

SB1504



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1504

Introduced 2/15/2019, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

735 ILCS 5/5-105

from Ch. 110, par. 5-105

Amends the Code of Civil Procedure. Deletes language providing that if an attorney files an appearance on behalf of a person whose fees, costs, and charges were initially waived, the attorney must pay all fees, costs, and charges relating to the civil action, including any previously waived fees, costs, and charges, unless the attorney is either a civil legal services provider, representing his or her client as part of a court-sponsored pro bono program as, or appearing under a limited scope appearance. Effective immediately.

LRB101 07381 LNS 52421 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 Code of Civil Procedure is amended by
5 changing Section 5-105 as follows:

6 (735 ILCS 5/5-105) (from Ch. 110, par. 5-105)

7 (Text of Section before amendment by P.A. 100-987 and
8 100-1161)

9 Sec. 5-105. Leave to sue or defend as an indigent person.

10 (a) As used in this Section:

11 (1) "Fees, costs, and charges" means payments imposed
12 on a party in connection with the prosecution or defense of
13 a civil action, including, but not limited to: filing fees;
14 appearance fees; fees for service of process and other
15 papers served either within or outside this State,
16 including service by publication pursuant to Section 2-206
17 of this Code and publication of necessary legal notices;
18 motion fees; jury demand fees; charges for participation
19 in, or attendance at, any mandatory process or procedure
20 including, but not limited to, conciliation, mediation,
21 arbitration, counseling, evaluation, "Children First",
22 "Focus on Children" or similar programs; fees for
23 supplementary proceedings; charges for translation

1 services; guardian ad litem fees; charges for certified
2 copies of court documents; and all other processes and
3 procedures deemed by the court to be necessary to commence,
4 prosecute, defend, or enforce relief in a civil action.

5 (2) "Indigent person" means any person who meets one or
6 more of the following criteria:

7 (i) He or she is receiving assistance under one or
8 more of the following public benefits programs:
9 Supplemental Security Income (SSI), Aid to the Aged,
10 Blind and Disabled (AABD), Temporary Assistance for
11 Needy Families (TANF), Food Stamps, General
12 Assistance, Transitional Assistance, or State Children
13 and Family Assistance.

14 (ii) His or her available income is 125% or less of
15 the current poverty level as established by the United
16 States Department of Health and Human Services, unless
17 the applicant's assets that are not exempt under Part 9
18 or 10 of Article XII of this Code are of a nature and
19 value that the court determines that the applicant is
20 able to pay the fees, costs, and charges.

21 (iii) He or she is, in the discretion of the court,
22 unable to proceed in an action without payment of fees,
23 costs, and charges and whose payment of those fees,
24 costs, and charges would result in substantial
25 hardship to the person or his or her family.

26 (iv) He or she is an indigent person pursuant to

1 Section 5-105.5 of this Code.

2 (b) On the application of any person, before, or after the
3 commencement of an action, a court, on finding that the
4 applicant is an indigent person, shall grant the applicant
5 leave to sue or defend the action without payment of the fees,
6 costs, and charges of the action.

7 (c) An application for leave to sue or defend an action as
8 an indigent person shall be in writing and supported by the
9 affidavit of the applicant or, if the applicant is a minor or
10 an incompetent adult, by the affidavit of another person having
11 knowledge of the facts. The contents of the affidavit shall be
12 established by Supreme Court Rule. The court shall provide,
13 through the office of the clerk of the court, simplified forms
14 consistent with the requirements of this Section and applicable
15 Supreme Court Rules to any person seeking to sue or defend an
16 action who indicates an inability to pay the fees, costs, and
17 charges of the action. The application and supporting affidavit
18 may be incorporated into one simplified form. The clerk of the
19 court shall post in a conspicuous place in the courthouse a
20 notice no smaller than 8.5 x 11 inches, using no smaller than
21 30-point typeface printed in English and in Spanish, advising
22 the public that they may ask the court for permission to sue or
23 defend a civil action without payment of fees, costs, and
24 charges. The notice shall be substantially as follows:

25 "If you are unable to pay the fees, costs, and charges
26 of an action you may ask the court to allow you to proceed

1 without paying them. Ask the clerk of the court for forms."

2 (d) The court shall rule on applications under this Section
3 in a timely manner based on information contained in the
4 application unless the court, in its discretion, requires the
5 applicant to personally appear to explain or clarify
6 information contained in the application. If the court finds
7 that the applicant is an indigent person, the court shall enter
8 an order permitting the applicant to sue or defend without
9 payment of fees, costs, or charges. If the application is
10 denied, the court shall enter an order to that effect stating
11 the specific reasons for the denial. The clerk of the court
12 shall promptly mail or deliver a copy of the order to the
13 applicant.

