



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2140

Introduced 2/14/2008, by Sen. Dave Syverson

SYNOPSIS AS INTRODUCED:

750 ILCS 5/301	from Ch. 40, par. 301
750 ILCS 5/401	from Ch. 40, par. 401
750 ILCS 5/402	from Ch. 40, par. 402

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that, in a proceeding in which a qualified domestic relations order or Qualified Illinois Domestic Relations Order is entered, a final judgment of dissolution of marriage or legal separation or judgment declaring the invalidity of a marriage may not be entered until the court receives proof that the qualified domestic relations order or Qualified Illinois Domestic Relations Order has been properly filed with the appropriate employer or retirement system. Effective January 1, 2009.

LRB095 19020 WGH 45288 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 Sections 301, 401, and 402
6 as follows:

7 (750 ILCS 5/301) (from Ch. 40, par. 301)

8 Sec. 301. Declaration of Invalidity - Grounds.) The court
9 shall enter its judgment declaring the invalidity of a marriage
10 (formerly known as annulment) entered into under the following
11 circumstances:

12 (1) a party lacked capacity to consent to the marriage at
13 the time the marriage was solemnized, either because of mental
14 incapacity or infirmity or because of the influence of alcohol,
15 drugs or other incapacitating substances, or a party was
16 induced to enter into a marriage by force or duress or by fraud
17 involving the essentials of marriage;

18 (2) a party lacks the physical capacity to consummate the
19 marriage by sexual intercourse and at the time the marriage was
20 solemnized the other party did not know of the incapacity;

21 (3) a party was aged 16 or 17 years and did not have the
22 consent of his parents or guardian or judicial approval; or

23 (4) the marriage is prohibited.

1 In a proceeding in which a qualified domestic relations
2 order or Qualified Illinois Domestic Relations Order is
3 entered, a final non-retroactive judgment declaring the
4 invalidity of a marriage may not be entered until the court
5 receives proof that the qualified domestic relations order or
6 Qualified Illinois Domestic Relations Order has been properly
7 filed with the appropriate employer or retirement system. As
8 used in this Section, "qualified domestic relations order" has
9 the meaning ascribed to that term in Section 414(p) of the
10 Internal Revenue Code of 1986 and "Qualified Illinois Domestic
11 Relations Order" has the meaning ascribed to that term in
12 Section 1-119 of the Illinois Pension Code.

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

14 (750 ILCS 5/401) (from Ch. 40, par. 401)

15 Sec. 401. Dissolution of marriage.

16 (a) The court shall enter a judgment of dissolution of
17 marriage if at the time the action was commenced one of the
18 spouses was a resident of this State or was stationed in this
19 State while a member of the armed services, and the residence
20 or military presence had been maintained for 90 days next
21 preceding the commencement of the action or the making of the
22 finding; provided, however, that a finding of residence of a
23 party in any judgment entered under this Act from January 1,
24 1982 through June 30, 1982 shall satisfy the former domicile
25 requirements of this Act; and if one of the following grounds

1 for dissolution has been proved:

2 (1) That, without cause or provocation by the
3 petitioner: the respondent was at the time of such
4 marriage, and continues to be naturally impotent; the
5 respondent had a wife or husband living at the time of the
6 marriage; the respondent had committed adultery subsequent
7 to the marriage; the respondent has wilfully deserted or
8 absented himself or herself from the petitioner for the
9 space of one year, including any period during which
10 litigation may have pended between the spouses for
11 dissolution of marriage or legal separation; the
12 respondent has been guilty of habitual drunkenness for the
13 space of 2 years; the respondent has been guilty of gross
14 and confirmed habits caused by the excessive use of
15 addictive drugs for the space of 2 years, or has attempted
16 the life of the other by poison or other means showing
17 malice, or has been guilty of extreme and repeated physical
18 or mental cruelty, or has been convicted of a felony or
19 other infamous crime; or the respondent has infected the
20 other with a sexually transmitted disease. "Excessive use
21 of addictive drugs", as used in this Section, refers to use
22 of an addictive drug by a person when using the drug
23 becomes a controlling or a dominant purpose of his life; or
24 (2) That the spouses have lived separate and apart for
25 a continuous period in excess of 2 years and irreconcilable
26 differences have caused the irretrievable breakdown of the

