



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4686

Introduced 1/12/2006, by Rep. Marlow H. Colvin

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.663 new

Creates the Legal Document Preparer Act. Establishes the Board of Legal Document Preparers and outlines its duties and powers. Sets out the services that may be provided by a legal document preparer. Provides for disciplinary actions. Provides for a code of conduct for legal document preparers. Creates the Legal Document Preparer Fund as a special fund in the State treasury and provides that, subject to appropriation, all moneys in the Fund shall be used to further the objectives of the Act. Amends the State Finance Act to list the Fund as a special fund. Effective immediately.

LRB094 16708 LCT 51978 b

FISCAL NOTE ACT
MAY APPLY

1 An ACT concerning legal document preparers.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Legal
5 Document Preparer Act.

6 Section 5. Purpose. The Illinois Supreme Court has
7 inherent regulatory power over all persons providing legal
8 services to the public regardless of whether they are lawyers
9 or nonlawyers. The Court recognizes, however, that the need to
10 protect the public from possible harm caused by nonlawyers
11 providing legal services must be balanced against the public's
12 need for access to legal services. Accordingly, this Act is
13 intended to: (i) protect the public through the use of legal
14 document preparers to ensure conformance to the highest ethical
15 standards and performance of responsibilities in a
16 professional and competent manner, in accordance with all
17 applicable statutes and court rules; and (ii) result in the
18 effective administration of the Legal Document Preparer
19 Program.

20 Section 10. Definitions. As used in this Act:

21 "Board" means the Board of Legal Document Preparers
22 appointed by the Chief Justice of the Supreme Court.

23 "Day" means any calendar day except Saturday, Sunday, or a
24 federal or State holiday.

25 "Director" means the Director of the Administrative Office
26 of the Illinois Courts (AOIC).

27 "Formal charges" means the document setting forth specific
28 acts of misconduct by a legal document preparer or violations
29 of this Act, including any amendments, authorized by the Board
30 upon a determination of probable cause.

31 "Formal disciplinary proceedings" means filing of formal

1 charges specifying misconduct by a legal document preparer.

2 "Hearing officer" means an individual appointed pursuant
3 to this Act to preside over an administrative hearing regarding
4 a complaint regarding alleged misconduct of a certificate
5 holder.

6 "Informal disciplinary proceedings" means resolution of a
7 complaint prior to the filing of formal charges.

8 "Legal document preparer" means an individual who prepares
9 or provides legal documents, without the supervision of an
10 attorney, for an entity or a member of the public who is
11 engaging in self-representation in any legal matter. An
12 individual whose assistance consists merely of secretarial or
13 receptionist services is not a legal document preparer.

14 "Letter of concern" means a communication from the Board
15 notifying the legal document preparer of the Board's
16 determination the concerning whether the legal document
17 preparer has violated a provision of this Act and that informal
18 discipline is appropriate. A letter of concern is not
19 appealable.

20 "Program Coordinator" means the staff appointed by the
21 Director to administer the program.

22 Section 15. Responsibilities of the Supreme Court. The
23 Supreme Court shall:

24 (1) Adopt rules for the implementation and
25 administration of the program. At a minimum, the rules
26 shall include a code of conduct and minimum qualifications.

27 (2) Establish and collect fees, costs, and fines
28 necessary for the implementation and enforcement of the
29 program.

30 (3) Establish a Legal Document Preparer Fund
31 consisting of monies received for fees, costs, and fines.

32 Section 20. Responsibilities of the Program Coordinator.
33 The Program Coordinator, designated by the Director, shall:

34 (1) Forward all fees, costs, and fines imposed and

1 received pursuant to this Act to the State Treasurer for
2 deposit into the Legal Document Preparer Fund.

3 (2) Provide updates to the Board and make
4 recommendations regarding matters pertaining to
5 complaints, investigations, and all other matters relevant
6 to legal document preparers.

7 (3) Maintain a list of legal document preparers. The
8 Program Coordinator shall distribute the list to the
9 Supreme Court and make it available to the public.

10 The Program Coordinator may charge for the costs of
11 providing copies of the list or any other public records of the
12 program pursuant to the Rules of the Supreme Court.

13 Section 25. Board of Legal Document Preparers.

14 (a) The Board of Legal Document Preparers shall be
15 established and shall consist of the following 11 members:

16 (1) five legal document preparers who have each worked
17 as a legal document preparer for at least 5 years;

18 (2) the Director or the Director's designee;

19 (3) one judge or court administrator;

20 (4) one clerk of the circuit court or his or her
21 designee;

22 (5) one attorney; and

23 (6) two public members not affiliated with any lawyer,
24 judge, legal document preparer, or court system.

