



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Iris Y. Martinez

SYNOPSIS AS INTRODUCED:

750 ILCS 5/510

from Ch. 40, par. 510

Amends the Marriage and Dissolution of Marriage Act. Requires the court to modify the child support and maintenance obligation of any member of the National Guard or Reserves of the United States Armed Forces who is called up to active duty, by the same proportion that the soldier's military pay falls below his or her civilian pay, provided that the motion for modification is filed within 180 days of the soldier's discharge from active duty. Provides that the modification shall be retroactive to the date that the soldier reported to active duty and shall continue until his or her discharge from active duty. Effective immediately.

LRB093 21046 LCB 47067 b

1 AN ACT concerning child support.

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

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

17 (1) upon a showing of a substantial change in
18 circumstances; and

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

21 (A) upon a showing of an inconsistency of at least
22 20%, but no less than \$10 per month, between the amount
23 of the existing order and the amount of child support
24 that results from application of the guidelines
25 specified in Section 505 of this Act unless the
26 inconsistency is due to the fact that the amount of the
27 existing order resulted from a deviation from the
28 guideline amount and there has not been a change in the
29 circumstances that resulted in that deviation; or

30 (B) Upon a showing of a need to provide for the
31 health care needs of the child under the order through
32 health insurance or other means. In no event shall the

1 eligibility for or receipt of medical assistance be
2 considered to meet the need to provide for the child's
3 health care needs.

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

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

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

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

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

23 (4) the tax consequences of the maintenance payments
24 upon the respective economic circumstances of the parties;

25 (5) the duration of the maintenance payments
26 previously paid (and remaining to be paid) relative to the
27 length of the marriage;

28 (6) the property, including retirement benefits,
29 awarded to each party under the judgment of dissolution of
30 marriage, judgment of legal separation, or judgment of
31 declaration of invalidity of marriage and the present
32 status of the property;

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

36 (8) the property acquired and currently owned by each

1 party after the entry of the judgment of dissolution of
2 marriage, judgment of legal separation, or judgment of
3 declaration of invalidity of marriage; and

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

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

10 (c) Unless otherwise agreed by the parties in a written
11 agreement set forth in the judgment or otherwise approved by
12 the court, the obligation to pay future maintenance is
13 terminated upon the death of either party, or the remarriage of
14 the party receiving maintenance, or if the party receiving
15 maintenance cohabits with another person on a resident,
16 continuing conjugal basis.

17 (d) Unless otherwise provided in this Act, or as agreed in
18 writing or expressly provided in the judgment, provisions for
19 the support of a child are terminated by emancipation of the
20 child, or if the child has attained the age of 18 and is still
21 attending high school, provisions for the support of the child
22 are terminated upon the date that the child graduates from high
23 school or the date the child attains the age of 19, whichever
24 is earlier, but not by the death of a parent obligated to
25 support or educate the child. An existing obligation to pay for
26 support or educational expenses, or both, is not terminated by
27 the death of a parent. When a parent obligated to pay support
28 or educational expenses, or both, dies, the amount of support
29 or educational expenses, or both, may be enforced, modified,
30 revoked or commuted to a lump sum payment, as equity may
31 require, and that determination may be provided for at the time
32 of the dissolution of the marriage or thereafter.

33 (e) The right to petition for support or educational
34 expenses, or both, under Sections 505 and 513 is not
35 extinguished by the death of a parent. Upon a petition filed
36 before or after a parent's death, the court may award sums of

1 money out of the decedent's estate for the child's support or
2 educational expenses, or both, as equity may require. The time
3 within which a claim may be filed against the estate of a
4 decedent under Sections 505 and 513 and subsection (d) and this
5 subsection shall be governed by the provisions of the Probate
6 Act of 1975, as a barrable, noncontingent claim.

7 (f) A petition to modify or terminate child support,
8 custody, or visitation shall not delay any child support
9 enforcement litigation or supplementary proceeding on behalf
10 of the obligee, including, but not limited to, a petition for a
11 rule to show cause, for non-wage garnishment, or for a
12 restraining order.

13 (g) Upon the motion for modification of any judgment
14 respecting the maintenance or support obligation of any member
15 of the National Guard or Reserves of the United States Armed
16 Forces called up to active duty outside the United States, the
17 court shall modify the soldier's maintenance or support
18 obligation by the same proportion that the soldier's military
19 pay falls below his or her civilian pay, provided that the
20 motion is filed within 180 days of the soldier's discharge from
21 active duty. The modification shall be retroactive to the date
22 the soldier reported for active duty and shall continue until
23 his or her discharge from active duty.

24 (Source: P.A. 92-289, eff. 8-9-01; 92-590, eff. 7-1-02; 92-651,
25 eff. 7-11-02; 92-876, eff. 6-1-03; 93-353, eff. 1-1-04.)

26 Section 99. Effective date. This Act takes effect upon
27 becoming law.