1 marriage and the court determines that efforts at
2 reconciliation have failed or that future attempts at
3 reconciliation would be impracticable and not in the best
4 interests of the family. If the spouses have lived separate
5 and apart for a continuous period of not less than 6 months
6 next preceding the entry of the judgment dissolving the
7 marriage, as evidenced by testimony or affidavits of the
8 spouses, the requirement of living separate and apart for a
9 continuous period in excess of 2 years may be waived upon
10 written stipulation of both spouses filed with the court.
11 At any time after the parties cease to cohabit, the
12 following periods shall be included in the period of
13 separation:

14 (A) any period of cohabitation during which the
15 parties attempted in good faith to reconcile and
16 participated in marriage counseling under the guidance
17 of any of the following: a psychiatrist, a clinical
18 psychologist, a clinical social worker, a marriage and
19 family therapist, a person authorized to provide
20 counseling in accordance with the prescriptions of any
21 religious denomination, or a person regularly engaged
22 in providing family or marriage counseling; and

23 (B) any period of cohabitation under written
24 agreement of the parties to attempt to reconcile.

25 In computing the period during which the spouses have lived
26 separate and apart for purposes of this Section, periods during

1 which the spouses were living separate and apart prior to July
2 1, 1984 are included.

3 (b) Judgment shall not be entered unless, to the extent it
4 has jurisdiction to do so, the court has considered, approved,
5 reserved or made provision for child custody, the support of
6 any child of the marriage entitled to support, the maintenance
7 of either spouse and the disposition of property. The court may
8 enter a judgment for dissolution that reserves any of these
9 issues either upon (i) agreement of the parties, or (ii) motion
10 of either party and a finding by the court that appropriate
11 circumstances exist.

12 In a proceeding in which a qualified domestic relations
13 order or Qualified Illinois Domestic Relations Order is
14 entered, a final judgment of dissolution of marriage may not be
15 entered until the court receives proof that the qualified
16 domestic relations order or Qualified Illinois Domestic
17 Relations Order has been properly filed with the appropriate
18 employer or retirement system. As used in this Section,
19 "qualified domestic relations order" has the meaning ascribed
20 to that term in Section 414(p) of the Internal Revenue Code of
21 1986 and "Qualified Illinois Domestic Relations Order" has the
22 meaning ascribed to that term in Section 1-119 of the Illinois
23 Pension Code.

24 The death of a party subsequent to entry of a judgment for
25 dissolution but before judgment on reserved issues shall not
26 abate the proceedings.

1 If any provision of this Section or its application shall
2 be adjudged unconstitutional or invalid for any reason by any
3 court of competent jurisdiction, that judgment shall not
4 impair, affect or invalidate any other provision or application
5 of this Section, which shall remain in full force and effect.

6 (Source: P.A. 89-187, eff. 7-19-95.)

7 (750 ILCS 5/402) (from Ch. 40, par. 402)

8 Sec. 402. Legal Separation.) (a) Any person living separate
9 and apart from his or her spouse without fault may have a
10 remedy for reasonable support and maintenance while they so
11 live apart.

12 (b) Such action shall be brought in the circuit court of
13 the county in which the respondent resides or in which the
14 parties last resided together as husband and wife. In the event
15 the respondent cannot be found within the State, the action may
16 be brought in the circuit court of the county in which the
17 petitioner resides. Commencement of the action, temporary
18 relief and trials shall be the same as in actions for
19 dissolution of marriage.

20 (c) A proceeding or judgment for legal separation shall not
21 bar either party from instituting an action for dissolution of
22 marriage, and if the party so moving has met the requirements
23 of Section 401, a judgment for dissolution shall be granted.

24 (d) In a proceeding in which a qualified domestic relations
25 order or Qualified Illinois Domestic Relations Order is

1 entered, a final judgment of legal separation may not be
2 entered until the court receives proof that the qualified
3 domestic relations order or Qualified Illinois Domestic
4 Relations Order has been properly filed with the appropriate
5 employer or retirement system. As used in this Section,
6 "qualified domestic relations order" has the meaning ascribed
7 to that term in Section 414(p) of the Internal Revenue Code of
8 1986 and "Qualified Illinois Domestic Relations Order" has the
9 meaning ascribed to that term in Section 1-119 of the Illinois
10 Pension Code.

11 (Source: P.A. 82-716.)

12 Section 99. Effective date. This Act takes effect January
13 1, 2009.