

# HB4281



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

**HB4281**

Introduced 1/28/2020, by Rep. Lindsay Parkhurst

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1401

from Ch. 110, par. 2-1401

Amends the Post-Judgment Article of the Code of Civil Procedure. Provides that a movant may present a meritorious claim for relief from a final order or judgment if the allegations in the petition establish, by a preponderance of the evidence, that the law under which the movant was convicted has been held by the Supreme Court of the State or the United States Supreme Court to be facially unconstitutional.

LRB101 16894 LNS 66293 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 Code of Civil Procedure is amended by  
5 changing Section 2-1401 as follows:

6 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

7 Sec. 2-1401. Relief from judgments.

8 (a) Relief from final orders and judgments, after 30 days  
9 from the entry thereof, may be had upon petition as provided in  
10 this Section. Writs of error coram nobis and coram vobis, bills  
11 of review and bills in the nature of bills of review are  
12 abolished. All relief heretofore obtainable and the grounds for  
13 such relief heretofore available, whether by any of the  
14 foregoing remedies or otherwise, shall be available in every  
15 case, by proceedings hereunder, regardless of the nature of the  
16 order or judgment from which relief is sought or of the  
17 proceedings in which it was entered. Except as provided in the  
18 Illinois Parentage Act of 2015, there shall be no distinction  
19 between actions and other proceedings, statutory or otherwise,  
20 as to availability of relief, grounds for relief or the relief  
21 obtainable.

22 (b) The petition must be filed in the same proceeding in  
23 which the order or judgment was entered but is not a

1 continuation thereof. The petition must be supported by  
2 affidavit or other appropriate showing as to matters not of  
3 record. A petition to reopen a foreclosure proceeding must  
4 include as parties to the petition, but is not limited to, all  
5 parties in the original action in addition to the current  
6 record title holders of the property, current occupants, and  
7 any individual or entity that had a recorded interest in the  
8 property before the filing of the petition. All parties to the  
9 petition shall be notified as provided by rule.

10 (b-5) A movant may present a meritorious claim under this  
11 Section if the allegations in the petition establish each of  
12 the following by a preponderance of the evidence:

13 (1) the movant was convicted of a forcible felony;

14 (2) the movant's participation in the offense was  
15 related to him or her previously having been a victim of  
16 domestic violence as perpetrated by an intimate partner;

17 (3) no evidence of domestic violence against the movant  
18 was presented at the movant's sentencing hearing;

19 (4) the movant was unaware of the mitigating nature of  
20 the evidence of the domestic violence at the time of  
21 sentencing and could not have learned of its significance  
22 sooner through diligence; and

23 (5) the new evidence of domestic violence against the  
24 movant is material and noncumulative to other evidence  
25 offered at the sentencing hearing, and is of such a  
26 conclusive character that it would likely change the

1 sentence imposed by the original trial court.

2 Nothing in this subsection (b-5) shall prevent a movant  
3 from applying for any other relief under this Section or any  
4 other law otherwise available to him or her.

5 As used in this subsection (b-5):

6 "Domestic violence" means abuse as defined in Section  
7 103 of the Illinois Domestic Violence Act of 1986.

8 "Forcible felony" has the meaning ascribed to the term  
9 in Section 2-8 of the Criminal Code of 2012.

10 "Intimate partner" means a spouse or former spouse,  
11 persons who have or allegedly have had a child in common,  
12 or persons who have or have had a dating or engagement  
13 relationship.

14 (b-10) A movant may present a meritorious claim under this  
15 Section if the allegations in the petition establish each of  
16 the following by a preponderance of the evidence:

17 (A) she was convicted of a forcible felony;

18 (B) her participation in the offense was a direct  
19 result of her suffering from post-partum depression or  
20 post-partum psychosis;

21 (C) no evidence of post-partum depression or  
22 post-partum psychosis was presented by a qualified medical  
23 person at trial or sentencing, or both;

24 (D) she was unaware of the mitigating nature of the  
25 evidence or, if aware, was at the time unable to present  
26 this defense due to suffering from post-partum depression

1 or post-partum psychosis, or, at the time of trial or  
2 sentencing, neither was a recognized mental illness and as  
3 such, she was unable to receive proper treatment; and

4 (E) evidence of post-partum depression or post-partum  
5 psychosis as suffered by the person is material and  
6 noncumulative to other evidence offered at the time of  
7 trial or sentencing, and it is of such a conclusive  
8 character that it would likely change the sentence imposed  
9 by the original court.

10 Nothing in this subsection (b-10) prevents a person from  
11 applying for any other relief under this Article or any other  
12 law otherwise available to her.

13 As used in this subsection (b-10):

14 "Post-partum depression" means a mood disorder which  
15 strikes many women during and after pregnancy and usually  
16 occurs during pregnancy and up to 12 months after delivery.  
17 This depression can include anxiety disorders.

18 "Post-partum psychosis" means an extreme form of  
19 post-partum depression which can occur during pregnancy  
20 and up to 12 months after delivery. This can include losing  
21 touch with reality, distorted thinking, delusions,  
22 auditory and visual hallucinations, paranoia,  
23 hyperactivity and rapid speech, or mania.

24 (b-15) A movant may present a meritorious claim under this  
25 Section if the allegations in the petition establish, by a  
26 preponderance of the evidence, that the law under which the

1 movant was convicted has been held by the Supreme Court of this  
2 State or the United States Supreme Court to be facially  
3 unconstitutional.

4 (c) Except as provided in Section 20b of the Adoption Act  
5 and Section 2-32 of the Juvenile Court Act of 1987 or in a  
6 petition based upon Section 116-3 of the Code of Criminal  
7 Procedure of 1963 or subsection (b-10) of this Section, or in a  
8 motion to vacate and expunge convictions under the Cannabis  
9 Control Act as provided by subsection (i) of Section 5.2 of the  
10 Criminal Identification Act, the petition must be filed not  
11 later than 2 years after the entry of the order or judgment.  
12 Time during which the person seeking relief is under legal  
13 disability or duress or the ground for relief is fraudulently  
14 concealed shall be excluded in computing the period of 2 years.

15 (d) The filing of a petition under this Section does not  
16 affect the order or judgment, or suspend its operation.

17 (e) Unless lack of jurisdiction affirmatively appears from  
18 the record proper, the vacation or modification of an order or  
19 judgment pursuant to the provisions of this Section does not  
20 affect the right, title or interest in or to any real or  
21 personal property of any person, not a party to the original  
22 action, acquired for value after the entry of the order or  
23 judgment but before the filing of the petition, nor affect any  
24 right of any person not a party to the original action under  
25 any certificate of sale issued before the filing of the  
26 petition, pursuant to a sale based on the order or judgment.

1 When a petition is filed pursuant to this Section to reopen a  
2 foreclosure proceeding, notwithstanding the provisions of  
3 Section 15-1701 of this Code, the purchaser or successor  
4 purchaser of real property subject to a foreclosure sale who  
5 was not a party to the mortgage foreclosure proceedings is  
6 entitled to remain in possession of the property until the  
7 foreclosure action is defeated or the previously foreclosed  
8 defendant redeems from the foreclosure sale if the purchaser  
9 has been in possession of the property for more than 6 months.

10 (f) Nothing contained in this Section affects any existing  
11 right to relief from a void order or judgment, or to employ any  
12 existing method to procure that relief.

13 (Source: P.A. 100-1048, eff. 8-23-18; 101-27, eff. 6-25-19;  
14 101-411, eff. 8-16-19; revised 9-17-19.)