14 (e) The clerk of the court shall not refuse to accept and
15 file any complaint, appearance, or other paper presented by the
16 applicant if accompanied by an application to sue or defend in
17 forma pauperis, and those papers shall be considered filed on
18 the date the application is presented. If the application is
19 denied, the order shall state a date certain by which the
20 necessary fees, costs, and charges must be paid. The court, for
21 good cause shown, may allow an applicant whose application is
22 denied to defer payment of fees, costs, and charges, make
23 installment payments, or make payment upon reasonable terms and
24 conditions stated in the order. The court may dismiss the
25 claims or defenses of any party failing to pay the fees, costs,
26 or charges within the time and in the manner ordered by the

1 court. A determination concerning an application to sue or
2 defend in forma pauperis shall not be construed as a ruling on
3 the merits.

4 (f) The court may order an indigent person to pay all or a
5 portion of the fees, costs, or charges waived pursuant to this
6 Section out of moneys recovered by the indigent person pursuant
7 to a judgment or settlement resulting from the civil action.
8 However, nothing in this Section shall be construed to limit
9 the authority of a court to order another party to the action
10 to pay the fees, costs, or charges of the action.

11 (g) A court, in its discretion, may appoint counsel to
12 represent an indigent person, and that counsel shall perform
13 his or her duties without fees, charges, or reward.

14 (h) Nothing in this Section shall be construed to affect
15 the right of a party to sue or defend an action in forma
16 pauperis without the payment of fees, costs, or charges, or the
17 right of a party to court-appointed counsel, as authorized by
18 any other provision of law or by the rules of the Illinois
19 Supreme Court.

20 (i) The provisions of this Section are severable under
21 Section 1.31 of the Statute on Statutes.

22 (Source: P.A. 97-689, eff. 6-14-12; 97-813, eff. 7-13-12.)

23 (Text of Section after amendment by P.A. 100-987 and
24 100-1161)

25 Sec. 5-105. Waiver of court fees, costs, and charges.

1 (a) As used in this Section:

2 (1) "Fees, costs, and charges" means payments imposed
3 on a party in connection with the prosecution or defense of
4 a civil action, including, but not limited to: fees set
5 forth in Section 27.1b of the Clerks of Courts Act; fees
6 for service of process and other papers served either
7 within or outside this State, including service by
8 publication pursuant to Section 2-206 of this Code and
9 publication of necessary legal notices; motion fees;
10 charges for participation in, or attendance at, any
11 mandatory process or procedure including, but not limited
12 to, conciliation, mediation, arbitration, counseling,
13 evaluation, "Children First", "Focus on Children" or
14 similar programs; fees for supplementary proceedings;
15 charges for translation services; guardian ad litem fees;
16 and all other processes and procedures deemed by the court
17 to be necessary to commence, prosecute, defend, or enforce
18 relief in a civil action.

19 (2) "Indigent person" means any person who meets one or
20 more of the following criteria:

21 (i) He or she is receiving assistance under one or
22 more of the following means-based governmental public
23 benefits programs: Supplemental Security Income (SSI),
24 Aid to the Aged, Blind and Disabled (AABD), Temporary
25 Assistance for Needy Families (TANF), Supplemental
26 Nutrition Assistance Program (SNAP), General

1 Assistance, Transitional Assistance, or State Children
2 and Family Assistance.

3 (ii) His or her available personal income is 125%
4 or less of the current poverty level, unless the
5 applicant's assets that are not exempt under Part 9 or
6 10 of Article XII of this Code are of a nature and
7 value that the court determines that the applicant is
8 able to pay the fees, costs, and charges.

9 (iii) He or she is, in the discretion of the court,
10 unable to proceed in an action without payment of fees,
11 costs, and charges and whose payment of those fees,
12 costs, and charges would result in substantial
13 hardship to the person or his or her family.

14 (iv) He or she is an indigent person pursuant to
15 Section 5-105.5 of this Code.

16 (3) "Poverty level" means the current poverty level as
17 established by the United States Department of Health and
18 Human Services.

19 (b) On the application of any person, before or after the
20 commencement of an action:

21 (1) If the court finds that the applicant is an
22 indigent person, the court shall grant the applicant a full
23 fees, costs, and charges waiver entitling him or her to sue
24 or defend the action without payment of any of the fees,
25 costs, and charges.

