

SB3550



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3550

Introduced 2/8/2012, by Sen. Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

750 ILCS 5/505

from Ch. 40, par. 505

Amends the Illinois Marriage and Dissolution of Marriage Act. In provisions concerning child support, provides that in a case in which (i) a parent is 90 days or more delinquent in payment of support or has been adjudicated in arrears in an amount equal to 90 days obligation or more and (ii) the parent is self-employed, the court may order the parent to pay to the clerk of the circuit court an amount equal to up to 180 days support obligation. Provides that the clerk shall hold that amount as security and shall pay to the obligee amounts therefrom as they become due.

LRB097 18228 DRJ 63452 b

FISCAL NOTE ACT
MAY APPLY

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
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:

Number of Children	Percent of Supporting Party's Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
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 In a case in which (i) a parent is 90 days or more
9 delinquent in payment of support or has been adjudicated in
10 arrears in an amount equal to 90 days obligation or more and
11 (ii) the parent is self-employed, the court may order the
12 parent to pay to the clerk of the circuit court an amount equal
13 to up to 180 days support obligation. The clerk shall hold that
14 amount as security and shall pay to the obligee amounts
15 therefrom as they become due.

16 The court may also order in cases where the parent is 90
17 days or more delinquent in payment of support or has been
18 adjudicated in arrears in an amount equal to 90 days obligation
19 or more, that the parent's Illinois driving privileges be
20 suspended until the court determines that the parent is in
21 compliance with the order of support. The court may also order
22 that the parent be issued a family financial responsibility
23 driving permit that would allow limited driving privileges for
24 employment and medical purposes in accordance with Section
25 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit
26 court shall certify the order suspending the driving privileges

1 of the parent or granting the issuance of a family financial
2 responsibility driving permit to the Secretary of State on
3 forms prescribed by the Secretary. Upon receipt of the
4 authenticated documents, the Secretary of State shall suspend
5 the parent's driving privileges until further order of the
6 court and shall, if ordered by the court, subject to the
7 provisions of Section 7-702.1 of the Illinois Vehicle Code,
8 issue a family financial responsibility driving permit to the
9 parent.

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

22 A support obligation, or any portion of a support
23 obligation, which becomes due and remains unpaid as of the end
24 of each month, excluding the child support that was due for
25 that month to the extent that it was not paid in that month,
26 shall accrue simple interest as set forth in Section 12-109 of

1 the Code of Civil Procedure. An order for support entered or
2 modified on or after January 1, 2006 shall contain a statement
3 that a support obligation required under the order, or any
4 portion of a support obligation required under the order, that
5 becomes due and remains unpaid as of the end of each month,
6 excluding the child support that was due for that month to the
7 extent that it was not paid in that month, shall accrue simple
8 interest as set forth in Section 12-109 of the Code of Civil
9 Procedure. Failure to include the statement in the order for
10 support does not affect the validity of the order or the
11 accrual of interest as provided in this Section.

12 (c) A one-time charge of 20% is imposable upon the amount
13 of past-due child support owed on July 1, 1988 which has
14 accrued under a support order entered by the court. The charge
15 shall be imposed in accordance with the provisions of Section
16 10-21 of the Illinois Public Aid Code and shall be enforced by
17 the court upon petition.

18 (d) Any new or existing support order entered by the court
19 under this Section shall be deemed to be a series of judgments
20 against the person obligated to pay support thereunder, each
21 such judgment to be in the amount of each payment or
22 installment of support and each such judgment to be deemed
23 entered as of the date the corresponding payment or installment
24 becomes due under the terms of the support order. Each such
25 judgment shall have the full force, effect and attributes of
26 any other judgment of this State, including the ability to be

1 enforced. Notwithstanding any other State or local law to the
2 contrary, a lien arises by operation of law against the real
3 and personal property of the noncustodial parent for each
4 installment of overdue support owed by the noncustodial parent.

5 (e) When child support is to be paid through the clerk of
6 the court in a county of 1,000,000 inhabitants or less, the
7 order shall direct the obligor to pay to the clerk, in addition
8 to the child support payments, all fees imposed by the county
9 board under paragraph (3) of subsection (u) of Section 27.1 of
10 the Clerks of Courts Act. Unless paid in cash or pursuant to an
11 order for withholding, the payment of the fee shall be by a
12 separate instrument from the support payment and shall be made
13 to the order of the Clerk.