25 (b) The Chief Justice of the Supreme Court shall appoint
26 Board members to initial terms of one, 2, and 3 years.
27 Thereafter, all terms shall be 3 years. If a vacancy occurs in
28 a Board member position, the Chief Justice shall fill the
29 vacancy expeditiously in the manner provided for in the
30 original appointment.

31 (c) The Board shall:

32 (1) make recommendations to the Supreme Court
33 regarding rules, policies, and procedures to implement and
34 enforce the requirements regarding legal document
35 preparers, including administrative fees, a code of

1 conduct, continuing education, and any other matter
2 pertaining to legal document preparers;

3 (2) direct the Program Coordinator to conduct
4 investigations into alleged violations of this Act by legal
5 document preparers; and

6 (3) adjudicate and make all final decisions regarding
7 alleged violations by legal document preparers pursuant to
8 Section 55 of this Act.

9 Section 30. Authorized services. A legal document preparer
10 may:

11 (1) prepare or provide legal documents, without the
12 supervision of an attorney, for an entity or a member of
13 the public in any legal matter when that entity or person
14 is not represented by an attorney;

15 (2) provide general legal information, but may not
16 provide any kind of specific advice, opinion, or
17 recommendation to a consumer about possible legal rights,
18 remedies, defenses, options, or strategies;

19 (3) provide general factual information pertaining to
20 legal rights, procedures, or options available to a person
21 in a legal matter when that person is not represented by an
22 attorney;

23 (4) make legal forms and documents available to a
24 person who is not represented by an attorney; and

25 (5) file and arrange for service of legal forms and
26 documents for a person in a legal matter when that person
27 is not represented by an attorney.

28 Section 35. Designated business principal. The designated
29 principal of a business entity shall:

30 (1) prepare and submit, with the initial business
31 application, a list of all legal document preparers acting
32 for or on behalf of the business entity;

33 (2) file with the Program Coordinator, by June 30 of
34 each year, a list of all legal document preparers acting

1 for or on behalf of the business entity as of June 1 of
2 that year;

3 (3) actively and directly supervise all other legal
4 document preparers and staff working for the business
5 entity; and

6 (4) represent the business entity, at the discretion of
7 the entity, in any proceeding under this Act.

8 Section 40. Code of conduct. Each legal document preparer
9 shall adhere to the code of conduct provided for in Section 95
10 of this Act and any code of conduct set forth in Supreme Court
11 Rules.

12 Section 45. Identification. Beginning July 1, 2007, a
13 legal document preparer shall include the legal document
14 preparer's name and the title "Illinois Legal Document
15 Preparer" or the abbreviation "ILLDP" on all documents prepared
16 by the legal document preparer that are filed in any Illinois
17 court.

18 Section 50. Notification of changes. A legal document
19 preparer shall inform the Program Coordinator, in writing, of
20 any change in name, address, employment, or phone number within
21 30 days after the change occurs.

22 Section 55. Grounds for discipline. A legal document
23 preparer is subject to disciplinary action if the Board finds
24 that the legal document preparer has:

25 (1) willfully violated or willfully failed to comply
26 with applicable laws, court orders, orders of the Board, or
27 provisions of the Illinois Supreme Court Rules or with this
28 Act;

29 (2) violated or failed to discharge any obligation
30 required by this Act;

31 (3) exhibited gross negligence or incompetence in the
32 performance of his or her duties as a legal document

1 preparer;

2 (4) engaged in fraud, dishonesty, or corruption;

3 (5) aided or assisted another person to engage in
4 independent preparation of legal documents if the other
5 person is not a legal document preparer;

6 (6) been convicted by final judgment of a felony
7 offense or any other offense involving moral turpitude; or

8 (7) been the subject of court-ordered treatment
9 pursuant to the Mental Health and Developmental
10 Disabilities Code or been found to be incapacitated
11 pursuant to the Probate Act of 1975.

12 Section 60. Cease and desist order. A hearing officer or a
13 circuit court judge, upon petition by the Board, may enter an
14 order for an individual to immediately cease and desist from
15 conduct that constitutes engaging in the practice of legal
16 document preparation.

