



Sen. Chuck Weaver

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1 AMENDMENT TO SENATE BILL 2437

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2437 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 503 as follows:

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

7 Sec. 503. Disposition of property and debts.

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

12 (1) property acquired by gift, legacy or descent or  
13 property acquired in exchange for such property;

14 (2) property acquired in exchange for property  
15 acquired before the marriage;

16 (3) property acquired by a spouse after a judgment of

1 legal separation;

2 (4) property excluded by valid agreement of the  
3 parties, including a premarital agreement or a postnuptial  
4 agreement;

5 (5) any judgment or property obtained by judgment  
6 awarded to a spouse from the other spouse except, however,  
7 when a spouse is required to sue the other spouse in order  
8 to obtain insurance coverage or otherwise recover from a  
9 third party and the recovery is directly related to amounts  
10 advanced by the marital estate, the judgment shall be  
11 considered marital property;

12 (6) property acquired before the marriage, except as it  
13 relates to retirement plans that may have both marital and  
14 non-marital characteristics;

15 (6.5) all property acquired by a spouse by the sole use  
16 of non-marital property as collateral for a loan that then  
17 is used to acquire property during the marriage; to the  
18 extent that the marital estate repays any portion of the  
19 loan, it shall be considered a contribution from the  
20 marital estate to the non-marital estate subject to  
21 reimbursement;

22 (7) the increase in value of non-marital property,  
23 irrespective of whether the increase results from a  
24 contribution of marital property, non-marital property,  
25 the personal effort of a spouse, or otherwise, subject to  
26 the right of reimbursement provided in subsection (c) of

1           this Section; and

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

5           Property acquired prior to a marriage that would otherwise  
6           be non-marital property shall not be deemed to be marital  
7           property solely because the property was acquired in  
8           contemplation of marriage.

9           The court shall make specific factual findings as to its  
10          classification of assets as marital or non-marital property,  
11          values, and other factual findings supporting its property  
12          award.

13          (b)(1) For purposes of distribution of property, all  
14          property acquired by either spouse after the marriage and  
15          before a judgment of dissolution of marriage or declaration of  
16          invalidity of marriage is presumed marital property. This  
17          presumption includes non-marital property transferred into  
18          some form of co-ownership between the spouses, regardless of  
19          whether title is held individually or by the spouses in some  
20          form of co-ownership such as joint tenancy, tenancy in common,  
21          tenancy by the entirety, or community property. The presumption  
22          of marital property is overcome by showing through clear and  
23          convincing evidence that the property was acquired by a method  
24          listed in subsection (a) of this Section or was done for estate  
25          or tax planning purposes or for other reasons that establish  
26          that a transfer between spouses was not intended to be a gift.

1           (2) For purposes of distribution of property pursuant to  
2 this Section, all pension benefits (including pension benefits  
3 under the Illinois Pension Code, defined benefit plans, defined  
4 contribution plans and accounts, individual retirement  
5 accounts, and non-qualified plans) acquired by or participated  
6 in by either spouse after the marriage and before a judgment of  
7 dissolution of marriage or legal separation or declaration of  
8 invalidity of the marriage are presumed to be marital property.  
9 A spouse may overcome the presumption that these pension  
10 benefits are marital property by showing through clear and  
11 convincing evidence that the pension benefits were acquired by  
12 a method listed in subsection (a) of this Section. The right to  
13 a division of pension benefits in just proportions under this  
14 Section is enforceable under Section 1-119 of the Illinois  
15 Pension Code.

16           The value of pension benefits in a retirement system  
17 subject to the Illinois Pension Code shall be determined in  
18 accordance with the valuation procedures established by the  
19 retirement system.

20           The recognition of pension benefits as marital property and  
21 the division of those benefits pursuant to a Qualified Illinois  
22 Domestic Relations Order shall not be deemed to be a  
23 diminishment, alienation, or impairment of those benefits. The  
24 division of pension benefits is an allocation of property in  
25 which each spouse has a species of common ownership.

26           (3) For purposes of distribution of property under this

1 Section, all stock options and restricted stock or similar form  
2 of benefit granted to either spouse after the marriage and  
3 before a judgment of dissolution of marriage or legal  
4 separation or declaration of invalidity of marriage, whether  
5 vested or non-vested or whether their value is ascertainable,  
6 are presumed to be marital property. This presumption of  
7 marital property is overcome by a showing that the stock  
8 options or restricted stock or similar form of benefit were  
9 acquired by a method listed in subsection (a) of this Section.  
10 The court shall allocate stock options and restricted stock or  
11 similar form of benefit between the parties at the time of the  
12 judgment of dissolution of marriage or declaration of  
13 invalidity of marriage recognizing that the value of the stock  
14 options and restricted stock or similar form of benefit may not  
15 be then determinable and that the actual division of the  
16 options may not occur until a future date. In making the  
17 allocation between the parties, the court shall consider, in  
18 addition to the factors set forth in subsection (d) of this  
19 Section, the following:

20 (i) All circumstances underlying the grant of the stock  
21 option and restricted stock or similar form of benefit  
22 including but not limited to the vesting schedule, whether  
23 the grant was for past, present, or future efforts, whether  
24 the grant is designed to promote future performance or  
25 employment, or any combination thereof.

