



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB2437

Introduced 1/30/2018, by Sen. Chuck Weaver

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/503

from Ch. 40, par. 503

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that as to any policy of life insurance insuring the life of either spouse, or any interest in such policy, that constitutes non-marital property, or constitutes marital property but was not specifically allocated between the parties as provided in the Act, a beneficiary designation made by or on behalf of the decedent prior to the entry of the judgment of dissolution or declaration of invalidity of marriage that provides for the payment or transfer at death of any of the proceeds of the policy to or for the benefit of the decedent's former spouse is void as of the time of the judgment of dissolution or declaration of invalidity of marriage and the policy proceeds shall pass as if the decedent's former spouse predeceased the decedent. Provides that a life insurance company that insures the life of either spouse or holds a policy in which either spouse has an interest will not be held liable for distributing the proceeds or transferring an interest in such a policy if it is disburses the proceeds or transfers the interest prior to the actual receipt of proof of the judgment of dissolution or declaration of invalidity of marriage.

LRB100 16507 HEP 31639 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 503 as follows:

6 (750 ILCS 5/503) (from Ch. 40, par. 503)

7 Sec. 503. Disposition of property and debts.

8 (a) For purposes of this Act, "marital property" means all  
9 property, including debts and other obligations, acquired by  
10 either spouse subsequent to the marriage, except the following,  
11 which is known as "non-marital property":

12 (1) property acquired by gift, legacy or descent or  
13 property acquired in exchange for such property;

14 (2) property acquired in exchange for property  
15 acquired before the marriage;

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, including a premarital agreement or a postnuptial  
20 agreement;

21 (5) any judgment or property obtained by judgment  
22 awarded to a spouse from the other spouse except, however,  
23 when a spouse is required to sue the other spouse in order

1 to obtain insurance coverage or otherwise recover from a  
2 third party and the recovery is directly related to amounts  
3 advanced by the marital estate, the judgment shall be  
4 considered marital property;

5 (6) property acquired before the marriage, except as it  
6 relates to retirement plans that may have both marital and  
7 non-marital characteristics;

8 (6.5) all property acquired by a spouse by the sole use  
9 of non-marital property as collateral for a loan that then  
10 is used to acquire property during the marriage; to the  
11 extent that the marital estate repays any portion of the  
12 loan, it shall be considered a contribution from the  
13 marital estate to the non-marital estate subject to  
14 reimbursement;

15 (7) the increase in value of non-marital property,  
16 irrespective of whether the increase results from a  
17 contribution of marital property, non-marital property,  
18 the personal effort of a spouse, or otherwise, subject to  
19 the right of reimbursement provided in subsection (c) of  
20 this Section; and

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

24 Property acquired prior to a marriage that would otherwise  
25 be non-marital property shall not be deemed to be marital  
26 property solely because the property was acquired in

1 contemplation of marriage.

2 The court shall make specific factual findings as to its  
3 classification of assets as marital or non-marital property,  
4 values, and other factual findings supporting its property  
5 award.

6 (b)(1) For purposes of distribution of property, all  
7 property acquired by either spouse after the marriage and  
8 before a judgment of dissolution of marriage or declaration of  
9 invalidity of marriage is presumed marital property. This  
10 presumption includes non-marital property transferred into  
11 some form of co-ownership between the spouses, regardless of  
12 whether title is held individually or by the spouses in some  
13 form of co-ownership such as joint tenancy, tenancy in common,  
14 tenancy by the entirety, or community property. The presumption  
15 of marital property is overcome by showing through clear and  
16 convincing evidence that the property was acquired by a method  
17 listed in subsection (a) of this Section or was done for estate  
18 or tax planning purposes or for other reasons that establish  
19 that a transfer between spouses was not intended to be a gift.

20 (2) For purposes of distribution of property pursuant to  
21 this Section, all pension benefits (including pension benefits  
22 under the Illinois Pension Code, defined benefit plans, defined  
23 contribution plans and accounts, individual retirement  
24 accounts, and non-qualified plans) acquired by or participated  
25 in by either spouse after the marriage and before a judgment of  
26 dissolution of marriage or legal separation or declaration of

1     invalidity of the marriage are presumed to be marital property.  
2     A spouse may overcome the presumption that these pension  
3     benefits are marital property by showing through clear and  
4     convincing evidence that the pension benefits were acquired by  
5     a method listed in subsection (a) of this Section. The right to  
6     a division of pension benefits in just proportions under this  
7     Section is enforceable under Section 1-119 of the Illinois  
8     Pension Code.