17 Section 65. Subpoenas; oaths; evidence.

18 (a) For the purposes of investigations or hearings under
19 this Act, the Board or a hearing officer may administer oaths
20 and affirmations, subpoena witnesses, take evidence, and
21 require the production of documents, records, or information,
22 whether kept in original form or electronically stored or
23 recorded, or other items relevant or material to the inquiry.

24 (b) If a person fails to obey a subpoena issued pursuant to
25 this Section, the Board or a hearing officer may request that
26 the circuit court issue an order that requires the appearance
27 by a person or the production of documents or other items, or
28 both to the same extent as provided in the subpoena. The court
29 may treat the failure to obey the order as contempt of court
30 and may punish the contempt.

31 (c) Subpoenas shall be issued in the same manner and served
32 as provided by the Code of Civil Procedure.

33 Section 70. Immunity. Persons appointed by the Supreme

1 Court to serve in an advisory capacity to the Legal Document
2 Preparer Program, staff of the Legal Document Preparer Program,
3 hearing officers, and employees of the Administrative Office of
4 the Illinois Courts who participate in the Legal Document
5 Preparer Program are immune from civil liability for good faith
6 conduct that relates to the performance of their official
7 duties under the program.

8 Section 75. Confidentiality. The Board, program staff, and
9 court employees shall keep information or documents obtained or
10 generated by the Board, program staff, or court employees in
11 the course of an open investigation under this Act or received
12 in an initial report of misconduct under this Act confidential
13 except as mandated by public record rules adopted by the
14 Supreme Court or adopted pursuant to this Act. Upon
15 determination by the Board, if the alleged violations are
16 sufficiently serious to warrant the filing of formal charges,
17 then the complaint and all records of proceedings and actions
18 by the Board pertaining to the complaint shall be open to
19 public inspection. Documents relating to other actions shall be
20 open to public inspection upon final disposition of the action
21 by the Board.

22 Section 80. Service. The Board shall serve notice of
23 formal proceedings by personal service upon the legal document
24 preparer or the legal document preparer's counsel or by
25 certified mail, return receipt requested, to the legal document
26 preparer's address of record with the Board. Service by mail is
27 complete upon deposit in the United States mail. Proof of
28 service shall be made by filing with the hearing officer a
29 verified statement that service was made. Delivery of all other
30 papers or notices, including a request for a response to a
31 complaint, shall be made by first class mail unless otherwise
32 ordered by the Board.

33 Section 85. Complaint.

1 (a) All judicial officers or their designees and all legal
2 document preparers shall, and any other person may, notify the
3 Program Coordinator if they have personal knowledge that a
4 legal document preparer has violated this Act. A complainant
5 shall make the complaint in writing with sufficient specificity
6 to warrant further investigation. The complaint shall include
7 the name and telephone number of the complainant.

8 (b) On receipt of a complaint, the Program Coordinator and
9 program staff shall investigate and prosecute, and the Board
10 shall adjudicate, alleged violations of this Act as necessary
11 for the enforcement of this Act. The Board may initiate a
12 complaint on its own motion.

13 Section 90. Judicial review. All final administrative
14 decisions of the Board pursuant are subject to judicial review
15 under Article III of the Code of Civil Procedure and its rules.
16 The term "administrative decision" is defined as in Section
17 3-101 of the Code of Civil Procedure. Proceedings for judicial
18 review shall be commenced in the circuit court of any county
19 permitted by Section 3-104 of the Code of Civil Procedure.

20 Section 95. Code of conduct.

21 (a) Preamble. This code of conduct shall apply to all legal
22 document preparers in this State. The purpose of this code is
23 to establish minimum standards for performance by legal
24 document preparers.

25 (b) Ethics.

26 (1) A legal document preparer shall avoid impropriety
27 and the appearance of impropriety in all activities, shall
28 respect and comply with the laws, and shall act at all
29 times in a manner that promotes public confidence in the
30 integrity and impartiality of the legal and judicial
31 systems.

32 (2) A legal document preparer shall be alert to
33 situations that are conflicts of interest or that may give
34 the appearance of a conflict of interest.

1 (3) A legal document preparer shall promptly make full
2 disclosure to a consumer of any relationships that may give
3 the appearance of a conflict of interest.

4 (4) A legal document preparer shall refrain from
5 knowingly making misleading, deceptive, untrue, or
6 fraudulent representations while assisting a consumer in
7 the preparation of legal documents. A legal document
8 preparer shall not engage in unethical or unprofessional
9 conduct in any professional dealings that are harmful or
10 detrimental to the public.

11 (c) Professionalism.

