



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB2569

Introduced 1/11/2012, by Sen. John G. Mulroe

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/503

from Ch. 40, par. 503

Amends the Illinois Marriage and Dissolution of Marriage Act. In provisions concerning the dissipation of marital or non-marital property, provides that a party's claim of dissipation is subject to the following conditions: a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later; the notice shall contain, at a minimum, the time period during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and the time during which the dissipation occurred; the notice shall be filed and served pursuant to applicable rules; and no dissipation shall be deemed to have occurred prior to 5 years before the filing of the petition for dissolution of marriage or 3 years after the party claiming dissipation knew or should have known of the dissipation.

LRB097 13260 AJO 57769 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 Section 503 as follows:

6 (750 ILCS 5/503) (from Ch. 40, par. 503)

7 Sec. 503. Disposition of property.

8 (a) For purposes of this Act, "marital property" means all  
9 property acquired by either spouse subsequent to the marriage,  
10 except the following, which is known as "non-marital property":

11 (1) property acquired by gift, legacy or descent;

12 (2) property acquired in exchange for property  
13 acquired before the marriage or in exchange for property  
14 acquired by gift, legacy or descent;

15 (3) property acquired by a spouse after a judgment of  
16 legal separation;

17 (4) property excluded by valid agreement of the  
18 parties;

19 (5) any judgment or property obtained by judgment  
20 awarded to a spouse from the other spouse;

21 (6) property acquired before the marriage;

22 (7) the increase in value of property acquired by a  
23 method listed in paragraphs (1) through (6) of this

1 subsection, irrespective of whether the increase results  
2 from a contribution of marital property, non-marital  
3 property, the personal effort of a spouse, or otherwise,  
4 subject to the right of reimbursement provided in  
5 subsection (c) of this Section; and

6 (8) income from property acquired by a method listed in  
7 paragraphs (1) through (7) of this subsection if the income  
8 is not attributable to the personal effort of a spouse.

9 (b) (1) For purposes of distribution of property pursuant to  
10 this Section, all property acquired by either spouse after the  
11 marriage and before a judgment of dissolution of marriage or  
12 declaration of invalidity of marriage, including non-marital  
13 property transferred into some form of co-ownership between the  
14 spouses, is presumed to be marital property, regardless of  
15 whether title is held individually or by the spouses in some  
16 form of co-ownership such as joint tenancy, tenancy in common,  
17 tenancy by the entirety, or community property. The presumption  
18 of marital property is overcome by a showing that the property  
19 was acquired by a method listed in subsection (a) of this  
20 Section.

21 (2) For purposes of distribution of property pursuant to  
22 this Section, all pension benefits (including pension benefits  
23 under the Illinois Pension Code) acquired by either spouse  
24 after the marriage and before a judgment of dissolution of  
25 marriage or declaration of invalidity of the marriage are  
26 presumed to be marital property, regardless of which spouse

1 participates in the pension plan. The presumption that these  
2 pension benefits are marital property is overcome by a showing  
3 that the pension benefits were acquired by a method listed in  
4 subsection (a) of this Section. The right to a division of  
5 pension benefits in just proportions under this Section is  
6 enforceable under Section 1-119 of the Illinois Pension Code.

7 The value of pension benefits in a retirement system  
8 subject to the Illinois Pension Code shall be determined in  
9 accordance with the valuation procedures established by the  
10 retirement system.

11 The recognition of pension benefits as marital property and  
12 the division of those benefits pursuant to a Qualified Illinois  
13 Domestic Relations Order shall not be deemed to be a  
14 diminishment, alienation, or impairment of those benefits. The  
15 division of pension benefits is an allocation of property in  
16 which each spouse has a species of common ownership.

17 (3) For purposes of distribution of property under this  
18 Section, all stock options granted to either spouse after the  
19 marriage and before a judgment of dissolution of marriage or  
20 declaration of invalidity of marriage, whether vested or  
21 non-vested or whether their value is ascertainable, are  
22 presumed to be marital property. This presumption of marital  
23 property is overcome by a showing that the stock options were  
24 acquired by a method listed in subsection (a) of this Section.  
25 The court shall allocate stock options between the parties at  
26 the time of the judgment of dissolution of marriage or

1 declaration of invalidity of marriage recognizing that the  
2 value of the stock options may not be then determinable and  
3 that the actual division of the options may not occur until a  
4 future date. In making the allocation between the parties, the  
5 court shall consider, in addition to the factors set forth in  
6 subsection (d) of this Section, the following:

7 (i) All circumstances underlying the grant of the stock  
8 option including but not limited to whether the grant was  
9 for past, present, or future efforts, or any combination  
10 thereof.