26 (ii) The length of time from the grant of the option to

1 the time the option is exercisable.

2 (b-5)(1) As to any existing policy of life insurance  
3 insuring the life of either spouse, or any interest in such  
4 policy, that constitutes marital property, whether whole life,  
5 term life, group term life, universal life, or other form of  
6 life insurance policy, and whether or not the value is  
7 ascertainable, the court shall allocate ownership, death  
8 benefits or the right to assign death benefits, and the  
9 obligation for premium payments, if any, equitably between the  
10 parties at the time of the judgment for dissolution or  
11 declaration of invalidity of marriage.

12 (2) If a judgment of dissolution of marriage is entered  
13 after an insured has designated the insured's spouse as a  
14 beneficiary under a life insurance policy in force at the time  
15 of entry, the designation of the insured's former spouse as  
16 beneficiary is not effective unless:

17 (A) the judgment designates the insured's former  
18 spouse as the beneficiary;

19 (B) the insured redesignates the former spouse as the  
20 beneficiary after entry of the judgment; or

21 (C) the former spouse is designated to receive the  
22 proceeds in trust for, on behalf of, or for the benefit of  
23 a child or a dependent of either former spouse.

24 (3) If a designation is not effective under paragraph (2),  
25 the proceeds of the policy are payable to the named alternative  
26 beneficiary or, if there is not a named alternative

1 beneficiary, to the estate of the insured.

2 (4) An insurer that pays the proceeds of a life insurance  
3 policy to the beneficiary under a designation that is not  
4 effective under paragraph (2) is liable for payment of the  
5 proceeds to the person or estate provided by paragraph (3) only  
6 if:

7 (A) before payment of the proceeds to the designated  
8 beneficiary, the insurer receives written notice at the  
9 home office of the insurer from an interested person that  
10 the designation is not effective under paragraph (2); and

11 (B) the insurer has not filed an interpleader.

12 (c) Commingled marital and non-marital property shall be  
13 treated in the following manner, unless otherwise agreed by the  
14 spouses:

15 (1) (A) If marital and non-marital property are  
16 commingled by one estate being contributed into the other,  
17 the following shall apply:

18 (i) If the contributed property loses its  
19 identity, the contributed property transmutes to the  
20 estate receiving the property, subject to the  
21 provisions of paragraph (2) of this subsection (c).

22 (ii) If the contributed property retains its  
23 identity, it does not transmute and remains property of  
24 the contributing estate.

25 (B) If marital and non-marital property are commingled  
26 into newly acquired property resulting in a loss of

1 identity of the contributing estates, the commingled  
2 property shall be deemed transmuted to marital property,  
3 subject to the provisions of paragraph (2) of this  
4 subsection (c).

5 (2) (A) When one estate of property makes a contribution  
6 to another estate of property, the contributing estate  
7 shall be reimbursed from the estate receiving the  
8 contribution notwithstanding any transmutation. No such  
9 reimbursement shall be made with respect to a contribution  
10 that is not traceable by clear and convincing evidence or  
11 that was a gift. The court may provide for reimbursement  
12 out of the marital property to be divided or by imposing a  
13 lien against the non-marital property that received the  
14 contribution.

15 (B) When a spouse contributes personal effort to  
16 non-marital property, it shall be deemed a contribution  
17 from the marital estate, which shall receive reimbursement  
18 for the efforts if the efforts are significant and result  
19 in substantial appreciation to the non-marital property  
20 except that if the marital estate reasonably has been  
21 compensated for his or her efforts, it shall not be deemed  
22 a contribution to the marital estate and there shall be no  
23 reimbursement to the marital estate. The court may provide  
24 for reimbursement out of the marital property to be divided  
25 or by imposing a lien against the non-marital property  
26 which received the contribution.



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

10 (1) each party's contribution to the acquisition,  
11 preservation, or increase or decrease in value of the  
12 marital or non-marital property, including (i) any  
13 decrease attributable to an advance from the parties'  
14 marital estate under subsection (c-1)(2) of Section 501;  
15 (ii) the contribution of a spouse as a homemaker or to the  
16 family unit; and (iii) whether the contribution is after  
17 the commencement of a proceeding for dissolution of  
18 marriage or declaration of invalidity of marriage;

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

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

25 (ii) the notice of intent to claim dissipation  
26 shall contain, at a minimum, a date or period of time

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

5           (iii) a certificate or service of the notice of  
6           intent to claim dissipation shall be filed with the  
7           clerk of the court and be served pursuant to applicable  
8           rules;

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

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

15          (4) the duration of the marriage;

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

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

23          (7) any prenuptial or postnuptial agreement of the  
24          parties;

25          (8) the age, health, station, occupation, amount and  
26          sources of income, vocational skills, employability,

1 estate, liabilities, and needs of each of the parties;

2 (9) the custodial provisions for any children;

3 (10) whether the apportionment is in lieu of or in  
4 addition to maintenance;

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

7 (12) the tax consequences of the property division upon  
8 the respective economic circumstances of the parties.

