



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0233

Introduced 1/19/2007, by Rep. Monique D. Davis

SYNOPSIS AS INTRODUCED:

750 ILCS 5/103	from Ch. 40, par. 103
750 ILCS 5/302	from Ch. 40, par. 302
750 ILCS 5/304	from Ch. 40, par. 304
750 ILCS 5/403	from Ch. 40, par. 403
750 ILCS 5/501	from Ch. 40, par. 501
750 ILCS 5/511	from Ch. 40, par. 511
750 ILCS 5/604	from Ch. 40, par. 604
750 ILCS 5/606	from Ch. 40, par. 606

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a party to an action for declaration of invalidity of marriage, dissolution of marriage, or legal separation may demand a trial by jury in accordance with the Code of Civil Procedure. Provides that the grounds for declaration of invalidity of marriage, dissolution of marriage, or legal separation shall be tried by the court without a jury. Provides that uncontested issues shall not be tried by a jury. Provides that proceedings for temporary relief and all post-judgment proceedings to enforce or modify a judgment of dissolution of marriage, legal separation, or invalidity of marriage shall be heard by the court without a jury. Provides that, in an action tried by the court without a jury, the court may interview a child of the marriage in chambers. Provides that, where the issue of custody is tried by a court with a jury, the court shall determine questions of law and the jury shall determine questions of fact.

LRB095 04636 AJ0 24694 b

1 AN ACT in relation to 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 103, 302, 304,
6 403, 501, 511, 604, and 606 as follows:

7 (750 ILCS 5/103) (from Ch. 40, par. 103)

8 Sec. 103. Trial by Jury.) There shall be no trial by jury
9 under this Act, except where authorized in this Act.

10 (Source: P.A. 80-923.)

11 (750 ILCS 5/302) (from Ch. 40, par. 302)

12 Sec. 302. Time of Commencement.) (a) A declaration of
13 invalidity under paragraphs (1) through (3) of Section 301 may
14 be sought by any of the following persons and must be commenced
15 within the times specified:

16 (1) for any of the reasons set forth in paragraph (1) of
17 Section 301, by either party or by the legal representative of
18 the party who lacked capacity to consent, no later than 90 days
19 after the petitioner obtained knowledge of the described
20 condition;

21 (2) for the reason set forth in paragraph (2) of Section
22 301, by either party, no later than one year after the

1 petitioner obtained knowledge of the described condition;

2 (3) for the reason set forth in paragraph (3) of Section
3 301, by the underaged party, his parent or guardian, prior to
4 the time the underaged party reaches the age at which he could
5 have married without needing to satisfy the omitted
6 requirement.

7 (b) In no event may a declaration of invalidity of marriage
8 be sought after the death of either party to the marriage under
9 subsections (1), (2) and (3) of Section 301.

10 (c) A declaration of invalidity for the reason set forth in
11 paragraph (4) of Section 301 may be sought by either party, the
12 legal spouse in case of a bigamous marriage, the State's
13 Attorney or a child of either party, at any time not to exceed
14 3 years following the death of the first party to die.

15 (d) Any party to a proceeding may demand a trial by jury in
16 accordance with the Code of Civil Procedure. The grounds for
17 declaration of invalidity of marriage shall be tried by the
18 court without a jury.

19 (Source: P.A. 80-923.)

20 (750 ILCS 5/304) (from Ch. 40, par. 304)

21 Sec. 304. Retroactivity.) Unless the court finds, after a
22 consideration of all relevant circumstances, including the
23 effect of a retroactive judgment on third parties, that the
24 interests of justice would be served by making the judgment not
25 retroactive, it shall declare the marriage invalid as of the

1 date of the marriage. The provisions of this Act relating to
2 property rights of the spouses, maintenance, support and
3 custody of children on dissolution of marriage are applicable
4 to non-retroactive judgments of invalidity of marriage only. If
5 the court declares a judgment of invalidity of marriage to be
6 non-retroactive and a party has demanded a trial by jury,
7 contested issues relating to property rights of the spouses,
8 maintenance, support, and custody of children shall be tried by
9 the court with a jury.

10 (Source: P.A. 80-923.)

11 (750 ILCS 5/403) (from Ch. 40, par. 403)

12 Sec. 403. Pleadings - Commencement - Abolition of Existing
13 Defenses - Procedure.)

14 (a) The petition for dissolution of marriage or legal
15 separation shall be verified and shall minimally set forth:

16 (1) the age, occupation and residence of each party and
17 his length of residence in this State;

18 (2) the date of the marriage and the place at which it
19 was registered;

20 (2.5) whether a petition for dissolution of marriage is
21 pending in any other county or state;

22 (3) that the jurisdictional requirements of subsection
23 (a) of Section 401 have been met and that there exist
24 grounds for dissolution of marriage or legal separation.