26 (2) If the court finds that the applicant satisfies any

1 of the criteria contained in items (i), (ii), or (iii) of
2 this subdivision (b)(2), the court shall grant the
3 applicant a partial fees, costs, and charges waiver
4 entitling him or her to sue or defend the action upon
5 payment of the applicable percentage of the assessments,
6 costs, and charges of the action, as follows:

7 (i) the court shall waive 75% of all fees, costs,
8 and charges if the available income of the applicant is
9 greater than 125% but does not exceed 150% of the
10 poverty level, unless the assets of the applicant that
11 are not exempt under Part 9 or 10 of Article XII of
12 this Code are such that the applicant is able, without
13 undue hardship, to pay a greater portion of the fees,
14 costs, and charges;

15 (ii) the court shall waive 50% of all fees, costs,
16 and charges if the available income is greater than
17 150% but does not exceed 175% of the poverty level,
18 unless the assets of the applicant that are not exempt
19 under Part 9 or 10 of Article XII of this Code are such
20 that the applicant is able, without undue hardship, to
21 pay a greater portion of the fees, costs, and charges;
22 and

23 (iii) the court shall waive 25% of all fees, costs,
24 and charges if the available income of the applicant is
25 greater than 175% but does not exceed 200% of the
26 current poverty level, unless the assets of the

1 applicant that are not exempt under Part 9 or 10 of
2 Article XII of this Code are such that the applicant is
3 able, without undue hardship, to pay a greater portion
4 of the fees, costs, and charges.

5 (c) An application for waiver of court fees, costs, and
6 charges shall be in writing and signed by the applicant, or, if
7 the applicant is a minor or an incompetent adult, by another
8 person having knowledge of the facts. The contents of the
9 application for waiver of court fees, costs, and charges, and
10 the procedure for the decision of the applications, shall be
11 established by Supreme Court Rule. Factors to consider in
12 evaluating an application shall include:

13 (1) the applicant's receipt of needs based
14 governmental public benefits, including Supplemental
15 Security Income (SSI); Aid to the Aged, Blind and Disabled
16 (ADBD); Temporary Assistance for Needy Families (TANF);
17 Supplemental Nutrition Assistance Program (SNAP or "food
18 stamps"); General Assistance; Transitional Assistance; or
19 State Children and Family Assistance;

20 (2) the employment status of the applicant and amount
21 of monthly income, if any;

22 (3) income received from the applicant's pension,
23 Social Security benefits, unemployment benefits, and other
24 sources;

25 (4) income received by the applicant from other
26 household members;

1 (5) the applicant's monthly expenses, including rent,
2 home mortgage, other mortgage, utilities, food, medical,
3 vehicle, childcare, debts, child support, and other
4 expenses; and

5 (6) financial affidavits or other similar supporting
6 documentation provided by the applicant showing that
7 payment of the imposed fees, costs, and charges would
8 result in substantial hardship to the applicant or the
9 applicant's family.

10 (c-5) The court shall provide, through the office of the
11 clerk of the court, the application for waiver of court fees,
12 costs, and charges to any person seeking to sue or defend an
13 action who indicates an inability to pay the fees, costs, and
14 charges of the action. The clerk of the court shall post in a
15 conspicuous place in the courthouse a notice no smaller than
16 8.5 x 11 inches, using no smaller than 30-point typeface
17 printed in English and in Spanish, advising the public that
18 they may ask the court for permission to sue or defend a civil
19 action without payment of fees, costs, and charges. The notice
20 shall be substantially as follows:

21 "If you are unable to pay the fees, costs, and charges
22 of an action you may ask the court to allow you to proceed
23 without paying them. Ask the clerk of the court for forms."

24 (d) (Blank).

25 (e) The clerk of the court shall not refuse to accept and
26 file any complaint, appearance, or other paper presented by the

1 applicant if accompanied by an application for waiver of court
2 fees, costs, and charges, and those papers shall be considered
3 filed on the date the application is presented. If the
4 application is denied or a partial fees, costs, and charges
5 waiver is granted, the order shall state a date certain by
6 which the necessary fees, costs, and charges must be paid. For
7 good cause shown, the court may allow an applicant who receives
8 a partial fees, costs, and charges waiver to defer payment of
9 fees, costs, and charges, make installment payments, or make
10 payment upon reasonable terms and conditions stated in the
11 order. The court may dismiss the claims or strike the defenses
12 of any party failing to pay the fees, costs, and charges within
13 the time and in the manner ordered by the court. A judicial
14 ruling on an application for waiver of court assessments does
15 not constitute a decision of a substantial issue in the case
16 under Section 2-1001 of this Code.