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

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

19             (3) For purposes of distribution of property under this  
20     Section, all stock options and restricted stock or similar form  
21     of benefit granted to either spouse after the marriage and  
22     before a judgment of dissolution of marriage or legal  
23     separation or declaration of invalidity of marriage, whether  
24     vested or non-vested or whether their value is ascertainable,  
25     are presumed to be marital property. This presumption of  
26     marital property is overcome by a showing that the stock

1 options or restricted stock or similar form of benefit were  
2 acquired by a method listed in subsection (a) of this Section.  
3 The court shall allocate stock options and restricted stock or  
4 similar form of benefit between the parties at the time of the  
5 judgment of dissolution of marriage or declaration of  
6 invalidity of marriage recognizing that the value of the stock  
7 options and restricted stock or similar form of benefit may not  
8 be then determinable and that the actual division of the  
9 options may not occur until a future date. In making the  
10 allocation between the parties, the court shall consider, in  
11 addition to the factors set forth in subsection (d) of this  
12 Section, the following:

13 (i) All circumstances underlying the grant of the stock  
14 option and restricted stock or similar form of benefit  
15 including but not limited to the vesting schedule, whether  
16 the grant was for past, present, or future efforts, whether  
17 the grant is designed to promote future performance or  
18 employment, or any combination thereof.

19 (ii) The length of time from the grant of the option to  
20 the time the option is exercisable.

21 (b-5)(1) As to any existing policy of life insurance  
22 insuring the life of either spouse, or any interest in such  
23 policy, that constitutes marital property, whether whole life,  
24 term life, group term life, universal life, or other form of  
25 life insurance policy, and whether or not the value is  
26 ascertainable, the court shall allocate ownership, death

1 benefits or the right to assign death benefits, and the  
2 obligation for premium payments, if any, equitably between the  
3 parties at the time of the judgment for dissolution or  
4 declaration of invalidity of marriage.

5 (2) As to any existing policy of life insurance insuring  
6 the life of either spouse, or any interest in such policy, that  
7 constitutes non-marital property, or constitutes marital  
8 property but was not specifically allocated between the parties  
9 as provided in paragraph (1) of this subsection, a beneficiary  
10 designation made by or on behalf of the decedent prior to the  
11 entry of the judgment of dissolution or declaration of  
12 invalidity of marriage that provides for the payment or  
13 transfer at death of any of the proceeds of the policy to or  
14 for the benefit of the decedent's former spouse is void as of  
15 the time of the judgment of dissolution or declaration of  
16 invalidity of marriage and the policy proceeds shall pass as if  
17 the decedent's former spouse predeceased the decedent. The life  
18 insurance company insuring the life of either spouse or holding  
19 a policy in which either spouse has an interest shall not be  
20 liable for distributing the proceeds or transferring an  
21 interest in such a policy if it disburses the proceeds or  
22 transfers the interest prior to the actual receipt of proof of  
23 the judgment of dissolution or declaration of invalidity of  
24 marriage.

25 (c) Commingled marital and non-marital property shall be  
26 treated in the following manner, unless otherwise agreed by the

1 spouses:

2 (1) (A) If marital and non-marital property are  
3 commingled by one estate being contributed into the other,  
4 the following shall apply:

5 (i) If the contributed property loses its  
6 identity, the contributed property transmutes to the  
7 estate receiving the property, subject to the  
8 provisions of paragraph (2) of this subsection (c).

9 (ii) If the contributed property retains its  
10 identity, it does not transmute and remains property of  
11 the contributing estate.

12 (B) If marital and non-marital property are commingled  
13 into newly acquired property resulting in a loss of  
14 identity of the contributing estates, the commingled  
15 property shall be deemed transmuted to marital property,  
16 subject to the provisions of paragraph (2) of this  
17 subsection (c).