25 The petitioner need only allege the name of the particular

1 grounds relied upon, which shall constitute a legally
2 sufficient allegation of the grounds; and the respondent
3 shall be entitled to demand a bill of particulars prior to
4 trial setting forth the facts constituting the grounds, if
5 he so chooses. The petition must also contain:

6 (4) the names, ages and addresses of all living
7 children of the marriage and whether the wife is pregnant;

8 (5) any arrangements as to support, custody and
9 visitation of the children and maintenance of a spouse; and

10 (6) the relief sought.

11 (b) Either or both parties to the marriage may initiate the
12 proceeding. Either party may demand a trial by jury in
13 accordance with the Code of Civil Procedure.

14 (c) The previously existing defense of recrimination is
15 abolished. The defense of condonation is abolished only as to
16 condonations occurring after a proceeding is filed under this
17 Act and after the court has acquired jurisdiction over the
18 respondent.

19 (d) The court may join additional parties necessary and
20 proper for the exercise of its authority under this Act.

21 (e) Contested trials shall be on a bifurcated basis with
22 the grounds being tried first. The grounds shall be tried by
23 the court without a jury. Upon the court determining that the
24 grounds exist, the court may allow additional time for the
25 parties to settle amicably the remaining issues before resuming
26 the trial, or may proceed immediately to trial on the remaining

1 issues. In cases tried by the court without a jury where the
2 grounds are uncontested and proved as in cases of default, the
3 trial on all other remaining issues shall proceed immediately,
4 if so ordered by the court or if the parties so stipulate,
5 issue on the pleadings notwithstanding. In cases tried by the
6 court with a jury, the trial on all other remaining issues
7 shall proceed after the court has impaneled the jury.
8 Uncontested issues shall not be submitted to the jury.

9 (f) Even if no bill of particulars shall have been filed
10 demanding the specification of the particular facts underlying
11 the allegation of the grounds, the court shall nonetheless
12 require proper and sufficient proof of the existence of the
13 grounds.

14 (Source: P.A. 90-174, eff. 10-1-97.)

15 (750 ILCS 5/501) (from Ch. 40, par. 501)

16 Sec. 501. Temporary Relief.) In all proceedings under this
17 Act, temporary relief shall be as follows:

18 (a) Either party may move for:

19 (1) temporary maintenance or temporary support of a
20 child of the marriage entitled to support, accompanied by
21 an affidavit as to the factual basis for the relief
22 requested;

23 (2) a temporary restraining order or preliminary
24 injunction, accompanied by affidavit showing a factual
25 basis for any of the following relief:

1 (i) restraining any person from transferring,
2 encumbering, concealing or otherwise disposing of any
3 property except in the usual course of business or for
4 the necessities of life, and, if so restrained,
5 requiring him to notify the moving party and his
6 attorney of any proposed extraordinary expenditures
7 made after the order is issued;

8 (ii) enjoining a party from removing a child from
9 the jurisdiction of the court;

10 (iii) enjoining a party from striking or
11 interfering with the personal liberty of the other
12 party or of any child; or

13 (iv) providing other injunctive relief proper in
14 the circumstances; or

15 (3) other appropriate temporary relief.

16 (b) The court may issue a temporary restraining order
17 without requiring notice to the other party only if it finds,
18 on the basis of the moving affidavit or other evidence, that
19 irreparable injury will result to the moving party if no order
20 is issued until the time for responding has elapsed.

21 (c) A response hereunder may be filed within 21 days after
22 service of notice of motion or at the time specified in the
23 temporary restraining order.

24 (c-1) As used in this subsection (c-1), "interim attorney's
25 fees and costs" means attorney's fees and costs assessed from
26 time to time while a case is pending, in favor of the

1 petitioning party's current counsel, for reasonable fees and
2 costs either already incurred or to be incurred, and "interim
3 award" means an award of interim attorney's fees and costs.
4 Interim awards shall be governed by the following:

5 (1) Except for good cause shown, a proceeding for (or
6 relating to) interim attorney's fees and costs shall be
7 nonevidentiary, summary in nature, and expeditious. When a
8 party files a petition for interim attorney's fees and
9 costs supported by one or more affidavits that delineate
10 relevant factors, the court (or a hearing officer) shall
11 assess an interim award after affording the opposing party
12 a reasonable opportunity to file a responsive pleading. A
13 responsive pleading shall set out the amount of each
14 retainer or other payment or payments, or both, previously
15 paid to the responding party's counsel by or on behalf of
16 the responding party. In assessing an interim award, the
17 court shall consider all relevant factors, as presented,
18 that appear reasonable and necessary, including:

19 (A) the income and property of each party,
20 including alleged marital property within the sole
21 control of one party and alleged non-marital property
22 within access to a party;

23 (B) the needs of each party;

24 (C) the realistic earning capacity of each party;

25 (D) any impairment to present earning capacity of
26 either party, including age and physical and emotional

1 health;

2 (E) the standard of living established during the
3 marriage;

4 (F) the degree of complexity of the issues,
5 including custody, valuation or division (or both) of
6 closely held businesses, and tax planning, as well as
7 reasonable needs for expert investigations or expert
8 witnesses, or both;

9 (G) each party's access to relevant information;

10 (H) the amount of the payment or payments made or
11 reasonably expected to be made to the attorney for the
12 other party; and

13 (I) any other factor that the court expressly finds
14 to be just and equitable.

15 (2) Any assessment of an interim award (including one
16 pursuant to an agreed order) shall be without prejudice to
17 any final allocation and without prejudice as to any claim
18 or right of either party or any counsel of record at the
19 time of the award. Any such claim or right may be presented
20 by the appropriate party or counsel at a hearing on
21 contribution under subsection (j) of Section 503 or a
22 hearing on counsel's fees under subsection (c) of Section
23 508. Unless otherwise ordered by the court at the final
24 hearing between the parties or in a hearing under
25 subsection (j) of Section 503 or subsection (c) of Section
26 508, interim awards, as well as the aggregate of all other

1 payments by each party to counsel and related payments to
2 third parties, shall be deemed to have been advances from
3 the parties' marital estate. Any portion of any interim
4 award constituting an overpayment shall be remitted back to
5 the appropriate party or parties, or, alternatively, to
6 successor counsel, as the court determines and directs,
7 after notice.

8 (3) In any proceeding under this subsection (c-1), the
9 court (or hearing officer) shall assess an interim award
10 against an opposing party in an amount necessary to enable
11 the petitioning party to participate adequately in the
12 litigation, upon findings that the party from whom
13 attorney's fees and costs are sought has the financial
14 ability to pay reasonable amounts and that the party
15 seeking attorney's fees and costs lacks sufficient access
16 to assets or income to pay reasonable amounts. In
17 determining an award, the court shall consider whether
18 adequate participation in the litigation requires
19 expenditure of more fees and costs for a party that is not
20 in control of assets or relevant information. Except for
21 good cause shown, an interim award shall not be less than
22 payments made or reasonably expected to be made to the
23 counsel for the other party. If the court finds that both
24 parties lack financial ability or access to assets or
25 income for reasonable attorney's fees and costs, the court
26 (or hearing officer) shall enter an order that allocates

1 available funds for each party's counsel, including
2 retainers or interim payments, or both, previously paid, in
3 a manner that achieves substantial parity between the
4 parties.

5 (4) The changes to this Section 501 made by this
6 amendatory Act of 1996 apply to cases pending on or after
7 June 1, 1997, except as otherwise provided in Section 508.

8 (d) A temporary order entered under this Section:

9 (1) does not prejudice the rights of the parties or the
10 child which are to be adjudicated at subsequent hearings in
11 the proceeding;

12 (2) may be revoked or modified before final judgment,
13 on a showing by affidavit and upon hearing; and

14 (3) terminates when the final judgment is entered or
15 when the petition for dissolution of marriage or legal
16 separation or declaration of invalidity of marriage is
17 dismissed.

18 (e) All proceedings for temporary relief shall be heard by
19 the court without a jury.

20 (Source: P.A. 89-712, eff. 6-1-97.)

21 (750 ILCS 5/511) (from Ch. 40, par. 511)

22 Sec. 511. Procedure. A judgment of dissolution or of legal
23 separation or of declaration of invalidity of marriage may be
24 enforced or modified by order of court pursuant to petition.

