

HB3484



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3484

Introduced 2/22/2021, by Rep. Denyse Stoneback

SYNOPSIS AS INTRODUCED:

750 ILCS 5/501

from Ch. 40, par. 501

Amends the Illinois Marriage and Dissolution of Marriage Act. Allows either party to petition or move for an allowance from the other party for a retainer fee to obtain an attorney, accompanied by a financial affidavit that is supported by documentary evidence, and a certificate stating that if an allowance is granted, the party shall only use it for retaining an attorney. Provides that the court shall review the financial affidavit and, if appropriate, grant an allowance to the party for a retainer fee.

LRB102 13864 LNS 19215 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 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
17 returns, pay stubs, and banking statements. Unless the
18 court otherwise directs, any affidavit or supporting
19 documentary evidence submitted pursuant to this paragraph
20 shall not be made part of the public record of the
21 proceedings but shall be available to the court or an
22 appellate court in which the proceedings are subject to
23 review, to the parties, their attorneys, and such other

1 persons as the court may direct. Upon motion of a party, a
2 court may hold a hearing to determine whether and why
3 there is a disparity between a party's sworn affidavit and
4 the supporting documentation. If a party intentionally or
5 recklessly files an inaccurate or misleading financial
6 affidavit, the court shall impose significant penalties
7 and sanctions including, but not limited to, costs and
8 attorney's fees;

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

12 (i) restraining any person from transferring,
13 encumbering, concealing or otherwise disposing of any
14 property except in the usual course of business or for
15 the necessities of life, and, if so restrained,
16 requiring him to notify the moving party and his
17 attorney of any proposed extraordinary expenditures
18 made after the order is issued; however, an order need
19 not include an exception for transferring,
20 encumbering, or otherwise disposing of property in the
21 usual course of business or for the necessities of
22 life if the court enters appropriate orders that
23 enable the parties to pay their necessary personal and
24 business expenses including, but not limited to,
25 appropriate professionals to assist the court pursuant
26 to subsection (1) of Section 503 to administer the

1 payment and accounting of such living and business
2 expenses;

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

5 (iii) enjoining a party from striking or
6 interfering with the personal liberty of the other
7 party or of any child; or

8 (iv) providing other injunctive relief proper in
9 the circumstances; ~~or~~

10 (2.5) an allowance from the other party for a retainer
11 fee to obtain an attorney. The petition shall be
12 accompanied by a financial affidavit that is supported by
13 documentary evidence, and a certificate stating that if an
14 allowance is granted, the party shall only use it for
15 retaining an attorney. The court shall review the
16 financial affidavit and, if appropriate, grant an
17 allowance to the party for a retainer fee; or

18 (3) other appropriate temporary relief including, in
19 the discretion of the court, ordering the purchase or sale
20 of assets and requiring that a party or parties borrow
21 funds in the appropriate circumstances.

22 Issues concerning temporary maintenance or temporary
23 support of a child entitled to support shall be dealt with on a
24 summary basis based on allocated parenting time, financial
25 affidavits, tax returns, pay stubs, banking statements, and
26 other relevant documentation, except an evidentiary hearing

1 may be held upon a showing of good cause. If a party
2 intentionally or recklessly files an inaccurate or misleading
3 financial affidavit, the court shall impose significant
4 penalties and sanctions including, but not limited to, costs
5 and attorney's fees resulting from the improper
6 representation.

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

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

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

22 (1) Except for good cause shown, a proceeding for (or
23 relating to) interim attorney's fees and costs in a
24 pre-judgment dissolution proceeding shall be
25 nonevidentiary and summary in nature. All hearings for or
26 relating to interim attorney's fees and costs under this

1 subsection shall be scheduled expeditiously by the court.
2 When a party files a petition for interim attorney's fees
3 and costs supported by one or more affidavits that
4 delineate relevant factors, the court (or a hearing
5 officer) shall assess an interim award after affording the
6 opposing party a reasonable opportunity to file a
7 responsive pleading. A responsive pleading shall set out
8 the amount of each retainer or other payment or payments,
9 or both, previously paid to the responding party's counsel
10 by or on behalf of the responding party. A responsive
11 pleading shall include costs incurred, and shall indicate
12 whether the costs are paid or unpaid. In assessing an
13 interim award, the court shall consider all relevant
14 factors, as presented, that appear reasonable and
15 necessary, including to the extent applicable:

16 (A) the income and property of each party,
17 including alleged marital property within the sole
18 control of one party and alleged non-marital property
19 within access to a party;

20 (B) the needs of each party;

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

22 (D) any impairment to present earning capacity of
23 either party, including age and physical and emotional
24 health;

25 (E) the standard of living established during the
26 marriage;

1 (F) the degree of complexity of the issues,
2 including allocation of parental responsibility,
3 valuation or division (or both) of closely held
4 businesses, and tax planning, as well as reasonable
5 needs for expert investigations or expert witnesses,
6 or both;

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

8 (H) the amount of the payment or payments made or
9 reasonably expected to be made to the attorney for the
10 other party; and

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

13 (2) Any assessment of an interim award (including one
14 pursuant to an agreed order) shall be without prejudice to
15 any final allocation and without prejudice as to any claim
16 or right of either party or any counsel of record at the
17 time of the award. Any such claim or right may be presented
18 by the appropriate party or counsel at a hearing on
19 contribution under subsection (j) of Section 503 or a
20 hearing on counsel's fees under subsection (c) of Section
21 508. Unless otherwise ordered by the court at the final
22 hearing between the parties or in a hearing under
23 subsection (j) of Section 503 or subsection (c) of Section
24 508, interim awards, as well as the aggregate of all other
25 payments by each party to counsel and related payments to
26 third parties, shall be deemed to have been advances from

1 the parties' marital estate. Any portion of any interim
2 award constituting an overpayment shall be remitted back
3 to the appropriate party or parties, or, alternatively, to
4 successor counsel, as the court determines and directs,
5 after notice in a form designated by the Supreme Court. An
6 order for the award of interim attorney's fees shall be a
7 standardized form order and labeled "Interim Fee Award
8 Order".

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

1 (or hearing officer) shall enter an order that allocates
2 available funds for each party's counsel, including
3 retainers or interim payments, or both, previously paid,
4 in a manner that achieves substantial parity between the
5 parties.

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

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

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

26 (1) does not prejudice the rights of the parties or

1 the child which are to be adjudicated at subsequent
2 hearings in the proceeding;

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

5 (3) terminates when the final judgment is entered or
6 when the petition for dissolution of marriage or legal
7 separation or declaration of invalidity of marriage is
8 dismissed.

9 (e) The fees or costs of mediation shall be borne by the
10 parties and may be assessed by the court as it deems equitable
11 without prejudice and are subject to reallocation at the
12 conclusion of the case.

13 (f) Companion animals. Either party may petition or move
14 for the temporary allocation of sole or joint possession of
15 and responsibility for a companion animal jointly owned by the
16 parties. In issuing an order under this subsection, the court
17 shall take into consideration the well-being of the companion
18 animal. As used in this Section, "companion animal" does not
19 include a service animal as defined in Section 2.01c of the
20 Humane Care for Animals Act.

21 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17;
22 100-422, eff. 1-1-18.)