

# HB2051



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB2051

Introduced 2/18/2009, by Rep. Michael J. Madigan - Barbara Flynn Currie - Sara Feigenholtz

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/505

from Ch. 40, par. 505

Amends the Illinois Marriage and Dissolution of Marriage Act. Makes a technical change in a Section concerning the setting of child support.

LRB096 05577 AJO 15643 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 505 as follows:

6 (750 ILCS 5/505) (from Ch. 40, par. 505)

7 Sec. 505. Child support; contempt; penalties.

8 (a) In a proceeding for dissolution of marriage, legal  
9 separation, declaration of invalidity of marriage, a  
10 proceeding for child support following dissolution of the ~~the~~  
11 marriage by a court which lacked personal jurisdiction over the  
12 absent spouse, a proceeding for modification of a previous  
13 order for child support under Section 510 of this Act, or any  
14 proceeding authorized under Section 501 or 601 of this Act, the  
15 court may order either or both parents owing a duty of support  
16 to a child of the marriage to pay an amount reasonable and  
17 necessary for his support, without regard to marital  
18 misconduct. The duty of support owed to a child includes the  
19 obligation to provide for the reasonable and necessary  
20 physical, mental and emotional health needs of the child. For  
21 purposes of this Section, the term "child" shall include any  
22 child under age 18 and any child under age 19 who is still  
23 attending high school.

1           (1) The Court shall determine the minimum amount of  
2 support by using the following guidelines:

Number of Children	Percent of Supporting Party's Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%

11           (2) The above guidelines shall be applied in each case  
12 unless the court makes a finding that application of the  
13 guidelines would be inappropriate, after considering the  
14 best interests of the child in light of evidence including  
15 but not limited to one or more of the following relevant  
16 factors:

17           (a) the financial resources and needs of the child;

18           (b) the financial resources and needs of the  
19 custodial parent;

20           (c) the standard of living the child would have  
21 enjoyed had the marriage not been dissolved;

22           (d) the physical and emotional condition of the  
23 child, and his educational needs; and

24           (e) the financial resources and needs of the  
25 non-custodial parent.

26           If the court deviates from the guidelines, the court's

1 finding shall state the amount of support that would have  
2 been required under the guidelines, if determinable. The  
3 court shall include the reason or reasons for the variance  
4 from the guidelines.

5 (3) "Net income" is defined as the total of all income  
6 from all sources, minus the following deductions:

7 (a) Federal income tax (properly calculated  
8 withholding or estimated payments);

9 (b) State income tax (properly calculated  
10 withholding or estimated payments);

11 (c) Social Security (FICA payments);

12 (d) Mandatory retirement contributions required by  
13 law or as a condition of employment;

14 (e) Union dues;

15 (f) Dependent and individual  
16 health/hospitalization insurance premiums;

17 (g) Prior obligations of support or maintenance  
18 actually paid pursuant to a court order;

19 (h) Expenditures for repayment of debts that  
20 represent reasonable and necessary expenses for the  
21 production of income, medical expenditures necessary  
22 to preserve life or health, reasonable expenditures  
23 for the benefit of the child and the other parent,  
24 exclusive of gifts. The court shall reduce net income  
25 in determining the minimum amount of support to be  
26 ordered only for the period that such payments are due

1           and shall enter an order containing provisions for its  
2           self-executing modification upon termination of such  
3           payment period.

4           (4) In cases where the court order provides for  
5           health/hospitalization insurance coverage pursuant to  
6           Section 505.2 of this Act, the premiums for that insurance,  
7           or that portion of the premiums for which the supporting  
8           party is responsible in the case of insurance provided  
9           through an employer's health insurance plan where the  
10          employer pays a portion of the premiums, shall be  
11          subtracted from net income in determining the minimum  
12          amount of support to be ordered.

13          (4.5) In a proceeding for child support following  
14          dissolution of the marriage by a court that lacked personal  
15          jurisdiction over the absent spouse, and in which the court  
16          is requiring payment of support for the period before the  
17          date an order for current support is entered, there is a  
18          rebuttable presumption that the supporting party's net  
19          income for the prior period was the same as his or her net  
20          income at the time the order for current support is  
21          entered.