11 (ii) The length of time from the grant of the option to  
12 the time the option is exercisable.

13 (b-5) As to any policy of life insurance insuring the life  
14 of either spouse, or any interest in such policy, that  
15 constitutes marital property, whether whole life, term life,  
16 group term life, universal life, or other form of life  
17 insurance policy, and whether or not the value is  
18 ascertainable, the court shall allocate ownership, death  
19 benefits or the right to assign death benefits, and the  
20 obligation for premium payments, if any, equitably between the  
21 parties at the time of the judgment for dissolution or  
22 declaration of invalidity of marriage.

23 (c) Commingled marital and non-marital property shall be  
24 treated in the following manner, unless otherwise agreed by the  
25 spouses:

26 (1) When marital and non-marital property are

1 commingled by contributing one estate of property into  
2 another resulting in a loss of identity of the contributed  
3 property, the classification of the contributed property  
4 is transmuted to the estate receiving the contribution,  
5 subject to the provisions of paragraph (2) of this  
6 subsection; provided that if marital and non-marital  
7 property are commingled into newly acquired property  
8 resulting in a loss of identity of the contributing  
9 estates, the commingled property shall be deemed  
10 transmuted to marital property, subject to the provisions  
11 of paragraph (2) of this subsection.

12 (2) When one estate of property makes a contribution to  
13 another estate of property, or when a spouse contributes  
14 personal effort to non-marital property, the contributing  
15 estate shall be reimbursed from the estate receiving the  
16 contribution notwithstanding any transmutation; provided,  
17 that no such reimbursement shall be made with respect to a  
18 contribution which is not retraceable by clear and  
19 convincing evidence, or was a gift, or, in the case of a  
20 contribution of personal effort of a spouse to non-marital  
21 property, unless the effort is significant and results in  
22 substantial appreciation of the non-marital property.  
23 Personal effort of a spouse shall be deemed a contribution  
24 by the marital estate. The court may provide for  
25 reimbursement out of the marital property to be divided or  
26 by imposing a lien against the non-marital property which

1 received the contribution.

2 (d) In a proceeding for dissolution of marriage or  
3 declaration of invalidity of marriage, or in a proceeding for  
4 disposition of property following dissolution of marriage by a  
5 court which lacked personal jurisdiction over the absent spouse  
6 or lacked jurisdiction to dispose of the property, the court  
7 shall assign each spouse's non-marital property to that spouse.  
8 It also shall divide the marital property without regard to  
9 marital misconduct in just proportions considering all  
10 relevant factors, including:

11 (1) the contribution of each party to the acquisition,  
12 preservation, or increase or decrease in value of the  
13 marital or non-marital property, including (i) any such  
14 decrease attributable to a payment deemed to have been an  
15 advance from the parties' marital estate under subsection  
16 (c-1)(2) of Section 501 and (ii) the contribution of a  
17 spouse as a homemaker or to the family unit;

18 (2) the dissipation by each party of the marital or  
19 non-marital property, provided that a party's claim of  
20 dissipation is subject to the following conditions:

21 (i) a notice of intent to claim dissipation shall  
22 be given no later than 60 days before trial or 30 days  
23 after discovery closes, whichever is later;

24 (ii) the notice of intent to claim dissipation  
25 shall contain, at a minimum, a date or period of time  
26 during which the marriage began undergoing an

1 irretrievable breakdown, an identification of the  
2 property dissipated, and a date or period of time  
3 during which the dissipation occurred;

4 (iii) the notice of intent to claim dissipation  
5 shall be filed with the clerk of the court and be  
6 served pursuant to applicable rules;

7 (iv) no dissipation shall be deemed to have  
8 occurred prior to 5 years before the filing of the  
9 petition for dissolution of marriage, or 3 years after  
10 the party claiming dissipation knew or should have  
11 known of the dissipation;

12 (3) the value of the property assigned to each spouse;

13 (4) the duration of the marriage;

14 (5) the relevant economic circumstances of each spouse  
15 when the division of property is to become effective,  
16 including the desirability of awarding the family home, or  
17 the right to live therein for reasonable periods, to the  
18 spouse having custody of the children;

19 (6) any obligations and rights arising from a prior  
20 marriage of either party;

21 (7) any antenuptial agreement of the parties;

22 (8) the age, health, station, occupation, amount and  
23 sources of income, vocational skills, employability,  
24 estate, liabilities, and needs of each of the parties;

25 (9) the custodial provisions for any children;

26 (10) whether the apportionment is in lieu of or in



1 addition to maintenance;

2 (11) the reasonable opportunity of each spouse for  
3 future acquisition of capital assets and income; and

4 (12) the tax consequences of the property division upon  
5 the respective economic circumstances of the parties.

