



Rep. Denyse Stoneback

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10200HB3484ham001

LRB102 13864 LNS 23924 a

1 AMENDMENT TO HOUSE BILL 3484

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3484 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Marriage and Dissolution of  
5 Marriage Act is amended by changing Section 501 as follows:

6 (750 ILCS 5/501) (from Ch. 40, par. 501)

7 Sec. 501. Temporary relief. In all proceedings under this  
8 Act, temporary relief shall be as follows:

9 (a) Either party may petition or move for:

10 (1) temporary maintenance or temporary support of a  
11 child of the marriage entitled to support, accompanied by  
12 an affidavit as to the factual basis for the relief  
13 requested. One form of financial affidavit, as determined  
14 by the Supreme Court, shall be used statewide. The  
15 financial affidavit shall be supported by documentary  
16 evidence including, but not limited to, income tax

1 returns, pay stubs, and banking statements. Unless the  
2 court otherwise directs, any affidavit or supporting  
3 documentary evidence submitted pursuant to this paragraph  
4 shall not be made part of the public record of the  
5 proceedings but shall be available to the court or an  
6 appellate court in which the proceedings are subject to  
7 review, to the parties, their attorneys, and such other  
8 persons as the court may direct. Upon motion of a party, a  
9 court may hold a hearing to determine whether and why  
10 there is a disparity between a party's sworn affidavit and  
11 the supporting documentation. If a party intentionally or  
12 recklessly files an inaccurate or misleading financial  
13 affidavit, the court shall impose significant penalties  
14 and sanctions including, but not limited to, costs and  
15 attorney's fees;

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

19 (i) restraining any person from transferring,  
20 encumbering, concealing or otherwise disposing of any  
21 property except in the usual course of business or for  
22 the necessities of life, and, if so restrained,  
23 requiring him to notify the moving party and his  
24 attorney of any proposed extraordinary expenditures  
25 made after the order is issued; however, an order need  
26 not include an exception for transferring,

1 encumbering, or otherwise disposing of property in the  
2 usual course of business or for the necessities of  
3 life if the court enters appropriate orders that  
4 enable the parties to pay their necessary personal and  
5 business expenses including, but not limited to,  
6 appropriate professionals to assist the court pursuant  
7 to subsection (1) of Section 503 to administer the  
8 payment and accounting of such living and business  
9 expenses;

10 (ii) enjoining a party from removing a child from  
11 the jurisdiction of the court for more than 14 days;

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

15 (iv) providing other injunctive relief proper in  
16 the circumstances; ~~or~~

17 (2.5) an allowance from the other party for a retainer  
18 fee to obtain an attorney. The petition shall identify the  
19 attorney to be retained and shall be accompanied by:

20 (i) a financial affidavit, supported by  
21 documentary evidence;

22 (ii) an affidavit from the identified attorney  
23 stating that the moving party has contacted the  
24 attorney and agreed to retain the attorney and that  
25 the attorney has agreed to enter an appearance if the  
26 court grants the relief by the moving party; and

1           (iii) a certificate stating that if an allowance  
2           is granted, the party shall use it only for retaining  
3           the attorney.

4           The court shall review the financial affidavit and  
5           attorney affidavit, and, if appropriate, grant an  
6           allowance to the party for a retainer fee. All awards  
7           under this paragraph shall be paid directly to the  
8           identified attorney; or

9           (3) other appropriate temporary relief including, in  
10          the discretion of the court, ordering the purchase or sale  
11          of assets and requiring that a party or parties borrow  
12          funds in the appropriate circumstances.

13          Issues concerning temporary maintenance or temporary  
14          support of a child entitled to support shall be dealt with on a  
15          summary basis based on allocated parenting time, financial  
16          affidavits, tax returns, pay stubs, banking statements, and  
17          other relevant documentation, except an evidentiary hearing  
18          may be held upon a showing of good cause. If a party  
19          intentionally or recklessly files an inaccurate or misleading  
20          financial affidavit, the court shall impose significant  
21          penalties and sanctions including, but not limited to, costs  
22          and attorney's fees resulting from the improper  
23          representation.

24          (b) The court may issue a temporary restraining order  
25          without requiring notice to the other party only if it finds,  
26          on the basis of the moving affidavit or other evidence, that

1 irreparable injury will result to the moving party if no order  
2 is issued until the time for responding has elapsed.

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

6 (c-1) As used in this subsection (c-1), "interim  
7 attorney's fees and costs" means attorney's fees and costs  
8 assessed from time to time while a case is pending, in favor of  
9 the petitioning party's current counsel, for reasonable fees  
10 and costs either already incurred or to be incurred, and  
11 "interim award" means an award of interim attorney's fees and  
12 costs. Interim awards shall be governed by the following:

13 (1) Except for good cause shown, a proceeding for (or  
14 relating to) interim attorney's fees and costs in a  
15 pre-judgment dissolution proceeding shall be  
16 nonevidentiary and summary in nature. All hearings for or  
17 relating to interim attorney's fees and costs under this  
18 subsection shall be scheduled expeditiously by the court.  
19 When a party files a petition for interim attorney's fees  
20 and costs supported by one or more affidavits that  
21 delineate relevant factors, the court (or a hearing  
22 officer) shall assess an interim award after affording the  
23 opposing party a reasonable opportunity to file a  
24 responsive pleading. A responsive pleading shall set out  
25 the amount of each retainer or other payment or payments,  
26 or both, previously paid to the responding party's counsel