22          (5) If the net income cannot be determined because of  
23          default or any other reason, the court shall order support  
24          in an amount considered reasonable in the particular case.  
25          The final order in all cases shall state the support level  
26          in dollar amounts. However, if the court finds that the

1 child support amount cannot be expressed exclusively as a  
2 dollar amount because all or a portion of the payor's net  
3 income is uncertain as to source, time of payment, or  
4 amount, the court may order a percentage amount of support  
5 in addition to a specific dollar amount and enter such  
6 other orders as may be necessary to determine and enforce,  
7 on a timely basis, the applicable support ordered.

8 (6) If (i) the non-custodial parent was properly served  
9 with a request for discovery of financial information  
10 relating to the non-custodial parent's ability to provide  
11 child support, (ii) the non-custodial parent failed to  
12 comply with the request, despite having been ordered to do  
13 so by the court, and (iii) the non-custodial parent is not  
14 present at the hearing to determine support despite having  
15 received proper notice, then any relevant financial  
16 information concerning the non-custodial parent's ability  
17 to provide child support that was obtained pursuant to  
18 subpoena and proper notice shall be admitted into evidence  
19 without the need to establish any further foundation for  
20 its admission.

21 (a-5) In an action to enforce an order for support based on  
22 the respondent's failure to make support payments as required  
23 by the order, notice of proceedings to hold the respondent in  
24 contempt for that failure may be served on the respondent by  
25 personal service or by regular mail addressed to the  
26 respondent's last known address. The respondent's last known

1 address may be determined from records of the clerk of the  
2 court, from the Federal Case Registry of Child Support Orders,  
3 or by any other reasonable means.

4 (b) Failure of either parent to comply with an order to pay  
5 support shall be punishable as in other cases of contempt. In  
6 addition to other penalties provided by law the Court may,  
7 after finding the parent guilty of contempt, order that the  
8 parent be:

9 (1) placed on probation with such conditions of  
10 probation as the Court deems advisable;

11 (2) sentenced to periodic imprisonment for a period not  
12 to exceed 6 months; provided, however, that the Court may  
13 permit the parent to be released for periods of time during  
14 the day or night to:

15 (A) work; or

16 (B) conduct a business or other self-employed  
17 occupation.

18 The Court may further order any part or all of the earnings  
19 of a parent during a sentence of periodic imprisonment paid to  
20 the Clerk of the Circuit Court or to the parent having custody  
21 or to the guardian having custody of the children of the  
22 sentenced parent for the support of said children until further  
23 order of the Court.

24 If there is a unity of interest and ownership sufficient to  
25 render no financial separation between a non-custodial parent  
26 and another person or persons or business entity, the court may

1 pierce the ownership veil of the person, persons, or business  
2 entity to discover assets of the non-custodial parent held in  
3 the name of that person, those persons, or that business  
4 entity. The following circumstances are sufficient to  
5 authorize a court to order discovery of the assets of a person,  
6 persons, or business entity and to compel the application of  
7 any discovered assets toward payment on the judgment for  
8 support:

9 (1) the non-custodial parent and the person, persons,  
10 or business entity maintain records together.

11 (2) the non-custodial parent and the person, persons,  
12 or business entity fail to maintain an arms length  
13 relationship between themselves with regard to any assets.

14 (3) the non-custodial parent transfers assets to the  
15 person, persons, or business entity with the intent to  
16 perpetrate a fraud on the custodial parent.

17 With respect to assets which are real property, no order  
18 entered under this paragraph shall affect the rights of bona  
19 fide purchasers, mortgagees, judgment creditors, or other lien  
20 holders who acquire their interests in the property prior to  
21 the time a notice of lis pendens pursuant to the Code of Civil  
22 Procedure or a copy of the order is placed of record in the  
23 office of the recorder of deeds for the county in which the  
24 real property is located.