12 (1) A legal document preparer shall treat information
13 received from the consumer as confidential, yet recognize
14 and acknowledge that the privilege of confidential
15 communications is not extended to legal document
16 preparers.

17 (2) A legal document preparer shall be truthful and
18 accurate when advertising or representing the legal
19 document preparer's qualifications, skills, or abilities
20 or the services provided, and shall refrain from
21 denigrating or otherwise calling into disrepute the
22 products or services offered by any other legal document
23 preparer or attorney.

24 (3) A legal document preparer shall maintain and
25 observe the highest standards of integrity and
26 truthfulness in all professional dealings.

27 (4) A legal document preparer shall keep abreast of
28 current developments in the law as it relates to legal
29 document preparation and shall fulfill ongoing training
30 requirements to maintain professionalism and the skills
31 necessary to perform his or her duties competently.

32 (d) Fees and services.

33 (1) A legal document preparer shall, upon request of a
34 consumer at any time, disclose in writing an itemization of
35 all rates and charges to that consumer.

36 (2) A legal document preparer shall determine fees

1 independently, except when otherwise established by law,
2 entering into no unlawful agreements with other legal
3 document preparers on the fees to any consumer.

4 (3) A legal document preparer shall at all times be
5 aware of and avoid impropriety or the appearance of
6 impropriety, which may include, but is not limited to:

7 (A) establishing contingent fees as a basis of
8 compensation;

9 (B) directly or indirectly receiving any gift,
10 incentive, reward, or anything of value as a condition
11 of the performance of professional services; or

12 (C) directly or indirectly offering to pay any
13 commission or other consideration in order to secure
14 professional assignments.

15 (4) A legal document preparer may consult with,
16 associate with, collaborate with, and involve other
17 professionals in order to assist the consumer.

18 (e) Skills and practice.

19 (1) A legal document preparer shall provide completed
20 documents to a consumer in a timely manner. The legal
21 document preparer shall make a good faith effort to meet
22 promised delivery dates and make timely delivery of
23 documents when no date is specified. A legal document
24 preparer shall meet document preparation deadlines in
25 accordance with rules, statutes, court orders, or
26 agreements with the parties. A legal document preparer
27 shall provide immediate notification of delays.

28 (2) A legal document preparer shall accept only those
29 assignments for which the legal document preparer's level
30 of competence will result in the preparation of an accurate
31 document. The legal document preparer shall decline an
32 assignment when the legal document preparer's abilities
33 are inadequate.

34 (f) Performance in accordance with law.

35 (1) A legal document preparer shall perform all duties
36 and discharge all obligations in accordance with

1 applicable laws, rules, or court orders.

2 (2) A legal document preparer shall not represent that
3 he or she is authorized to practice law in this State, nor
4 shall the legal document preparer provide legal advice or
5 services to another by expressing opinions, either verbal
6 or written, or by representing another in a judicial,
7 quasi-judicial, or administrative proceeding, or other
8 formal dispute resolution process, except as directed by
9 the Supreme Court Rules or this Act. A legal document
10 preparer shall not attend court with a consumer for the
11 purpose of assisting the consumer in the court proceeding,
12 unless otherwise ordered by the court.

13 (3) A legal document preparer shall not provide any
14 kind of advice, opinion, or recommendation to a consumer
15 about possible legal rights, remedies, defenses, options,
16 or strategies. This shall not, however, preclude a legal
17 document preparer from providing the types of information
18 permitted in Section 30 of this Act. A legal document
19 preparer shall inform the consumer in writing that a legal
20 document preparer is not a lawyer, is not employed by a
21 lawyer, and cannot give legal advice and that
22 communications with a legal document preparer are not
23 privileged. A legal document preparer shall not use the
24 designations "lawyer", "attorney at law", "counselor at
25 law", "law office", "J.D.", "Esq.", or other equivalent
26 words, the use of which is reasonably likely to induce
27 others to believe the legal document preparer is authorized
28 to engage in the practice of law in this State.

29 Section 100. Fund. The Legal Document Preparer Fund is
30 created as a special fund in the State treasury. Subject to
31 appropriation by the General Assembly, all moneys in the Legal
32 Document Preparer Fund shall be used to further the objectives
33 of this Act.

34 Section 900. The State Finance Act is amended by adding

1 Section 5.663 as follows:

2 (30 ILCS 105/5.663 new)

3 Sec. 5.663. The Legal Document Preparer Fund.

4 Section 999. Effective date. This Act takes effect upon
5 becoming law.