



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1004

by Rep. Robert W. Pritchard

SYNOPSIS AS INTRODUCED:

750 ILCS 5/501

from Ch. 40, par. 501

Amends the Illinois Marriage and Dissolution of Marriage Act. In the Section concerning temporary relief, provides that a party in proceedings under the Act may move for a temporary restraining order or preliminary injunction to: (1) require a party to surrender to the court or the petitioner's attorney any United States or foreign passport issued in the name of a child; (2) require a party to place the name of a child in the Children's Passport Issuance Alert Program of the United States Department of State; or (3) enjoin a party from applying on behalf of a child for a new or replacement passport or visa. Effective immediately.

LRB098 06094 HEP 36133 b

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 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;

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

17 (i) restraining any person from transferring,
18 encumbering, concealing or otherwise disposing of any
19 property except in the usual course of business or for
20 the necessities of life, and, if so restrained,
21 requiring him to notify the moving party and his
22 attorney of any proposed extraordinary expenditures
23 made after the order is issued;

1 (ii) enjoining a party from removing a child from
2 the jurisdiction of the court;

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

6 (iv) requiring a party to surrender to the court or
7 the petitioner's attorney any United States or foreign
8 passport issued in the name of a child, including a
9 passport issued in the name of both the parent and the
10 child;

11 (v) requiring a party to place the name of a child
12 in the Children's Passport Issuance Alert Program of
13 the United States Department of State;

14 (vi) enjoining a party from applying on behalf of a
15 child for a new or replacement passport or visa; or

16 (vii) ~~(iv)~~ providing other injunctive relief
17 proper in the circumstances; or

18 (3) other appropriate temporary relief.

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

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

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

8 (1) Except for good cause shown, a proceeding for (or
9 relating to) interim attorney's fees and costs in a
10 pre-judgment dissolution proceeding shall be
11 nonevidentiary and summary in nature. All hearings for or
12 relating to interim attorney's fees and costs under this
13 subsection shall be scheduled expeditiously by the court.
14 When a party files a petition for interim attorney's fees
15 and costs supported by one or more affidavits that
16 delineate relevant factors, the court (or a hearing
17 officer) shall assess an interim award after affording the
18 opposing party a reasonable opportunity to file a
19 responsive pleading. A responsive pleading shall set out
20 the amount of each retainer or other payment or payments,
21 or both, previously paid to the responding party's counsel
22 by or on behalf of the responding party. In assessing an
23 interim award, the court shall consider all relevant
24 factors, as presented, that appear reasonable and
25 necessary, including to the extent applicable:

26 (A) the income and property of each party,

1 including alleged marital property within the sole
2 control of one party and alleged non-marital property
3 within access to a party;

4 (B) the needs of each party;

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

6 (D) any impairment to present earning capacity of
7 either party, including age and physical and emotional
8 health;

9 (E) the standard of living established during the
10 marriage;

11 (F) the degree of complexity of the issues,
12 including custody, valuation or division (or both) of
13 closely held businesses, and tax planning, as well as
14 reasonable needs for expert investigations or expert
15 witnesses, or both;

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

17 (H) the amount of the payment or payments made or
18 reasonably expected to be made to the attorney for the
19 other party; and

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

22 (2) Any assessment of an interim award (including one
23 pursuant to an agreed order) shall be without prejudice to
24 any final allocation and without prejudice as to any claim
25 or right of either party or any counsel of record at the
26 time of the award. Any such claim or right may be presented

1 by the appropriate party or counsel at a hearing on
2 contribution under subsection (j) of Section 503 or a
3 hearing on counsel's fees under subsection (c) of Section
4 508. Unless otherwise ordered by the court at the final
5 hearing between the parties or in a hearing under
6 subsection (j) of Section 503 or subsection (c) of Section
7 508, interim awards, as well as the aggregate of all other
8 payments by each party to counsel and related payments to
9 third parties, shall be deemed to have been advances from
10 the parties' marital estate. Any portion of any interim
11 award constituting an overpayment shall be remitted back to
12 the appropriate party or parties, or, alternatively, to
13 successor counsel, as the court determines and directs,
14 after notice.

15 (3) In any proceeding under this subsection (c-1), the
16 court (or hearing officer) shall assess an interim award
17 against an opposing party in an amount necessary to enable
18 the petitioning party to participate adequately in the
19 litigation, upon findings that the party from whom
20 attorney's fees and costs are sought has the financial
21 ability to pay reasonable amounts and that the party
22 seeking attorney's fees and costs lacks sufficient access
23 to assets or income to pay reasonable amounts. In
24 determining an award, the court shall consider whether
25 adequate participation in the litigation requires
26 expenditure of more fees and costs for a party that is not

1 in control of assets or relevant information. Except for
2 good cause shown, an interim award shall not be less than
3 payments made or reasonably expected to be made to the
4 counsel for the other party. If the court finds that both
5 parties lack financial ability or access to assets or
6 income for reasonable attorney's fees and costs, the court
7 (or hearing officer) shall enter an order that allocates
8 available funds for each party's counsel, including
9 retainers or interim payments, or both, previously paid, in
10 a manner that achieves substantial parity between the
11 parties.

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

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

16 (1) does not prejudice the rights of the parties or the
17 child which are to be adjudicated at subsequent hearings in
18 the proceeding;

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

21 (3) terminates when the final judgment is entered or
22 when the petition for dissolution of marriage or legal
23 separation or declaration of invalidity of marriage is
24 dismissed.

25 (Source: P.A. 96-583, eff. 1-1-10.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.