25 The court may also order in cases where the parent is 90  
26 days or more delinquent in payment of support or has been



1 adjudicated in arrears in an amount equal to 90 days obligation  
2 or more, that the parent's Illinois driving privileges be  
3 suspended until the court determines that the parent is in  
4 compliance with the order of support. The court may also order  
5 that the parent be issued a family financial responsibility  
6 driving permit that would allow limited driving privileges for  
7 employment and medical purposes in accordance with Section  
8 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit  
9 court shall certify the order suspending the driving privileges  
10 of the parent or granting the issuance of a family financial  
11 responsibility driving permit to the Secretary of State on  
12 forms prescribed by the Secretary. Upon receipt of the  
13 authenticated documents, the Secretary of State shall suspend  
14 the parent's driving privileges until further order of the  
15 court and shall, if ordered by the court, subject to the  
16 provisions of Section 7-702.1 of the Illinois Vehicle Code,  
17 issue a family financial responsibility driving permit to the  
18 parent.

19 In addition to the penalties or punishment that may be  
20 imposed under this Section, any person whose conduct  
21 constitutes a violation of Section 15 of the Non-Support  
22 Punishment Act may be prosecuted under that Act, and a person  
23 convicted under that Act may be sentenced in accordance with  
24 that Act. The sentence may include but need not be limited to a  
25 requirement that the person perform community service under  
26 Section 50 of that Act or participate in a work alternative

1 program under Section 50 of that Act. A person may not be  
2 required to participate in a work alternative program under  
3 Section 50 of that Act if the person is currently participating  
4 in a work program pursuant to Section 505.1 of this Act.

5 A support obligation, or any portion of a support  
6 obligation, which becomes due and remains unpaid as of the end  
7 of each month, excluding the child support that was due for  
8 that month to the extent that it was not paid in that month,  
9 shall accrue simple interest as set forth in Section 12-109 of  
10 the Code of Civil Procedure. An order for support entered or  
11 modified on or after January 1, 2006 shall contain a statement  
12 that a support obligation required under the order, or any  
13 portion of a support obligation required under the order, that  
14 becomes due and remains unpaid as of the end of each month,  
15 excluding the child support that was due for that month to the  
16 extent that it was not paid in that month, shall accrue simple  
17 interest as set forth in Section 12-109 of the Code of Civil  
18 Procedure. Failure to include the statement in the order for  
19 support does not affect the validity of the order or the  
20 accrual of interest as provided in this Section.

21 (c) A one-time charge of 20% is imposable upon the amount  
22 of past-due child support owed on July 1, 1988 which has  
23 accrued under a support order entered by the court. The charge  
24 shall be imposed in accordance with the provisions of Section  
25 10-21 of the Illinois Public Aid Code and shall be enforced by  
26 the court upon petition.

1 (d) Any new or existing support order entered by the court  
2 under this Section shall be deemed to be a series of judgments  
3 against the person obligated to pay support thereunder, each  
4 such judgment to be in the amount of each payment or  
5 installment of support and each such judgment to be deemed  
6 entered as of the date the corresponding payment or installment  
7 becomes due under the terms of the support order. Each such  
8 judgment shall have the full force, effect and attributes of  
9 any other judgment of this State, including the ability to be  
10 enforced. A lien arises by operation of law against the real  
11 and personal property of the noncustodial parent for each  
12 installment of overdue support owed by the noncustodial parent.

13 (e) When child support is to be paid through the clerk of  
14 the court in a county of 1,000,000 inhabitants or less, the  
15 order shall direct the obligor to pay to the clerk, in addition  
16 to the child support payments, all fees imposed by the county  
17 board under paragraph (3) of subsection (u) of Section 27.1 of  
18 the Clerks of Courts Act. Unless paid in cash or pursuant to an  
19 order for withholding, the payment of the fee shall be by a  
20 separate instrument from the support payment and shall be made  
21 to the order of the Clerk.

