

HB4443



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4443

by Rep. Kelly Burke

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.

LRB098 19317 HEP 54469 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 that 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 the support of the child, without regard to
18 marital misconduct. The duty of support owed to a child
19 includes the obligation to provide for the reasonable and
20 necessary educational, physical, mental and emotional health
21 needs of the child. For purposes of this Section, the term
22 "child" shall include any child under age 18 and any child
23 under age 19 who is still 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 finds that a deviation from the guidelines
13 is appropriate after considering the best interest of the
14 child in light of the evidence, including, but not limited
15 to, one or more of the following relevant factors:

16 (a) the financial resources and needs of the child;

17 (b) the financial resources and needs of the
18 custodial parent;

19 (c) the standard of living the child would have
20 enjoyed had the marriage not been dissolved;

21 (d) the physical, mental, and emotional needs of
22 the child;

23 (d-5) the educational needs of the child; 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 (2.5) The court, in its discretion, in addition to
6 setting child support pursuant to the guidelines and
7 factors, may order either or both parents owing a duty of
8 support to a child of the marriage to contribute to the
9 following expenses, if determined by the court to be
10 reasonable:

11 (a) health needs not covered by insurance;

12 (b) child care;

13 (c) education; and

14 (d) extracurricular activities.

15 (3) "Net income" is defined as the total of all income
16 from all sources, minus the following deductions:

17 (a) Federal income tax (properly calculated
18 withholding or estimated payments);

19 (b) State income tax (properly calculated
20 withholding or estimated payments);

21 (c) Social Security (FICA payments);

22 (d) Mandatory retirement contributions required by
23 law or as a condition of employment;

24 (e) Union dues;

25 (f) Dependent and individual
26 health/hospitalization insurance premiums and premiums

1 for life insurance ordered by the court to reasonably
2 secure payment of ordered child support;

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

5 (h) Expenditures for repayment of debts that
6 represent reasonable and necessary expenses for the
7 production of income, medical expenditures necessary
8 to preserve life or health, reasonable expenditures
9 for the benefit of the child and the other parent,
10 exclusive of gifts. The court shall reduce net income
11 in determining the minimum amount of support to be
12 ordered only for the period that such payments are due
13 and shall enter an order containing provisions for its
14 self-executing modification upon termination of such
15 payment period;

16 (i) Foster care payments paid by the Department of
17 Children and Family Services for providing licensed
18 foster care to a foster child.

19 (4) In cases where the court order provides for
20 health/hospitalization insurance coverage pursuant to
21 Section 505.2 of this Act, the premiums for that insurance,
22 or that portion of the premiums for which the supporting
23 party is responsible in the case of insurance provided
24 through an employer's health insurance plan where the
25 employer pays a portion of the premiums, shall be
26 subtracted from net income in determining the minimum

1 amount of support to be ordered.

2 (4.5) In a proceeding for child support following
3 dissolution of the marriage by a court that lacked personal
4 jurisdiction over the absent spouse, and in which the court
5 is requiring payment of support for the period before the
6 date an order for current support is entered, there is a
7 rebuttable presumption that the supporting party's net
8 income for the prior period was the same as his or her net
9 income at the time the order for current support is
10 entered.

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

23 (6) If (i) the non-custodial parent was properly served
24 with a request for discovery of financial information
25 relating to the non-custodial parent's ability to provide
26 child support, (ii) the non-custodial parent failed to

1 comply with the request, despite having been ordered to do
2 so by the court, and (iii) the non-custodial parent is not
3 present at the hearing to determine support despite having
4 received proper notice, then any relevant financial
5 information concerning the non-custodial parent's ability
6 to provide child support that was obtained pursuant to
7 subpoena and proper notice shall be admitted into evidence
8 without the need to establish any further foundation for
9 its admission.

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

19 (b) Failure of either parent to comply with an order to pay
20 support shall be punishable as in other cases of contempt. In
21 addition to other penalties provided by law the Court may,
22 after finding the parent guilty of contempt, order that the
23 parent be:

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

26 (2) sentenced to periodic imprisonment for a period not

1 to exceed 6 months; provided, however, that the Court may
2 permit the parent to be released for periods of time during
3 the day or night to:

4 (A) work; or

5 (B) conduct a business or other self-employed
6 occupation.

7 The Court may further order any part or all of the earnings
8 of a parent during a sentence of periodic imprisonment paid to
9 the Clerk of the Circuit Court or to the parent having custody
10 or to the guardian having custody of the children of the
11 sentenced parent for the support of said children until further
12 order of the Court.

13 If a parent who is found guilty of contempt for failure to
14 comply with an order to pay support is a person who conducts a
15 business or who is self-employed, the court in addition to
16 other penalties provided by law may order that the parent do
17 one or more of the following: (i) provide to the court monthly
18 financial statements showing income and expenses from the
19 business or the self-employment; (ii) seek employment and
20 report periodically to the court with a diary, listing, or
21 other memorandum of his or her employment search efforts; or
22 (iii) report to the Department of Employment Security for job
23 search services to find employment that will be subject to
24 withholding for child support.

25 If there is a unity of interest and ownership sufficient to
26 render no financial separation between a non-custodial parent

1 and another person or persons or business entity, the court may
2 pierce the ownership veil of the person, persons, or business
3 entity to discover assets of the non-custodial parent held in
4 the name of that person, those persons, or that business
5 entity. The following circumstances are sufficient to
6 authorize a court to order discovery of the assets of a person,
7 persons, or business entity and to compel the application of
8 any discovered assets toward payment on the judgment for
9 support:

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

12 (2) the non-custodial parent and the person, persons,
13 or business entity fail to maintain an arm's length
14 relationship between themselves with regard to any assets.