1 by or on behalf of the responding party. A responsive  
2 pleading shall include costs incurred, and shall indicate  
3 whether the costs are paid or unpaid. In assessing an  
4 interim award, the court shall consider all relevant  
5 factors, as presented, that appear reasonable and  
6 necessary, including to the extent applicable:

7 (A) the income and property of each party,  
8 including alleged marital property within the sole  
9 control of one party and alleged non-marital property  
10 within access to a party;

11 (B) the needs of each party;

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

13 (D) any impairment to present earning capacity of  
14 either party, including age and physical and emotional  
15 health;

16 (E) the standard of living established during the  
17 marriage;

18 (F) the degree of complexity of the issues,  
19 including allocation of parental responsibility,  
20 valuation or division (or both) of closely held  
21 businesses, and tax planning, as well as reasonable  
22 needs for expert investigations or expert witnesses,  
23 or both;

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

25 (H) the amount of the payment or payments made or  
26 reasonably expected to be made to the attorney for the

1 other party; and

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

4 (2) Any assessment of an interim award (including one  
5 pursuant to an agreed order) shall be without prejudice to  
6 any final allocation and without prejudice as to any claim  
7 or right of either party or any counsel of record at the  
8 time of the award. Any such claim or right may be presented  
9 by the appropriate party or counsel at a hearing on  
10 contribution under subsection (j) of Section 503 or a  
11 hearing on counsel's fees under subsection (c) of Section  
12 508. Unless otherwise ordered by the court at the final  
13 hearing between the parties or in a hearing under  
14 subsection (j) of Section 503 or subsection (c) of Section  
15 508, interim awards, as well as the aggregate of all other  
16 payments by each party to counsel and related payments to  
17 third parties, shall be deemed to have been advances from  
18 the parties' marital estate. Any portion of any interim  
19 award constituting an overpayment shall be remitted back  
20 to the appropriate party or parties, or, alternatively, to  
21 successor counsel, as the court determines and directs,  
22 after notice in a form designated by the Supreme Court. An  
23 order for the award of interim attorney's fees shall be a  
24 standardized form order and labeled "Interim Fee Award  
25 Order".

26 (3) In any proceeding under this subsection (c-1), the

1 court (or hearing officer) shall assess an interim award  
2 against an opposing party in an amount necessary to enable  
3 the petitioning party to participate adequately in the  
4 litigation, upon findings that the party from whom  
5 attorney's fees and costs are sought has the financial  
6 ability to pay reasonable amounts and that the party  
7 seeking attorney's fees and costs lacks sufficient access  
8 to assets or income to pay reasonable amounts. In  
9 determining an award, the court shall consider whether  
10 adequate participation in the litigation requires  
11 expenditure of more fees and costs for a party that is not  
12 in control of assets or relevant information. Except for  
13 good cause shown, an interim award shall not be less than  
14 payments made or reasonably expected to be made to the  
15 counsel for the other party. If the court finds that both  
16 parties lack financial ability or access to assets or  
17 income for reasonable attorney's fees and costs, the court  
18 (or hearing officer) shall enter an order that allocates  
19 available funds for each party's counsel, including  
20 retainers or interim payments, or both, previously paid,  
21 in a manner that achieves substantial parity between the  
22 parties.

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

26 (c-2) Allocation of use of marital residence. Where there



1 is on file a verified complaint or verified petition seeking  
2 temporary eviction from the marital residence, the court may,  
3 during the pendency of the proceeding, only in cases where the  
4 physical or mental well-being of either spouse or his or her  
5 children is jeopardized by occupancy of the marital residence  
6 by both spouses, and only upon due notice and full hearing,  
7 unless waived by the court on good cause shown, enter orders  
8 granting the exclusive possession of the marital residence to  
9 either spouse, by eviction from, or restoration of, the  
10 marital residence, until the final determination of the cause  
11 pursuant to the factors listed in Section 602.7 of this Act. No  
12 such order shall in any manner affect any estate in homestead  
13 property of either party. In entering orders under this  
14 subsection (c-2), the court shall balance hardships to the  
15 parties.

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

17 (1) does not prejudice the rights of the parties or  
18 the child which are to be adjudicated at subsequent  
19 hearings in the proceeding;

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

22 (3) terminates when the final judgment is entered or  
23 when the petition for dissolution of marriage or legal  
24 separation or declaration of invalidity of marriage is  
25 dismissed.

26 (e) The fees or costs of mediation shall be borne by the

1 parties and may be assessed by the court as it deems equitable  
2 without prejudice and are subject to reallocation at the  
3 conclusion of the case.

4 (f) Companion animals. Either party may petition or move  
5 for the temporary allocation of sole or joint possession of  
6 and responsibility for a companion animal jointly owned by the  
7 parties. In issuing an order under this subsection, the court  
8 shall take into consideration the well-being of the companion  
9 animal. As used in this Section, "companion animal" does not  
10 include a service animal as defined in Section 2.01c of the  
11 Humane Care for Animals Act.

12 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17;  
13 100-422, eff. 1-1-18.)".