

**SB3775**



**97TH GENERAL ASSEMBLY**

**State of Illinois**

**2011 and 2012**

**SB3775**

Introduced 2/10/2012, by Sen. Michael W. Frerichs

**SYNOPSIS AS INTRODUCED:**

750 ILCS 5/505

from Ch. 40, par. 505

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

LRB097 20421 AJ0 65907 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 (1) The Court shall determine the minimum amount of  
2 support by using the following guidelines:

3 Number of Children	Percent of Supporting Party's
	4 Net Income
5 1	20%
6 2	28%
7 3	32%
8 4	40%
9 5	45%
10 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 and life  
17 insurance premiums for life insurance ordered by the  
18 court to reasonably secure child support or support  
19 ordered pursuant to Section 513, any such order to  
20 entail provisions on which the parties agree or,  
21 otherwise, in accordance with the limitations set  
22 forth in subsection 504(f) (1) and (2);

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

25 (h) Expenditures for repayment of debts that  
26 represent reasonable and necessary expenses for the

1 production of income, medical expenditures necessary  
2 to preserve life or health, reasonable expenditures  
3 for the benefit of the child and the other parent,  
4 exclusive of gifts. The court shall reduce net income  
5 in determining the minimum amount of support to be  
6 ordered only for the period that such payments are due  
7 and shall enter an order containing provisions for its  
8 self-executing modification upon termination of such  
9 payment period;

10 (i) Foster care payments paid by the Department of  
11 Children and Family Services for providing licensed  
12 foster care to a foster child.

13 (4) In cases where the court order provides for  
14 health/hospitalization insurance coverage pursuant to  
15 Section 505.2 of this Act, the premiums for that insurance,  
16 or that portion of the premiums for which the supporting  
17 party is responsible in the case of insurance provided  
18 through an employer's health insurance plan where the  
19 employer pays a portion of the premiums, shall be  
20 subtracted from net income in determining the minimum  
21 amount of support to be ordered.

22 (4.5) In a proceeding for child support following  
23 dissolution of the marriage by a court that lacked personal  
24 jurisdiction over the absent spouse, and in which the court  
25 is requiring payment of support for the period before the  
26 date an order for current support is entered, there is a

1           rebuttable presumption that the supporting party's net  
2           income for the prior period was the same as his or her net  
3           income at the time the order for current support is  
4           entered.

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

17          (6) If (i) the non-custodial parent was properly served  
18          with a request for discovery of financial information  
19          relating to the non-custodial parent's ability to provide  
20          child support, (ii) the non-custodial parent failed to  
21          comply with the request, despite having been ordered to do  
22          so by the court, and (iii) the non-custodial parent is not  
23          present at the hearing to determine support despite having  
24          received proper notice, then any relevant financial  
25          information concerning the non-custodial parent's ability  
26          to provide child support that was obtained pursuant to

1 subpoena and proper notice shall be admitted into evidence  
2 without the need to establish any further foundation for  
3 its admission.

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

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

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

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

24 (A) work; or

25 (B) conduct a business or other self-employed  
26 occupation.

1           The Court may further order any part or all of the earnings  
2 of a parent during a sentence of periodic imprisonment paid to  
3 the Clerk of the Circuit Court or to the parent having custody  
4 or to the guardian having custody of the children of the  
5 sentenced parent for the support of said children until further  
6 order of the Court.

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

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

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

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

26           With respect to assets which are real property, no order



1 entered under this paragraph shall affect the rights of bona  
2 fide purchasers, mortgagees, judgment creditors, or other lien  
3 holders who acquire their interests in the property prior to  
4 the time a notice of lis pendens pursuant to the Code of Civil  
5 Procedure or a copy of the order is placed of record in the  
6 office of the recorder of deeds for the county in which the  
7 real property is located.

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

1 parent.

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

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

1 Procedure. Failure to include the statement in the order for  
2 support does not affect the validity of the order or the  
3 accrual of interest as provided in this Section.

4 (c) A one-time charge of 20% is imposable upon the amount  
5 of past-due child support owed on July 1, 1988 which has  
6 accrued under a support order entered by the court. The charge  
7 shall be imposed in accordance with the provisions of Section  
8 10-21 of the Illinois Public Aid Code and shall be enforced by  
9 the court upon petition.

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

23 (e) When child support is to be paid through the clerk of  
24 the court in a county of 1,000,000 inhabitants or less, the  
25 order shall direct the obligor to pay to the clerk, in addition  
26 to the child support payments, all fees imposed by the county

1 board under paragraph (3) of subsection (u) of Section 27.1 of  
2 the Clerks of Courts Act. Unless paid in cash or pursuant to an  
3 order for withholding, the payment of the fee shall be by a  
4 separate instrument from the support payment and shall be made  
5 to the order of the Clerk.

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

24 (g) An order for support shall include a date on which the  
25 current support obligation terminates. The termination date  
26 shall be no earlier than the date on which the child covered by

1 the order will attain the age of 18. However, if the child will  
2 not graduate from high school until after attaining the age of  
3 18, then the termination date shall be no earlier than the  
4 earlier of the date on which the child's high school graduation  
5 will occur or the date on which the child will attain the age  
6 of 19. The order for support shall state that the termination  
7 date does not apply to any arrearage that may remain unpaid on  
8 that date. Nothing in this subsection shall be construed to  
9 prevent the court from modifying the order or terminating the  
10 order in the event the child is otherwise emancipated.

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

1 limited to income withholding under the Income Withholding for  
2 Support Act. Each order for support entered or modified on or  
3 after the effective date of this amendatory Act of the 93rd  
4 General Assembly must contain a statement notifying the parties  
5 of the requirements of this subsection. Failure to include the  
6 statement in the order for support does not affect the validity  
7 of the order or the operation of the provisions of this  
8 subsection with regard to the order. This subsection shall not  
9 be construed to prevent or affect the establishment or  
10 modification of an order for support of a minor child or the  
11 establishment or modification of an order for support of a  
12 non-minor child or educational expenses under Section 513 of  
13 this Act.

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

1 this Section shall also include a provision requiring the  
2 obligor and obligee parents to advise each other of a change in  
3 residence within 5 days of the change except when the court  
4 finds that the physical, mental, or emotional health of a party  
5 or that of a child, or both, would be seriously endangered by  
6 disclosure of the party's address.

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

12 (Source: P.A. 96-1134, eff. 7-21-10; 97-186, eff. 7-22-11;  
13 97-608, eff. 1-1-12; revised 10-4-11.)