25 (a) Any judgment entered within this State may be enforced

1 or modified in the judicial circuit wherein such judgment was
2 entered or last modified by the filing of a petition with
3 notice mailed to the respondent at his last known address, or
4 by the issuance of summons to the respondent. If neither party
5 continues to reside in the county wherein such judgment was
6 entered or last modified, the court on the motion of either
7 party or on its own motion may transfer a post-judgment
8 proceeding, including a proceeding under the Income
9 Withholding for Support Act, to another county or judicial
10 circuit, as appropriate, where either party resides. If the
11 post-judgment proceeding is with respect to maintenance or
12 support, any such transfer shall be to the county or judicial
13 circuit wherein the recipient or proposed recipient of such
14 maintenance or support resides.

15 (b) In any post-judgment proceeding to enforce or modify in
16 one judicial circuit the judgment of another judicial circuit
17 of this State, the moving party shall commence the proceeding
18 by filing a petition establishing the judgment and attaching a
19 copy of the judgment as a part of the petition. The parties
20 shall continue to be designated as in the original proceeding.
21 Notice of the filing of the petition shall be mailed to the
22 clerk of the court wherein the judgment was entered and last
23 modified in the same manner as notice is mailed when
24 registering a foreign judgment. Summons shall be served as
25 provided by law.

26 (c) In any post-judgment proceeding to enforce or modify

1 the judgment of another state, the moving party shall commence
2 the proceeding by filing a petition to enroll that judgment,
3 attaching a copy thereof as a part of the petition and proceed
4 as provided for in paragraph (b) hereof.

5 (d) In any post-judgment proceeding to enforce a judgment
6 or order for payment of maintenance or support, including a
7 proceeding under the Income Withholding for Support Act, where
8 the terms of such judgment or order provide that payments of
9 such maintenance or support are to be made to the clerk of the
10 court and where neither party continues to reside in the county
11 wherein such judgment or order was entered or last modified,
12 the court on the motion of either party or on its own motion
13 may transfer the collection of the maintenance or support to
14 the clerk of the court in another county or judicial circuit,
15 as appropriate, wherein the recipient of the maintenance or
16 support payments resides.

17 (e) All post-judgment proceedings to enforce or modify a
18 judgment of dissolution, legal separation, or invalidity of
19 marriage shall be heard by the court without a jury.

20 (Source: P.A. 90-673, eff. 1-1-99.)

21 (750 ILCS 5/604) (from Ch. 40, par. 604)

22 Sec. 604. Interviews.) (a) In a case tried by the court
23 without a jury, the ~~The~~ court may interview the child in
24 chambers to ascertain the child's wishes as to his custodian
25 and as to visitation. Counsel shall be present at the interview

1 unless otherwise agreed upon by the parties. The court shall
2 cause a court reporter to be present who shall make a complete
3 record of the interview instantaneously to be part of the
4 record in the case.

5 (b) The court may seek the advice of professional
6 personnel, whether or not employed by the court on a regular
7 basis. The advice given shall be in writing and made available
8 by the court to counsel. Counsel may examine, as a witness, any
9 professional personnel consulted by the court, designated as a
10 court's witness.

11 (Source: P.A. 80-923.)

12 (750 ILCS 5/606) (from Ch. 40, par. 606)

13 Sec. 606. Hearings.

14 (a) Custody proceedings shall receive priority in being set
15 for hearing.

16 (b) The court may tax as costs the payment of necessary
17 travel and other expenses incurred by any person whose presence
18 at the hearing the court deems necessary to determine the best
19 interest of the child.

20 (c) If no demand for a trial by jury has been made under
21 Part III or Part IV, the ~~The~~ court, without a jury, shall
22 determine questions of law and fact. If a demand for a trial by
23 jury has been made under Part III or Part IV and custody is
24 contested, the court shall determine questions of law and the
25 jury shall determine questions of fact. If it finds that a

1 public hearing may be detrimental to the child's best interest,
2 the court may exclude the public from a custody hearing, but
3 may admit any person who has a direct and legitimate interest
4 in the particular case or a legitimate educational or research
5 interest in the work of the court.

6 (d) If the court finds it necessary, in order to protect
7 the child's welfare, that the record of any interview, report,
8 investigation, or testimony in a custody proceeding be kept
9 secret, the court may make an appropriate order sealing the
10 record.

11 (e) Previous statements made by the child relating to any
12 allegations that the child is an abused or neglected child
13 within the meaning of the Abused and Neglected Child Reporting
14 Act, or an abused or neglected minor within the meaning of the
15 Juvenile Court Act of 1987, shall be admissible in evidence in
16 a hearing concerning custody of or visitation with the child.
17 No such statement, however, if uncorroborated and not subject
18 to cross-examination, shall be sufficient in itself to support
19 a finding of abuse or neglect.

20 (Source: P.A. 87-1081.)