14 (f) All orders for support, when entered or modified, shall
15 include a provision requiring the obligor to notify the court
16 and, in cases in which a party is receiving child and spouse
17 services under Article X of the Illinois Public Aid Code, the
18 Department of Healthcare and Family Services, within 7 days,
19 (i) of the name and address of any new employer of the obligor,
20 (ii) whether the obligor has access to health insurance
21 coverage through the employer or other group coverage and, if
22 so, the policy name and number and the names of persons covered
23 under the policy, and (iii) of any new residential or mailing
24 address or telephone number of the non-custodial parent. In any
25 subsequent action to enforce a support order, upon a sufficient
26 showing that a diligent effort has been made to ascertain the

1 location of the non-custodial parent, service of process or
2 provision of notice necessary in the case may be made at the
3 last known address of the non-custodial parent in any manner
4 expressly provided by the Code of Civil Procedure or this Act,
5 which service shall be sufficient for purposes of due process.

6 (g) An order for support shall include a date on which the
7 current support obligation terminates. The termination date
8 shall be no earlier than the date on which the child covered by
9 the order will attain the age of 18. However, if the child will
10 not graduate from high school until after attaining the age of
11 18, then the termination date shall be no earlier than the
12 earlier of the date on which the child's high school graduation
13 will occur or the date on which the child will attain the age
14 of 19. The order for support shall state that the termination
15 date does not apply to any arrearage that may remain unpaid on
16 that date. Nothing in this subsection shall be construed to
17 prevent the court from modifying the order or terminating the
18 order in the event the child is otherwise emancipated.

19 (g-5) If there is an unpaid arrearage or delinquency (as
20 those terms are defined in the Income Withholding for Support
21 Act) equal to at least one month's support obligation on the
22 termination date stated in the order for support or, if there
23 is no termination date stated in the order, on the date the
24 child attains the age of majority or is otherwise emancipated,
25 the periodic amount required to be paid for current support of
26 that child immediately prior to that date shall automatically

1 continue to be an obligation, not as current support but as
2 periodic payment toward satisfaction of the unpaid arrearage or
3 delinquency. That periodic payment shall be in addition to any
4 periodic payment previously required for satisfaction of the
5 arrearage or delinquency. The total periodic amount to be paid
6 toward satisfaction of the arrearage or delinquency may be
7 enforced and collected by any method provided by law for
8 enforcement and collection of child support, including but not
9 limited to income withholding under the Income Withholding for
10 Support Act. Each order for support entered or modified on or
11 after the effective date of this amendatory Act of the 93rd
12 General Assembly must contain a statement notifying the parties
13 of the requirements of this subsection. Failure to include the
14 statement in the order for support does not affect the validity
15 of the order or the operation of the provisions of this
16 subsection with regard to the order. This subsection shall not
17 be construed to prevent or affect the establishment or
18 modification of an order for support of a minor child or the
19 establishment or modification of an order for support of a
20 non-minor child or educational expenses under Section 513 of
21 this Act.

22 (h) An order entered under this Section shall include a
23 provision requiring the obligor to report to the obligee and to
24 the clerk of court within 10 days each time the obligor obtains
25 new employment, and each time the obligor's employment is
26 terminated for any reason. The report shall be in writing and

1 shall, in the case of new employment, include the name and
2 address of the new employer. Failure to report new employment
3 or the termination of current employment, if coupled with
4 nonpayment of support for a period in excess of 60 days, is
5 indirect criminal contempt. For any obligor arrested for
6 failure to report new employment bond shall be set in the
7 amount of the child support that should have been paid during
8 the period of unreported employment. An order entered under
9 this Section shall also include a provision requiring the
10 obligor and obligee parents to advise each other of a change in
11 residence within 5 days of the change except when the court
12 finds that the physical, mental, or emotional health of a party
13 or that of a child, or both, would be seriously endangered by
14 disclosure of the party's address.

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

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