



Sen. Rachelle Crowe

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10200HB3484sam002

LRB102 13864 LNS 26850 a

1 AMENDMENT TO HOUSE BILL 3484

2 AMENDMENT NO. _____. Amend House Bill 3484 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 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

1 returns, pay stubs, and banking statements. Unless the
2 court otherwise directs, any affidavit or supporting
3 documentary evidence submitted pursuant to this paragraph
4 shall not be made part of the public record of the
5 proceedings but shall be available to the court or an
6 appellate court in which the proceedings are subject to
7 review, to the parties, their attorneys, and such other
8 persons as the court may direct. Upon motion of a party, a
9 court may hold a hearing to determine whether and why
10 there is a disparity between a party's sworn affidavit and
11 the supporting documentation. If a party intentionally or
12 recklessly files an inaccurate or misleading financial
13 affidavit, the court shall impose significant penalties
14 and sanctions including, but not limited to, costs and
15 attorney's fees;

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

19 (i) restraining any person from transferring,
20 encumbering, concealing or otherwise disposing of any
21 property except in the usual course of business or for
22 the necessities of life, and, if so restrained,
23 requiring him to notify the moving party and his
24 attorney of any proposed extraordinary expenditures
25 made after the order is issued; however, an order need
26 not include an exception for transferring,

1 encumbering, or otherwise disposing of property in the
2 usual course of business or for the necessities of
3 life if the court enters appropriate orders that
4 enable the parties to pay their necessary personal and
5 business expenses including, but not limited to,
6 appropriate professionals to assist the court pursuant
7 to subsection (1) of Section 503 to administer the
8 payment and accounting of such living and business
9 expenses;

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

12 (iii) enjoining a party from striking or
13 interfering with the personal liberty of the other
14 party or of any child; or

15 (iv) providing other injunctive relief proper in
16 the circumstances; or

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

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

1 intentionally or recklessly files an inaccurate or misleading
2 financial affidavit, the court shall impose significant
3 penalties and sanctions including, but not limited to, costs
4 and attorney's fees resulting from the improper
5 representation.

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

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

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

24 (1) Except for good cause shown, a proceeding for (or
25 relating to) interim attorney's fees and costs in a
26 pre-judgment dissolution proceeding shall be

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

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

22 (B) the needs of each party;

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

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

1 (E) the standard of living established during the
2 marriage;

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

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

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

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

15 (1.5) A petition for interim fees that seeks an order
16 for the payment of an initial retainer to retain an
17 attorney shall have attached to it an affidavit from the
18 attorney to be retained that the attorney has been
19 contacted by the moving party and the attorney has agreed
20 to enter an appearance if the court grants the relief
21 requested, together with a certificate from the moving
22 party that the interim fees granted will only be used by
23 the moving party to retain the attorney. Any interim fees
24 granted pursuant to this paragraph shall be paid directly
25 to the identified attorney.

26 (2) Any assessment of an interim award (including one

1 pursuant to an agreed order) shall be without prejudice to
2 any final allocation and without prejudice as to any claim
3 or right of either party or any counsel of record at the
4 time of the award. Any such claim or right may be presented
5 by the appropriate party or counsel at a hearing on
6 contribution under subsection (j) of Section 503 or a
7 hearing on counsel's fees under subsection (c) of Section
8 508. Unless otherwise ordered by the court at the final
9 hearing between the parties or in a hearing under
10 subsection (j) of Section 503 or subsection (c) of Section
11 508, interim awards, as well as the aggregate of all other
12 payments by each party to counsel and related payments to
13 third parties, shall be deemed to have been advances from
14 the parties' marital estate. Any portion of any interim
15 award constituting an overpayment shall be remitted back
16 to the appropriate party or parties, or, alternatively, to
17 successor counsel, as the court determines and directs,
18 after notice in a form designated by the Supreme Court. An
19 order for the award of interim attorney's fees shall be a
20 standardized form order and labeled "Interim Fee Award
21 Order".

22 (3) In any proceeding under this subsection (c-1), the
23 court (or hearing officer) shall assess an interim award
24 against an opposing party in an amount necessary to enable
25 the petitioning party to participate adequately in the
26 litigation, upon findings that the party from whom

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

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

22 (c-2) Allocation of use of marital residence. Where there
23 is on file a verified complaint or verified petition seeking
24 temporary eviction from the marital residence, the court may,
25 during the pendency of the proceeding, only in cases where the
26 physical or mental well-being of either spouse or his or her

1 children is jeopardized by occupancy of the marital residence
2 by both spouses, and only upon due notice and full hearing,
3 unless waived by the court on good cause shown, enter orders
4 granting the exclusive possession of the marital residence to
5 either spouse, by eviction from, or restoration of, the
6 marital residence, until the final determination of the cause
7 pursuant to the factors listed in Section 602.7 of this Act. No
8 such order shall in any manner affect any estate in homestead
9 property of either party. In entering orders under this
10 subsection (c-2), the court shall balance hardships to the
11 parties.

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

13 (1) does not prejudice the rights of the parties or
14 the child which are to be adjudicated at subsequent
15 hearings in the proceeding;

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

18 (3) terminates when the final judgment is entered or
19 when the petition for dissolution of marriage or legal
20 separation or declaration of invalidity of marriage is
21 dismissed.

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

26 (f) Companion animals. Either party may petition or move

1 for the temporary allocation of sole or joint possession of
2 and responsibility for a companion animal jointly owned by the
3 parties. In issuing an order under this subsection, the court
4 shall take into consideration the well-being of the companion
5 animal. As used in this Section, "companion animal" does not
6 include a service animal as defined in Section 2.01c of the
7 Humane Care for Animals Act.

8 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17;
9 100-422, eff. 1-1-18.)".