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

17 (f) In a proceeding for dissolution of marriage or  
18 declaration of invalidity of marriage or in a proceeding for  
19 disposition of property following dissolution of marriage by a  
20 court that lacked personal jurisdiction over the absent spouse  
21 or lacked jurisdiction to dispose of the property, the court,  
22 in determining the value of the marital and non-marital  
23 property for purposes of dividing the property, has the  
24 discretion to use the date of the trial or such other date as  
25 agreed upon by the parties, or ordered by the court within its  
26 discretion, for purposes of determining the value of assets or

1 property.

2 (g) The court if necessary to protect and promote the best  
3 interests of the children may set aside a portion of the  
4 jointly or separately held estates of the parties in a separate  
5 fund or trust for the support, maintenance, education, physical  
6 and mental health, and general welfare of any minor, dependent,  
7 or incompetent child of the parties. In making a determination  
8 under this subsection, the court may consider, among other  
9 things, the conviction of a party of any of the offenses set  
10 forth in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,  
11 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13, 12-14, 12-14.1,  
12 12-15, or 12-16, or Section 12-3.05 except for subdivision  
13 (a) (4) or (g) (1), of the Criminal Code of 1961 or the Criminal  
14 Code of 2012 if the victim is a child of one or both of the  
15 parties, and there is a need for, and cost of, care, healing  
16 and counseling for the child who is the victim of the crime.

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

23 (i) The court may make such judgments affecting the marital  
24 property as may be just and may enforce such judgments by  
25 ordering a sale of marital property, with proceeds therefrom to  
26 be applied as determined by the court.

1           (j) After proofs have closed in the final hearing on all  
2 other issues between the parties (or in conjunction with the  
3 final hearing, if all parties so stipulate) and before judgment  
4 is entered, a party's petition for contribution to fees and  
5 costs incurred in the proceeding shall be heard and decided, in  
6 accordance with the following provisions:

7           (1) A petition for contribution, if not filed before  
8 the final hearing on other issues between the parties,  
9 shall be filed no later than 14 days after the closing of  
10 proofs in the final hearing or within such other period as  
11 the court orders.

12           (2) Any award of contribution to one party from the  
13 other party shall be based on the criteria for division of  
14 marital property under this Section 503 and, if maintenance  
15 has been awarded, on the criteria for an award of  
16 maintenance under Section 504.

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

1 beyond the scope of the presentation.

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

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

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

19 (k) In determining the value of assets or property under  
20 this Section, the court shall employ a fair market value  
21 standard. The date of valuation for the purposes of division of  
22 assets shall be the date of trial or such other date as agreed  
23 by the parties or ordered by the court, within its discretion.  
24 If the court grants a petition brought under Section 2-1401 of  
25 the Code of Civil Procedure, then the court has the discretion  
26 to use the date of the trial or such other date as agreed upon

1 by the parties, or ordered by the court within its discretion,  
2 for purposes of determining the value of assets or property.

3 (l) The court may seek the advice of financial experts or  
4 other professionals, whether or not employed by the court on a  
5 regular basis. The advice given shall be in writing and made  
6 available by the court to counsel. Counsel may examine as a  
7 witness any professional consulted by the court designated as  
8 the court's witness. Professional personnel consulted by the  
9 court are subject to subpoena for the purposes of discovery,  
10 trial, or both. The court shall allocate the costs and fees of  
11 those professional personnel between the parties based upon the  
12 financial ability of each party and any other criteria the  
13 court considers appropriate, and the allocation is subject to  
14 reallocation under subsection (a) of Section 508. Upon the  
15 request of any party or upon the court's own motion, the court  
16 may conduct a hearing as to the reasonableness of those fees  
17 and costs.

18 (m) The changes made to this Section by Public Act 97-941  
19 apply only to petitions for dissolution of marriage filed on or  
20 after January 1, 2013 (the effective date of Public Act  
21 97-941).

22 (n) If the court finds that a companion animal of the  
23 parties is a marital asset, it shall allocate the sole or joint  
24 ownership of and responsibility for a companion animal of the  
25 parties. In issuing an order under this subsection, the court  
26 shall take into consideration the well-being of the companion

1 animal. As used in this Section, "companion animal" does not  
2 include a service animal as defined in Section 2.01c of the  
3 Humane Care for Animals Act.

4 (Source: P.A. 99-78, eff. 7-20-15; 99-90, eff. 1-1-16; 99-763,  
5 eff. 1-1-17; 100-422, eff. 1-1-18.)".