

1 AN ACT concerning family 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 510 as follows:

6 (750 ILCS 5/510) (from Ch. 40, par. 510)

7 (Text of Section before amendment by P.A. 92-876)

8 Sec. 510. Modification and termination of provisions for  
9 maintenance, support, educational expenses, and property  
10 disposition.

11 (a) Except as otherwise provided in paragraph (f) of  
12 Section 502 and in subsection (b), clause (3) of Section  
13 505.2, the provisions of any judgment respecting maintenance  
14 or support may be modified only as to installments accruing  
15 subsequent to due notice by the moving party of the filing of  
16 the motion for modification and ~~with respect to maintenance,~~  
17 ~~only upon a showing of a substantial change in circumstances.~~  
18 An order for child support may be modified as follows:

19 (1) upon a showing of a substantial change in  
20 circumstances; and

21 (2) without the necessity of showing a substantial  
22 change in circumstances, as follows:

23 (A) upon a showing of an inconsistency of at  
24 least 20%, but no less than \$10 per month, between  
25 the amount of the existing order and the amount of  
26 child support that results from application of the  
27 guidelines specified in Section 505 of this Act  
28 unless the inconsistency is due to the fact that the  
29 amount of the existing order resulted from a  
30 deviation from the guideline amount and there has  
31 not been a change in the circumstances that resulted

1 in that deviation; or

2 (B) Upon a showing of a need to provide for  
3 the health care needs of the child under the order  
4 through health insurance or other means. In no  
5 event shall the eligibility for or receipt of  
6 medical assistance be considered to meet the need to  
7 provide for the child's health care needs.

8 The provisions of subparagraph (a)(2)(A) shall apply only  
9 in cases in which a party is receiving child support  
10 enforcement services from the Illinois Department of Public  
11 Aid under Article X of the Illinois Public Aid Code, and only  
12 when at least 36 months have elapsed since the order for  
13 child support was entered or last modified.

14 (a-5) An order for maintenance may be modified or  
15 terminated only upon a showing of a substantial change in  
16 circumstances. In all such proceedings, as well as in  
17 proceedings in which maintenance is being reviewed, the court  
18 shall consider the applicable factors set forth in subsection  
19 (a) of Section 504 and the following factors:

20 (1) any change in the employment status of either  
21 party and whether the change has been made in good faith;

22 (2) the efforts, if any, made by the party  
23 receiving maintenance to become self-supporting, and the  
24 reasonableness of the efforts where they are appropriate;

25 (3) any impairment of the present and future  
26 earning capacity of either party;

27 (4) the tax consequences of the maintenance  
28 payments upon the respective economic circumstances of  
29 the parties;

30 (5) the duration of the maintenance payments  
31 previously paid (and remaining to be paid) relative to  
32 the length of the marriage;

33 (6) the property, including retirement benefits,  
34 awarded to each party under the judgment of dissolution

1 of marriage, judgment of legal separation, or judgment of  
2 declaration of invalidity of marriage and the present  
3 status of the property;

4 (7) the increase or decrease in each party's income  
5 since the prior judgment or order from which a review,  
6 modification, or termination is being sought;

7 (8) the property acquired and currently owned by  
8 each party after the entry of the judgment of dissolution  
9 of marriage, judgment of legal separation, or judgment of  
10 declaration of invalidity of marriage; and

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

13 (b) The provisions as to property disposition may not be  
14 revoked or modified, unless the court finds the existence of  
15 conditions that justify the reopening of a judgment under the  
16 laws of this State.

17 (c) Unless otherwise agreed by the parties in a written  
18 agreement set forth in the judgment or otherwise approved by  
19 the court, the obligation to pay future maintenance is  
20 terminated upon the death of either party, or the remarriage  
21 of the party receiving maintenance, or if the party receiving  
22 maintenance cohabits with another person on a resident,  
23 continuing conjugal basis.

24 (d) Unless otherwise agreed in writing or expressly  
25 provided in a judgment, provisions for the support of a child  
26 are terminated by emancipation of the child, except as  
27 otherwise provided herein, but not by the death of a parent  
28 obligated to support or educate the child. An existing  
29 obligation to pay for support or educational expenses, or  
30 both, is not terminated by the death of a parent. When a  
31 parent obligated to pay support or educational expenses, or  
32 both, dies, the amount of support or educational expenses, or  
33 both, may be enforced, modified, revoked or commuted to a  
34 lump sum payment, as equity may require, and that

1 determination may be provided for at the time of the  
2 dissolution of the marriage or thereafter.

3 (e) The right to petition for support or educational  
4 expenses, or both, under Sections 505 and 513 is not  
5 extinguished by the death of a parent. Upon a petition filed  
6 before or after a parent's death, the court may award sums of  
7 money out of the decedent's estate for the child's support or  
8 educational expenses, or both, as equity may require. The  
9 time within which a claim may be filed against the estate of  
10 a decedent under Sections 505 and 513 and subsection (d) and  
11 this subsection shall be governed by the provisions of the  
12 Probate Act of 1975, as a barrable, noncontingent claim.

13 (f) A petition to modify or terminate child support,  
14 custody, or visitation shall not delay any child support  
15 enforcement litigation or supplementary proceeding on behalf  
16 of the obligee, including, but not limited to, a petition for  
17 a rule to show cause, for non-wage garnishment, or for a  
18 restraining order.

19 (Source: P.A. 92-289, eff. 8-9-01; 92-590, eff. 7-1-02;  
20 92-651, eff. 7-11-02.)

21 (Text of Section after amendment by P.A. 92-876)

22 Sec. 510. Modification and termination of provisions for  
23 maintenance, support, educational expenses, and property  
24 disposition.

