

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

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

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

24 (5) A contribution award (payable to either the
25 petitioning party or the party's counsel, or jointly, as
26 the court determines) may be in the form of either a set

1 dollar amount or a percentage of fees and costs (or a
2 portion of fees and costs) to be subsequently agreed upon
3 by the petitioning party and counsel or, alternatively,
4 thereafter determined in a hearing pursuant to subsection
5 (c) of Section 508 or previously or thereafter determined
6 in an independent proceeding under subsection (e) of
7 Section 508.

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

11 (Source: P.A. 95-374, eff. 1-1-08; 96-583, eff. 1-1-10.)