18 (2) (A) When one estate of property makes a contribution  
19 to another estate of property, the contributing estate  
20 shall be reimbursed from the estate receiving the  
21 contribution notwithstanding any transmutation. No such  
22 reimbursement shall be made with respect to a contribution  
23 that is not traceable by clear and convincing evidence or  
24 that was a gift. The court may provide for reimbursement  
25 out of the marital property to be divided or by imposing a  
26 lien against the non-marital property that received the



1 contribution.

2 (B) When a spouse contributes personal effort to  
3 non-marital property, it shall be deemed a contribution  
4 from the marital estate, which shall receive reimbursement  
5 for the efforts if the efforts are significant and result  
6 in substantial appreciation to the non-marital property  
7 except that if the marital estate reasonably has been  
8 compensated for his or her efforts, it shall not be deemed  
9 a contribution to the marital estate and there shall be no  
10 reimbursement to the marital estate. The court may provide  
11 for reimbursement out of the marital property to be divided  
12 or by imposing a lien against the non-marital property  
13 which received the contribution.

14 (d) In a proceeding for dissolution of marriage or  
15 declaration of invalidity of marriage, or in a proceeding for  
16 disposition of property following dissolution of marriage by a  
17 court that lacked personal jurisdiction over the absent spouse  
18 or lacked jurisdiction to dispose of the property, the court  
19 shall assign each spouse's non-marital property to that spouse.  
20 It also shall divide the marital property without regard to  
21 marital misconduct in just proportions considering all  
22 relevant factors, including:

23 (1) each party's contribution to the acquisition,  
24 preservation, or increase or decrease in value of the  
25 marital or non-marital property, including (i) any  
26 decrease attributable to an advance from the parties'

1 marital estate under subsection (c-1)(2) of Section 501;  
2 (ii) the contribution of a spouse as a homemaker or to the  
3 family unit; and (iii) whether the contribution is after  
4 the commencement of a proceeding for dissolution of  
5 marriage or declaration of invalidity of marriage;

6 (2) the dissipation by each party of the marital  
7 property, provided that a party's claim of dissipation is  
8 subject to the following conditions:

9 (i) a notice of intent to claim dissipation shall  
10 be given no later than 60 days before trial or 30 days  
11 after discovery closes, whichever is later;

12 (ii) the notice of intent to claim dissipation  
13 shall contain, at a minimum, a date or period of time  
14 during which the marriage began undergoing an  
15 irretrievable breakdown, an identification of the  
16 property dissipated, and a date or period of time  
17 during which the dissipation occurred;

18 (iii) a certificate or service of the notice of  
19 intent to claim dissipation shall be filed with the  
20 clerk of the court and be served pursuant to applicable  
21 rules;

22 (iv) no dissipation shall be deemed to have  
23 occurred prior to 3 years after the party claiming  
24 dissipation knew or should have known of the  
25 dissipation, but in no event prior to 5 years before  
26 the filing of the petition for dissolution of marriage;

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

2 (4) the duration of the marriage;

3 (5) the relevant economic circumstances of each spouse  
4 when the division of property is to become effective,  
5 including the desirability of awarding the family home, or  
6 the right to live therein for reasonable periods, to the  
7 spouse having the primary residence of the children;

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

10 (7) any prenuptial or postnuptial agreement of the  
11 parties;

12 (8) the age, health, station, occupation, amount and  
13 sources of income, vocational skills, employability,  
14 estate, liabilities, and needs of each of the parties;

15 (9) the custodial provisions for any children;

16 (10) whether the apportionment is in lieu of or in  
17 addition to maintenance;

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

20 (12) the tax consequences of the property division upon  
21 the respective economic circumstances of the parties.

22 (e) Each spouse has a species of common ownership in the  
23 marital property which vests at the time dissolution  
24 proceedings are commenced and continues only during the  
25 pendency of the action. Any such interest in marital property  
26 shall not encumber that property so as to restrict its

1 transfer, assignment or conveyance by the title holder unless  
2 such title holder is specifically enjoined from making such  
3 transfer, assignment or conveyance.

4 (f) In a proceeding for dissolution of marriage or  
5 declaration of invalidity of marriage or in a proceeding for  
6 disposition of property following dissolution of marriage by a  
7 court that lacked personal jurisdiction over the absent spouse  
8 or lacked jurisdiction to dispose of the property, the court,  
9 in determining the value of the marital and non-marital  
10 property for purposes of dividing the property, has the  
11 discretion to use the date of the trial or such other date as  
12 agreed upon by the parties, or ordered by the court within its  
13 discretion, for purposes of determining the value of assets or  
14 property.

