



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2995

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

735 ILCS 5/5-105

from Ch. 110, par. 5-105

Amends the Code of Civil Procedure. Provides that the court may require that evidence of income accompany the application for leave to sue or defend as an indigent person, and that the affidavit submitted in support of the application shall state that it is made under penalty of perjury. Provides that any other party or his or her agent or attorney may contest the truth of an affidavit of indigency by verifying affirmatively under oath that the affidavit is untrue, and that the issue shall be heard and determined by the court, under the rules of the court. Provides that an attorney may not charge a fee to an applicant for preparation of an application for leave to sue or defend as an indigent person. Provides that the notice apprising litigants of their right to ask for leave to sue without payment of fees must contain language informing the applicant that he or she will be required to reimburse court fees, costs, and charges at the end of the case if he or she receives a monetary judgment or settlement.

LRB098 09260 HEP 39399 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 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 Sec. 5-105. Leave to sue or defend as an indigent person.

8 (a) As used in this Section:

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

1 procedures deemed by the court to be necessary to commence,
2 prosecute, defend, or enforce relief in a civil action.

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

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

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

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

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

26 (b) On the application of any person, before, or after the

1 commencement of an action, a court, on finding that the
2 applicant is an indigent person, shall grant the applicant
3 leave to sue or defend the action without payment of the fees,
4 costs, and charges of the action.

5 (c) An application for leave to sue or defend an action as
6 an indigent person shall be in writing and supported by the
7 affidavit of the applicant or, if the applicant is a minor or
8 an incompetent adult, by the affidavit of another person having
9 knowledge of the facts. The court may require that evidence of
10 income accompany the application. The affidavit shall state
11 that it is made under penalty of perjury. Any other party or
12 his or her agent or attorney may contest the truth of an
13 affidavit of indigency by verifying affirmatively under oath
14 that the affidavit is untrue. The issue shall be heard and
15 determined by the court, under the rules of the court. The
16 contents of the affidavit shall be established by Supreme Court
17 Rule. An attorney may not charge a fee to an applicant for
18 preparation of an application for leave to sue or defend as an
19 indigent person. The court shall provide, through the office of
20 the clerk of the court, simplified forms consistent with the
21 requirements of this Section and applicable Supreme Court Rules
22 to any person seeking to sue or defend an action who indicates
23 an inability to pay the fees, costs, and charges of the action.
24 The application and supporting affidavit may be incorporated
25 into one simplified form. The clerk of the court shall post in
26 a conspicuous place in the courthouse a notice no smaller than

1 8.5 x 11 inches, using no smaller than 30-point typeface
2 printed in English and in Spanish, advising the public that
3 they may ask the court for permission to sue or defend a civil
4 action without payment of fees, costs, and charges. The notice
5 shall be substantially as follows:

6 "If you are unable to pay the fees, costs, and charges
7 of an action you may ask the court to allow you to proceed
8 without paying them. However, you will be required to
9 reimburse these court fees, costs, and charges at the end
10 of the case if you receive a monetary judgment or
11 settlement. Ask the clerk of the court for forms."

12 (d) The court shall rule on applications under this Section
13 in a timely manner based on information contained in the
14 application and evidence of current income, if any, unless the
15 court, in its discretion, requires the applicant to personally
16 appear to explain or clarify information contained in the
17 application. If the court finds that the applicant is an
18 indigent person, the court shall enter an order permitting the
19 applicant to sue or defend without payment of fees, costs, or
20 charges. If the application is denied, the court shall enter an
21 order to that effect stating the specific reasons for the
22 denial. The clerk of the court shall promptly mail or deliver a
23 copy of the order to the applicant.

24 (e) The clerk of the court shall not refuse to accept and
25 file any complaint, appearance, or other paper presented by the
26 applicant if accompanied by an application to sue or defend in

1 forma pauperis, and those papers shall be considered filed on
2 the date the application is presented. If the application is
3 denied, the order shall state a date certain by which the
4 necessary fees, costs, and charges must be paid. The court, for
5 good cause shown, may allow an applicant whose application is
6 denied to defer payment of fees, costs, and charges, make
7 installment payments, or make payment upon reasonable terms and
8 conditions stated in the order. The court may dismiss the
9 claims or defenses of any party failing to pay the fees, costs,
10 or charges within the time and in the manner ordered by the
11 court. A determination concerning an application to sue or
12 defend in forma pauperis shall not be construed as a ruling on
13 the merits.

14 (f) The court may order an indigent person to pay all or a
15 portion of the fees, costs, or charges waived pursuant to this
16 Section out of moneys recovered by the indigent person pursuant
17 to a judgment or settlement resulting from the civil action.
18 However, nothing in this Section shall be construed to limit
19 the authority of a court to order another party to the action
20 to pay the fees, costs, or charges of the action.

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

24 (h) Nothing in this Section shall be construed to affect
25 the right of a party to sue or defend an action in forma
26 pauperis without the payment of fees, costs, or charges, or the

1 right of a party to court-appointed counsel, as authorized by
2 any other provision of law or by the rules of the Illinois
3 Supreme Court.

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

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