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

18 With respect to assets which are real property, no order
19 entered under this paragraph shall affect the rights of bona
20 fide purchasers, mortgagees, judgment creditors, or other lien
21 holders who acquire their interests in the property prior to
22 the time a notice of lis pendens pursuant to the Code of Civil
23 Procedure or a copy of the order is placed of record in the
24 office of the recorder of deeds for the county in which the
25 real property is located.

26 The court may also order in cases where the parent is 90

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

20 In addition to the penalties or punishment that may be
21 imposed under this Section, any person whose conduct
22 constitutes a violation of Section 15 of the Non-Support
23 Punishment Act may be prosecuted under that Act, and a person
24 convicted under that Act may be sentenced in accordance with
25 that Act. The sentence may include but need not be limited to a
26 requirement that the person perform community service under

1 Section 50 of that Act or participate in a work alternative
2 program under Section 50 of that Act. A person may not be
3 required to participate in a work alternative program under
4 Section 50 of that Act if the person is currently participating
5 in a work program pursuant to Section 505.1 of this Act.

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

22 (c) A one-time charge of 20% is imposable upon the amount
23 of past-due child support owed on July 1, 1988 which has
24 accrued under a support order entered by the court. The charge
25 shall be imposed in accordance with the provisions of Section
26 10-21 of the Illinois Public Aid Code and shall be enforced by

1 the court upon petition.

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

15 (e) When child support is to be paid through the clerk of
16 the court in a county of 1,000,000 inhabitants or less, the
17 order shall direct the obligor to pay to the clerk, in addition
18 to the child support payments, all fees imposed by the county
19 board under paragraph (3) of subsection (u) of Section 27.1 of
20 the Clerks of Courts Act. Unless paid in cash or pursuant to an
21 order for withholding, the payment of the fee shall be by a
22 separate instrument from the support payment and shall be made
23 to the order of the Clerk.

24 (f) All orders for support, when entered or modified, shall
25 include a provision requiring the obligor to notify the court
26 and, in cases in which a party is receiving child and spouse

1 services under Article X of the Illinois Public Aid Code, the
2 Department of Healthcare and Family Services, within 7 days,
3 (i) of the name and address of any new employer of the obligor,
4 (ii) whether the obligor has access to health insurance
5 coverage through the employer or other group coverage and, if
6 so, the policy name and number and the names of persons covered
7 under the policy, and (iii) of any new residential or mailing
8 address or telephone number of the non-custodial parent. In any
9 subsequent action to enforce a support order, upon a sufficient
10 showing that a diligent effort has been made to ascertain the
11 location of the non-custodial parent, service of process or
12 provision of notice necessary in the case may be made at the
13 last known address of the non-custodial parent in any manner
14 expressly provided by the Code of Civil Procedure or this Act,
15 which service shall be sufficient for purposes of due process.

16 (g) An order for support shall include a date on which the
17 current support obligation terminates. The termination date
18 shall be no earlier than the date on which the child covered by
19 the order will attain the age of 18. However, if the child will
20 not graduate from high school until after attaining the age of
21 18, then the termination date shall be no earlier than the
22 earlier of the date on which the child's high school graduation
23 will occur or the date on which the child will attain the age
24 of 19. The order for support shall state that the termination
25 date does not apply to any arrearage that may remain unpaid on
26 that date. Nothing in this subsection shall be construed to

1 prevent the court from modifying the order or terminating the
2 order in the event the child is otherwise emancipated.

3 (g-5) If there is an unpaid arrearage or delinquency (as
4 those terms are defined in the Income Withholding for Support
5 Act) equal to at least one month's support obligation on the
6 termination date stated in the order for support or, if there
7 is no termination date stated in the order, on the date the
8 child attains the age of majority or is otherwise emancipated,
9 the periodic amount required to be paid for current support of
10 that child immediately prior to that date shall automatically
11 continue to be an obligation, not as current support but as
12 periodic payment toward satisfaction of the unpaid arrearage or
13 delinquency. That periodic payment shall be in addition to any
14 periodic payment previously required for satisfaction of the
15 arrearage or delinquency. The total periodic amount to be paid
16 toward satisfaction of the arrearage or delinquency may be
17 enforced and collected by any method provided by law for
18 enforcement and collection of child support, including but not
19 limited to income withholding under the Income Withholding for
20 Support Act. Each order for support entered or modified on or
21 after the effective date of this amendatory Act of the 93rd
22 General Assembly must contain a statement notifying the parties
23 of the requirements of this subsection. Failure to include the
24 statement in the order for support does not affect the validity
25 of the order or the operation of the provisions of this
26 subsection with regard to the order. This subsection shall not

1 be construed to prevent or affect the establishment or
2 modification of an order for support of a minor child or the
3 establishment or modification of an order for support of a
4 non-minor child or educational expenses under Section 513 of
5 this Act.

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

25 (i) The court does not lose the powers of contempt,
26 driver's license suspension, or other child support

1 enforcement mechanisms, including, but not limited to,
2 criminal prosecution as set forth in this Act, upon the
3 emancipation of the minor child or children.

4 (Source: P.A. 97-186, eff. 7-22-11; 97-608, eff. 1-1-12;
5 97-813, eff. 7-13-12; 97-878, eff. 8-2-12; 97-941, eff. 1-1-13;
6 97-1029, eff. 1-1-13; 98-463, eff. 8-16-13.)