15 (g) The court if necessary to protect and promote the best  
16 interests of the children may set aside a portion of the  
17 jointly or separately held estates of the parties in a separate  
18 fund or trust for the support, maintenance, education, physical  
19 and mental health, and general welfare of any minor, dependent,  
20 or incompetent child of the parties. In making a determination  
21 under this subsection, the court may consider, among other  
22 things, the conviction of a party of any of the offenses set  
23 forth in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,  
24 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13, 12-14, 12-14.1,  
25 12-15, or 12-16, or Section 12-3.05 except for subdivision  
26 (a) (4) or (g) (1), of the Criminal Code of 1961 or the Criminal

1 Code of 2012 if the victim is a child of one or both of the  
2 parties, and there is a need for, and cost of, care, healing  
3 and counseling for the child who is the victim of the crime.

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

10 (i) The court may make such judgments affecting the marital  
11 property as may be just and may enforce such judgments by  
12 ordering a sale of marital property, with proceeds therefrom to  
13 be applied as determined by the court.

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

20 (1) A petition for contribution, if not filed before  
21 the final hearing on other issues between the parties,  
22 shall be filed no later than 14 days after the closing of  
23 proofs in the final hearing or within such other period as  
24 the court orders.

25 (2) Any award of contribution to one party from the  
26 other party shall be based on the criteria for division of

1 marital property under this Section 503 and, if maintenance  
2 has been awarded, on the criteria for an award of  
3 maintenance under Section 504.

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

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

19 (5) A contribution award (payable to either the  
20 petitioning party or the party's counsel, or jointly, as  
21 the court determines) may be in the form of either a set  
22 dollar amount or a percentage of fees and costs (or a  
23 portion of fees and costs) to be subsequently agreed upon  
24 by the petitioning party and counsel or, alternatively,  
25 thereafter determined in a hearing pursuant to subsection  
26 (c) of Section 508 or previously or thereafter determined

1 in an independent proceeding under subsection (e) of  
2 Section 508.

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

6 (k) In determining the value of assets or property under  
7 this Section, the court shall employ a fair market value  
8 standard. The date of valuation for the purposes of division of  
9 assets shall be the date of trial or such other date as agreed  
10 by the parties or ordered by the court, within its discretion.  
11 If the court grants a petition brought under Section 2-1401 of  
12 the Code of Civil Procedure, then the court has the discretion  
13 to use the date of the trial or such other date as agreed upon  
14 by the parties, or ordered by the court within its discretion,  
15 for purposes of determining the value of assets or property.

16 (l) The court may seek the advice of financial experts or  
17 other professionals, whether or not employed by the court on a  
18 regular basis. The advice given shall be in writing and made  
19 available by the court to counsel. Counsel may examine as a  
20 witness any professional consulted by the court designated as  
21 the court's witness. Professional personnel consulted by the  
22 court are subject to subpoena for the purposes of discovery,  
23 trial, or both. The court shall allocate the costs and fees of  
24 those professional personnel between the parties based upon the  
25 financial ability of each party and any other criteria the  
26 court considers appropriate, and the allocation is subject to

1 reallocation under subsection (a) of Section 508. Upon the  
2 request of any party or upon the court's own motion, the court  
3 may conduct a hearing as to the reasonableness of those fees  
4 and costs.

5 (m) The changes made to this Section by Public Act 97-941  
6 apply only to petitions for dissolution of marriage filed on or  
7 after January 1, 2013 (the effective date of Public Act  
8 97-941).

9 (n) If the court finds that a companion animal of the  
10 parties is a marital asset, it shall allocate the sole or joint  
11 ownership of and responsibility for a companion animal of the  
12 parties. In issuing an order under this subsection, the court  
13 shall take into consideration the well-being of the companion  
14 animal. As used in this Section, "companion animal" does not  
15 include a service animal as defined in Section 2.01c of the  
16 Humane Care for Animals Act.

17 (Source: P.A. 99-78, eff. 7-20-15; 99-90, eff. 1-1-16; 99-763,  
18 eff. 1-1-17; 100-422, eff. 1-1-18.)