17 (f) The order granting a full or partial fees, costs, and
18 charges waiver shall expire after one year. Upon expiration of
19 the waiver, or a reasonable period of time before expiration,
20 the party whose fees, costs, and charges were waived may file
21 another application for waiver and the court shall consider the
22 application in accordance with the applicable Supreme Court
23 Rule.

24 (f-5) If, before or at the time of final disposition of the
25 case, the court obtains information, including information
26 from the court file, suggesting that a person whose fees,

1 costs, and charges were initially waived was not entitled to a
2 full or partial waiver at the time of application, the court
3 may require the person to appear at a court hearing by giving
4 the applicant no less than 10 days' written notice of the
5 hearing and the specific reasons why the initial waiver might
6 be reconsidered. The court may require the applicant to provide
7 reasonably available evidence, including financial
8 information, to support his or her eligibility for the waiver,
9 but the court shall not require submission of information that
10 is unrelated to the criteria for eligibility and application
11 requirements set forth in subdivision (b) (1) or (b) (2) of this
12 Section. If the court finds that the person was not initially
13 entitled to any waiver, the person shall pay all fees, costs,
14 and charges relating to the civil action, including any
15 previously waived fees, costs, and charges. The order may state
16 terms of payment in accordance with subsection (e). The court
17 shall not conduct a hearing under this subsection more often
18 than once every 6 months.

19 (f-10) If, before or at the time of final disposition of
20 the case, the court obtains information, including information
21 from the court file, suggesting that a person who received a
22 full or partial waiver has experienced a change in financial
23 condition so that he or she is no longer eligible for that
24 waiver, the court may require the person to appear at a court
25 hearing by giving the applicant no less than 10 days' written
26 notice of the hearing and the specific reasons why the waiver

1 might be reconsidered. The court may require the person to
2 provide reasonably available evidence, including financial
3 information, to support his or her continued eligibility for
4 the waiver, but shall not require submission of information
5 that is unrelated to the criteria for eligibility and
6 application requirements set forth in subdivisions (b)(1) and
7 (b)(2) of this Section. If the court enters an order finding
8 that the person is no longer entitled to a waiver, or is
9 entitled to a partial waiver different than that which the
10 person had previously received, the person shall pay the
11 requisite fees, costs, and charges from the date of the order
12 going forward. The order may state terms of payment in
13 accordance with subsection (e) of this Section. The court shall
14 not conduct a hearing under this subsection more often than
15 once every 6 months.

16 (g) A court, in its discretion, may appoint counsel to
17 represent an indigent person, and that counsel shall perform
18 his or her duties without fees, charges, or reward.

19 (h) Nothing in this Section shall be construed to affect
20 the right of a party to sue or defend an action in forma
21 pauperis without the payment of fees, costs, charges, or the
22 right of a party to court-appointed counsel, as authorized by
23 any other provision of law or by the rules of the Illinois
24 Supreme Court. Nothing in this Section shall be construed to
25 limit the authority of a court to order another party to the
26 action to pay the fees, costs, and charges of the action.

1 (h-5) If a party is represented by a civil legal services
2 provider or an attorney in a court-sponsored pro bono program
3 as defined in Section 5-105.5 of this Code, the attorney
4 representing that party shall file a certification with the
5 court in accordance with Supreme Court Rule 298 and that party
6 shall be allowed to sue or defend without payment of fees,
7 costs, and charges without filing an application under this
8 Section.

9 (h-10) (Blank). ~~If an attorney files an appearance on~~
10 ~~behalf of a person whose fees, costs, and charges were~~
11 ~~initially waived under this Section, the attorney must pay all~~
12 ~~fees, costs, and charges relating to the civil action,~~
13 ~~including any previously waived fees, costs, and charges,~~
14 ~~unless the attorney is either a civil legal services provider,~~
15 ~~representing his or her client as part of a court sponsored pro~~
16 ~~bono program as defined in Section 5-105.1 of this Code, or~~
17 ~~appearing under a limited scope appearance in accordance with~~
18 ~~Supreme Court Rule 13(c)(6).~~

19 (i) The provisions of this Section are severable under
20 Section 1.31 of the Statute on Statutes.

21 (Source: P.A. 100-987, eff. 7-1-19; 100-1161, eff. 7-1-19.)

22 Section 95. No acceleration or delay. Where this Act makes
23 changes in a statute that is represented in this Act by text
24 that is not yet or no longer in effect (for example, a Section
25 represented by multiple versions), the use of that text does

1 not accelerate or delay the taking effect of (i) the changes
2 made by this Act or (ii) provisions derived from any other
3 Public Act.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.