6 (e) Each spouse has a species of common ownership in the  
7 marital property which vests at the time dissolution  
8 proceedings are commenced and continues only during the  
9 pendency of the action. Any such interest in marital property  
10 shall not encumber that property so as to restrict its  
11 transfer, assignment or conveyance by the title holder unless  
12 such title holder is specifically enjoined from making such  
13 transfer, assignment or conveyance.

14 (f) In a proceeding for dissolution of marriage or  
15 declaration of invalidity of marriage or in a proceeding for  
16 disposition of property following dissolution of marriage by a  
17 court that lacked personal jurisdiction over the absent spouse  
18 or lacked jurisdiction to dispose of the property, the court,  
19 in determining the value of the marital and non-marital  
20 property for purposes of dividing the property, shall value the  
21 property as of the date of trial or some other date as close to  
22 the date of trial as is practicable.

23 (g) The court if necessary to protect and promote the best  
24 interests of the children may set aside a portion of the  
25 jointly or separately held estates of the parties in a separate  
26 fund or trust for the support, maintenance, education, physical

1 and mental health, and general welfare of any minor, dependent,  
2 or incompetent child of the parties. In making a determination  
3 under this subsection, the court may consider, among other  
4 things, the conviction of a party of any of the offenses set  
5 forth in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,  
6 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13, 12-14, 12-14.1,  
7 12-15, or 12-16, or Section 12-3.05 except for subdivision  
8 (a) (4) or (g) (1), of the Criminal Code of 1961 if the victim is  
9 a child of one or both of the parties, and there is a need for,  
10 and cost of, care, healing and counseling for the child who is  
11 the victim of the crime.

12 (h) Unless specifically directed by a reviewing court, or  
13 upon good cause shown, the court shall not on remand consider  
14 any increase or decrease in the value of any "marital" or  
15 "non-marital" property occurring since the assessment of such  
16 property at the original trial or hearing, but shall use only  
17 that assessment made at the original trial or hearing.

18 (i) The court may make such judgments affecting the marital  
19 property as may be just and may enforce such judgments by  
20 ordering a sale of marital property, with proceeds therefrom to  
21 be applied as determined by the court.

22 (j) After proofs have closed in the final hearing on all  
23 other issues between the parties (or in conjunction with the  
24 final hearing, if all parties so stipulate) and before judgment  
25 is entered, a party's petition for contribution to fees and  
26 costs incurred in the proceeding shall be heard and decided, in

1 accordance with the following provisions:

2 (1) A petition for contribution, if not filed before  
3 the final hearing on other issues between the parties,  
4 shall be filed no later than 30 days after the closing of  
5 proofs in the final hearing or within such other period as  
6 the court orders.

7 (2) Any award of contribution to one party from the  
8 other party shall be based on the criteria for division of  
9 marital property under this Section 503 and, if maintenance  
10 has been awarded, on the criteria for an award of  
11 maintenance under Section 504.

12 (3) The filing of a petition for contribution shall not  
13 be deemed to constitute a waiver of the attorney-client  
14 privilege between the petitioning party and current or  
15 former counsel; and such a waiver shall not constitute a  
16 prerequisite to a hearing for contribution. If either  
17 party's presentation on contribution, however, includes  
18 evidence within the scope of the attorney-client  
19 privilege, the disclosure or disclosures shall be narrowly  
20 construed and shall not be deemed by the court to  
21 constitute a general waiver of the privilege as to matters  
22 beyond the scope of the presentation.

23 (4) No finding on which a contribution award is based  
24 or denied shall be asserted against counsel or former  
25 counsel for purposes of any hearing under subsection (c) or  
26 (e) of Section 508.

1           (5) A contribution award (payable to either the  
2           petitioning party or the party's counsel, or jointly, as  
3           the court determines) may be in the form of either a set  
4           dollar amount or a percentage of fees and costs (or a  
5           portion of fees and costs) to be subsequently agreed upon  
6           by the petitioning party and counsel or, alternatively,  
7           thereafter determined in a hearing pursuant to subsection  
8           (c) of Section 508 or previously or thereafter determined  
9           in an independent proceeding under subsection (e) of  
10          Section 508.

11          (6) The changes to this Section 503 made by this  
12          amendatory Act of 1996 apply to cases pending on or after  
13          June 1, 1997, except as otherwise provided in Section 508.

14          (Source: P.A. 95-374, eff. 1-1-08; 96-583, eff. 1-1-10;  
15          96-1551, Article 1, Section 985, eff. 7-1-11; 96-1551, Article  
16          2, Section 1100, eff. 7-1-11; 97-608, eff. 1-1-12; revised  
17          9-26-11.)