



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB5853

Introduced 10/31/06, 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.

LRB094 21106 AJO 59434 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  
23 petitioner obtained knowledge of the described condition;

24 (3) for the reason set forth in paragraph (3) of Section  
25 301, by the underaged party, his parent or guardian, prior to  
26 the time the underaged party reaches the age at which he could  
27 have married without needing to satisfy the omitted  
28 requirement.

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

1 (c) A declaration of invalidity for the reason set forth in  
2 paragraph (4) of Section 301 may be sought by either party, the  
3 legal spouse in case of a bigamous marriage, the State's  
4 Attorney or a child of either party, at any time not to exceed  
5 3 years following the death of the first party to die.

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

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

11 (750 ILCS 5/304) (from Ch. 40, par. 304)

12 Sec. 304. Retroactivity.) Unless the court finds, after a  
13 consideration of all relevant circumstances, including the  
14 effect of a retroactive judgment on third parties, that the  
15 interests of justice would be served by making the judgment not  
16 retroactive, it shall declare the marriage invalid as of the  
17 date of the marriage. The provisions of this Act relating to  
18 property rights of the spouses, maintenance, support and  
19 custody of children on dissolution of marriage are applicable  
20 to non-retroactive judgments of invalidity of marriage only. If  
21 the court declares a judgment of invalidity of marriage to be  
22 non-retroactive and a party has demanded a trial by jury,  
23 contested issues relating to property rights of the spouses,  
24 maintenance, support, and custody of children shall be tried by  
25 the court with a jury.

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

27 (750 ILCS 5/403) (from Ch. 40, par. 403)

28 Sec. 403. Pleadings - Commencement - Abolition of Existing  
29 Defenses - Procedure.)

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

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

34 (2) the date of the marriage and the place at which it

1 was registered;

2 (2.5) whether a petition for dissolution of marriage is  
3 pending in any other county or state;

4 (3) that the jurisdictional requirements of subsection  
5 (a) of Section 401 have been met and that there exist  
6 grounds for dissolution of marriage or legal separation.  
7 The petitioner need only allege the name of the particular  
8 grounds relied upon, which shall constitute a legally  
9 sufficient allegation of the grounds; and the respondent  
10 shall be entitled to demand a bill of particulars prior to  
11 trial setting forth the facts constituting the grounds, if  
12 he so chooses. The petition must also contain:

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

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

17 (6) the relief sought.

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

21 (c) The previously existing defense of recrimination is  
22 abolished. The defense of condonation is abolished only as to  
23 condonations occurring after a proceeding is filed under this  
24 Act and after the court has acquired jurisdiction over the  
25 respondent.

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

28 (e) Contested trials shall be on a bifurcated basis with  
29 the grounds being tried first. The grounds shall be tried by  
30 the court without a jury. Upon the court determining that the  
31 grounds exist, the court may allow additional time for the  
32 parties to settle amicably the remaining issues before resuming  
33 the trial, or may proceed immediately to trial on the remaining  
34 issues. In cases tried by the court without a jury where the  
35 grounds are uncontested and proved as in cases of default, the  
36 trial on all other remaining issues shall proceed immediately,

1 if so ordered by the court or if the parties so stipulate,  
2 issue on the pleadings notwithstanding. In cases tried by the  
3 court with a jury, the trial on all other remaining issues  
4 shall proceed after the court has impaneled the jury.  
5 Uncontested issues shall not be submitted to the jury.

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

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

12 (750 ILCS 5/501) (from Ch. 40, par. 501)

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

15 (a) Either party may move for:

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

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

23 (i) restraining any person from transferring,  
24 encumbering, concealing or otherwise disposing of any  
25 property except in the usual course of business or for  
26 the necessities of life, and, if so restrained,  
27 requiring him to notify the moving party and his  
28 attorney of any proposed extraordinary expenditures  
29 made after the order is issued;

30 (ii) enjoining a party from removing a child from  
31 the jurisdiction of the court;

32 (iii) enjoining a party from striking or  
33 interfering with the personal liberty of the other  
34 party or of any child; or

35 (iv) providing other injunctive relief proper in

1 the circumstances; or

2 (3) other appropriate temporary relief.

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

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

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

18 (1) Except for good cause shown, a proceeding for (or  
19 relating to) interim attorney's fees and costs shall be  
20 nonevidentiary, summary in nature, and expeditious. When a  
21 party files a petition for interim attorney's fees and  
22 costs supported by one or more affidavits that delineate  
23 relevant factors, the court (or a hearing officer) shall  
24 assess an interim award after affording the opposing party  
25 a reasonable opportunity to file a responsive pleading. A  
26 responsive pleading shall set out the amount of each  
27 retainer or other payment or payments, or both, previously  
28 paid to the responding party's counsel by or on behalf of  
29 the responding party. In assessing an interim award, the  
30 court shall consider all relevant factors, as presented,  
31 that appear reasonable and necessary, including:

32 (A) the income and property of each party,  
33 including alleged marital property within the sole  
34 control of one party and alleged non-marital property  
35 within access to a party;

36 (B) the needs of each party;

- 1 (C) the realistic earning capacity of each party;
- 2 (D) any impairment to present earning capacity of  
3 either party, including age and physical and emotional  
4 health;
- 5 (E) the standard of living established during the  
6 marriage;
- 7 (F) the degree of complexity of the issues,  
8 including custody, valuation or division (or both) of  
9 closely held businesses, and tax planning, as well as  
10 reasonable needs for expert investigations or expert  
11 witnesses, or both;
- 12 (G) each party's access to relevant information;
- 13 (H) the amount of the payment or payments made or  
14 reasonably expected to be made to the attorney for the  
15 other party; and
- 16 (I) any other factor that the court expressly finds  
17 to be just and equitable.