25 (a) Except as otherwise provided in paragraph (f) of  
26 Section 502 and in subsection (b), clause (3) of Section  
27 505.2, the provisions of any judgment respecting maintenance  
28 or support may be modified only as to installments accruing  
29 subsequent to due notice by the moving party of the filing of  
30 the motion for modification and ~~with respect to maintenance,~~  
31 ~~only upon a showing of a substantial change in circumstances.~~  
32 An order for child support may be modified as follows:

33 (1) upon a showing of a substantial change in  
34 circumstances; and

1 (2) without the necessity of showing a substantial  
2 change in circumstances, as follows:

3 (A) upon a showing of an inconsistency of at  
4 least 20%, but no less than \$10 per month, between  
5 the amount of the existing order and the amount of  
6 child support that results from application of the  
7 guidelines specified in Section 505 of this Act  
8 unless the inconsistency is due to the fact that the  
9 amount of the existing order resulted from a  
10 deviation from the guideline amount and there has  
11 not been a change in the circumstances that resulted  
12 in that deviation; or

13 (B) Upon a showing of a need to provide for  
14 the health care needs of the child under the order  
15 through health insurance or other means. In no  
16 event shall the eligibility for or receipt of  
17 medical assistance be considered to meet the need to  
18 provide for the child's health care needs.

19 The provisions of subparagraph (a)(2)(A) shall apply only  
20 in cases in which a party is receiving child support  
21 enforcement services from the Illinois Department of Public  
22 Aid under Article X of the Illinois Public Aid Code, and only  
23 when at least 36 months have elapsed since the order for  
24 child support was entered or last modified.

25 (a-5) An order for maintenance may be modified or  
26 terminated only upon a showing of a substantial change in  
27 circumstances. In all such proceedings, as well as in  
28 proceedings in which maintenance is being reviewed, the court  
29 shall consider the applicable factors set forth in subsection  
30 (a) of Section 504 and the following factors:

31 (1) any change in the employment status of either  
32 party and whether the change has been made in good faith;

33 (2) the efforts, if any, made by the party  
34 receiving maintenance to become self-supporting, and the

1 reasonableness of the efforts where they are appropriate;

2 (3) any impairment of the present and future  
3 earning capacity of either party;

4 (4) the tax consequences of the maintenance  
5 payments upon the respective economic circumstances of  
6 the parties;

7 (5) the duration of the maintenance payments  
8 previously paid (and remaining to be paid) relative to  
9 the length of the marriage;

10 (6) the property, including retirement benefits,  
11 awarded to each party under the judgment of dissolution  
12 of marriage, judgment of legal separation, or judgment of  
13 declaration of invalidity of marriage and the present  
14 status of the property;

15 (7) the increase or decrease in each party's income  
16 since the prior judgment or order from which a review,  
17 modification, or termination is being sought;

18 (8) the property acquired and currently owned by  
19 each party after the entry of the judgment of dissolution  
20 of marriage, judgment of legal separation, or judgment of  
21 declaration of invalidity of marriage; and

22 (9) any other factor that the court expressly finds  
23 to be just and equitable.

24 (b) The provisions as to property disposition may not be  
25 revoked or modified, unless the court finds the existence of  
26 conditions that justify the reopening of a judgment under the  
27 laws of this State.

28 (c) Unless otherwise agreed by the parties in a written  
29 agreement set forth in the judgment or otherwise approved by  
30 the court, the obligation to pay future maintenance is  
31 terminated upon the death of either party, or the remarriage  
32 of the party receiving maintenance, or if the party receiving  
33 maintenance cohabits with another person on a resident,  
34 continuing conjugal basis.

1 (d) Unless otherwise provided in this Act, or as agreed  
2 in writing or expressly provided in the judgment, provisions  
3 for the support of a child are terminated by emancipation of  
4 the child, or if the child has attained the age of 18 and is  
5 still attending high school, provisions for the support of  
6 the child are terminated upon the date that the child  
7 graduates from high school or the date the child attains the  
8 age of 19, whichever is earlier, but not by the death of a  
9 parent obligated to support or educate the child. An existing  
10 obligation to pay for support or educational expenses, or  
11 both, is not terminated by the death of a parent. When a  
12 parent obligated to pay support or educational expenses, or  
13 both, dies, the amount of support or educational expenses, or  
14 both, may be enforced, modified, revoked or commuted to a  
15 lump sum payment, as equity may require, and that  
16 determination may be provided for at the time of the  
17 dissolution of the marriage or thereafter.

18 (e) The right to petition for support or educational  
19 expenses, or both, under Sections 505 and 513 is not  
20 extinguished by the death of a parent. Upon a petition filed  
21 before or after a parent's death, the court may award sums of  
22 money out of the decedent's estate for the child's support or  
23 educational expenses, or both, as equity may require. The  
24 time within which a claim may be filed against the estate of  
25 a decedent under Sections 505 and 513 and subsection (d) and  
26 this subsection shall be governed by the provisions of the  
27 Probate Act of 1975, as a barrable, noncontingent claim.

28 (f) A petition to modify or terminate child support,  
29 custody, or visitation shall not delay any child support  
30 enforcement litigation or supplementary proceeding on behalf  
31 of the obligee, including, but not limited to, a petition for  
32 a rule to show cause, for non-wage garnishment, or for a  
33 restraining order.

34 (Source: P.A. 92-289, eff. 8-9-01; 92-590, eff. 7-1-02;

1 92-651, eff. 7-11-02; 92-876, eff. 6-1-03; revised 1-14-03.)