22 (f) All orders for support, when entered or modified, shall  
23 include a provision requiring the obligor to notify the court  
24 and, in cases in which a party is receiving child and spouse  
25 services under Article X of the Illinois Public Aid Code, the  
26 Department of Healthcare and Family Services, within 7 days,

1 (i) of the name and address of any new employer of the obligor,  
2 (ii) whether the obligor has access to health insurance  
3 coverage through the employer or other group coverage and, if  
4 so, the policy name and number and the names of persons covered  
5 under the policy, and (iii) of any new residential or mailing  
6 address or telephone number of the non-custodial parent. In any  
7 subsequent action to enforce a support order, upon a sufficient  
8 showing that a diligent effort has been made to ascertain the  
9 location of the non-custodial parent, service of process or  
10 provision of notice necessary in the case may be made at the  
11 last known address of the non-custodial parent in any manner  
12 expressly provided by the Code of Civil Procedure or this Act,  
13 which service shall be sufficient for purposes of due process.

14 (g) An order for support shall include a date on which the  
15 current support obligation terminates. The termination date  
16 shall be no earlier than the date on which the child covered by  
17 the order will attain the age of 18. However, if the child will  
18 not graduate from high school until after attaining the age of  
19 18, then the termination date shall be no earlier than the  
20 earlier of the date on which the child's high school graduation  
21 will occur or the date on which the child will attain the age  
22 of 19. The order for support shall state that the termination  
23 date does not apply to any arrearage that may remain unpaid on  
24 that date. Nothing in this subsection shall be construed to  
25 prevent the court from modifying the order or terminating the  
26 order in the event the child is otherwise emancipated.

1 (g-5) If there is an unpaid arrearage or delinquency (as  
2 those terms are defined in the Income Withholding for Support  
3 Act) equal to at least one month's support obligation on the  
4 termination date stated in the order for support or, if there  
5 is no termination date stated in the order, on the date the  
6 child attains the age of majority or is otherwise emancipated,  
7 the periodic amount required to be paid for current support of  
8 that child immediately prior to that date shall automatically  
9 continue to be an obligation, not as current support but as  
10 periodic payment toward satisfaction of the unpaid arrearage or  
11 delinquency. That periodic payment shall be in addition to any  
12 periodic payment previously required for satisfaction of the  
13 arrearage or delinquency. The total periodic amount to be paid  
14 toward satisfaction of the arrearage or delinquency may be  
15 enforced and collected by any method provided by law for  
16 enforcement and collection of child support, including but not  
17 limited to income withholding under the Income Withholding for  
18 Support Act. Each order for support entered or modified on or  
19 after the effective date of this amendatory Act of the 93rd  
20 General Assembly must contain a statement notifying the parties  
21 of the requirements of this subsection. Failure to include the  
22 statement in the order for support does not affect the validity  
23 of the order or the operation of the provisions of this  
24 subsection with regard to the order. This subsection shall not  
25 be construed to prevent or affect the establishment or  
26 modification of an order for support of a minor child or the

1 establishment or modification of an order for support of a  
2 non-minor child or educational expenses under Section 513 of  
3 this Act.

4 (h) An order entered under this Section shall include a  
5 provision requiring the obligor to report to the obligee and to  
6 the clerk of court within 10 days each time the obligor obtains  
7 new employment, and each time the obligor's employment is  
8 terminated for any reason. The report shall be in writing and  
9 shall, in the case of new employment, include the name and  
10 address of the new employer. Failure to report new employment  
11 or the termination of current employment, if coupled with  
12 nonpayment of support for a period in excess of 60 days, is  
13 indirect criminal contempt. For any obligor arrested for  
14 failure to report new employment bond shall be set in the  
15 amount of the child support that should have been paid during  
16 the period of unreported employment. An order entered under  
17 this Section shall also include a provision requiring the  
18 obligor and obligee parents to advise each other of a change in  
19 residence within 5 days of the change except when the court  
20 finds that the physical, mental, or emotional health of a party  
21 or that of a child, or both, would be seriously endangered by  
22 disclosure of the party's address.

23 (i) The court does not lose the powers of contempt,  
24 driver's license suspension, or other child support  
25 enforcement mechanisms, including, but not limited to,  
26 criminal prosecution as set forth in this Act, upon the

1 emancipation of the minor child or children.

2 (Source: P.A. 94-90, eff. 1-1-06; 95-331, eff. 8-21-07.)