18 (2) Any assessment of an interim award (including one  
19 pursuant to an agreed order) shall be without prejudice to  
20 any final allocation and without prejudice as to any claim  
21 or right of either party or any counsel of record at the  
22 time of the award. Any such claim or right may be presented  
23 by the appropriate party or counsel at a hearing on  
24 contribution under subsection (j) of Section 503 or a  
25 hearing on counsel's fees under subsection (c) of Section  
26 508. Unless otherwise ordered by the court at the final  
27 hearing between the parties or in a hearing under  
28 subsection (j) of Section 503 or subsection (c) of Section  
29 508, interim awards, as well as the aggregate of all other  
30 payments by each party to counsel and related payments to  
31 third parties, shall be deemed to have been advances from  
32 the parties' marital estate. Any portion of any interim  
33 award constituting an overpayment shall be remitted back to  
34 the appropriate party or parties, or, alternatively, to  
35 successor counsel, as the court determines and directs,  
36 after notice.

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

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

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

28           (1) does not prejudice the rights of the parties or the  
29 child which are to be adjudicated at subsequent hearings in  
30 the proceeding;

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

33           (3) terminates when the final judgment is entered or  
34 when the petition for dissolution of marriage or legal  
35 separation or declaration of invalidity of marriage is  
36 dismissed.



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

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

4           (750 ILCS 5/511) (from Ch. 40, par. 511)

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

8           (a) Any judgment entered within this State may be enforced  
9           or modified in the judicial circuit wherein such judgment was  
10          entered or last modified by the filing of a petition with  
11          notice mailed to the respondent at his last known address, or  
12          by the issuance of summons to the respondent. If neither party  
13          continues to reside in the county wherein such judgment was  
14          entered or last modified, the court on the motion of either  
15          party or on its own motion may transfer a post-judgment  
16          proceeding, including a proceeding under the Income  
17          Withholding for Support Act, to another county or judicial  
18          circuit, as appropriate, where either party resides. If the  
19          post-judgment proceeding is with respect to maintenance or  
20          support, any such transfer shall be to the county or judicial  
21          circuit wherein the recipient or proposed recipient of such  
22          maintenance or support resides.

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

34          (c) In any post-judgment proceeding to enforce or modify  
35          the judgment of another state, the moving party shall commence

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

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

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

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

20 (750 ILCS 5/604) (from Ch. 40, par. 604)

21 Sec. 604. Interviews.) (a) In a case tried by the court  
22 without a jury, the ~~The~~ court may interview the child in  
23 chambers to ascertain the child's wishes as to his custodian  
24 and as to visitation. Counsel shall be present at the interview  
25 unless otherwise agreed upon by the parties. The court shall  
26 cause a court reporter to be present who shall make a complete  
27 record of the interview instantaneously to be part of the  
28 record in the case.

29 (b) The court may seek the advice of professional  
30 personnel, whether or not employed by the court on a regular  
31 basis. The advice given shall be in writing and made available  
32 by the court to counsel. Counsel may examine, as a witness, any  
33 professional personnel consulted by the court, designated as a  
34 court's witness.

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

1 (750 ILCS 5/606) (from Ch. 40, par. 606)

2 Sec. 606. Hearings.

3 (a) Custody proceedings shall receive priority in being set  
4 for hearing.

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

9 (c) If no demand for a trial by jury has been made under  
10 Part III or Part IV, the ~~The~~ court, without a jury, shall  
11 determine questions of law and fact. If a demand for a trial by  
12 jury has been made under Part III or Part IV and custody is  
13 contested, the court shall determine questions of law and the  
14 jury shall determine questions of fact. If it finds that a  
15 public hearing may be detrimental to the child's best interest,  
16 the court may exclude the public from a custody hearing, but  
17 may admit any person who has a direct and legitimate interest  
18 in the particular case or a legitimate educational or research  
19 interest in the work of the court.

20 (d) If the court finds it necessary, in order to protect  
21 the child's welfare, that the record of any interview, report,  
22 investigation, or testimony in a custody proceeding be kept  
23 secret, the court may make an appropriate order sealing the  
24 record.

25 (e) Previous statements made by the child relating to any  
26 allegations that the child is an abused or neglected child  
27 within the meaning of the Abused and Neglected Child Reporting  
28 Act, or an abused or neglected minor within the meaning of the  
29 Juvenile Court Act of 1987, shall be admissible in evidence in  
30 a hearing concerning custody of or visitation with the child.  
31 No such statement, however, if uncorroborated and not subject  
32 to cross-examination, shall be sufficient in itself to support  
33 a finding of abuse or neglect.

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