

SB3325



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3325

Introduced 2/14/2020, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

735 ILCS 5/5-105

from Ch. 110, par. 5-105

Amends the Code of Civil Procedure. Provides that an indigent person may retain counsel of his or her choosing to represent the indigent person, with leave of the court, and that counsel shall perform his or her duties without fees, charges, or reward.

LRB101 19866 LNS 69386 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 Sec. 5-105. Waiver of court fees, costs, and charges.

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: fees set
12 forth in Section 27.1b of the Clerks of Courts Act; fees
13 for service of process and other papers served either
14 within or outside this State, including service by
15 publication pursuant to Section 2-206 of this Code and
16 publication of necessary legal notices; motion fees;
17 charges for participation in, or attendance at, any
18 mandatory process or procedure including, but not limited
19 to, conciliation, mediation, arbitration, counseling,
20 evaluation, "Children First", "Focus on Children" or
21 similar programs; fees for supplementary proceedings;
22 charges for translation services; guardian ad litem fees;
23 and all other processes and procedures deemed by the court

1 to be necessary to commence, prosecute, defend, or enforce
2 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 means-based governmental public
7 benefits programs: Supplemental Security Income (SSI),
8 Aid to the Aged, Blind and Disabled (AABD), Temporary
9 Assistance for Needy Families (TANF), Supplemental
10 Nutrition Assistance Program (SNAP), General
11 Assistance, Transitional Assistance, or State Children
12 and Family Assistance.

13 (ii) His or her available personal income is 125%
14 or less of the current poverty level, unless the
15 applicant's assets that are not exempt under Part 9 or
16 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 (3) "Poverty level" means the current poverty level as

1 established by the United States Department of Health and
2 Human Services.

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

5 (1) If the court finds that the applicant is an
6 indigent person, the court shall grant the applicant a full
7 fees, costs, and charges waiver entitling him or her to sue
8 or defend the action without payment of any of the fees,
9 costs, and charges.

10 (2) If the court finds that the applicant satisfies any
11 of the criteria contained in items (i), (ii), or (iii) of
12 this subdivision (b)(2), the court shall grant the
13 applicant a partial fees, costs, and charges waiver
14 entitling him or her to sue or defend the action upon
15 payment of the applicable percentage of the assessments,
16 costs, and charges of the action, as follows:

17 (i) the court shall waive 75% of all fees, costs,
18 and charges if the available income of the applicant is
19 greater than 125% but does not exceed 150% of the
20 poverty level, unless the assets of the applicant that
21 are not exempt under Part 9 or 10 of Article XII of
22 this Code are such that the applicant is able, without
23 undue hardship, to pay a greater portion of the fees,
24 costs, and charges;

25 (ii) the court shall waive 50% of all fees, costs,
26 and charges if the available income is greater than

1 150% but does not exceed 175% of the poverty level,
2 unless the assets of the applicant that are not exempt
3 under Part 9 or 10 of Article XII of this Code are such
4 that the applicant is able, without undue hardship, to
5 pay a greater portion of the fees, costs, and charges;
6 and

7 (iii) the court shall waive 25% of all fees, costs,
8 and charges if the available income of the applicant is
9 greater than 175% but does not exceed 200% of the
10 current poverty level, unless the assets of the
11 applicant that are not exempt under Part 9 or 10 of
12 Article XII of this Code are such that the applicant is
13 able, without undue hardship, to pay a greater portion
14 of the fees, costs, and charges.

15 (c) An application for waiver of court fees, costs, and
16 charges shall be in writing and signed by the applicant, or, if
17 the applicant is a minor or an incompetent adult, by another
18 person having knowledge of the facts. The contents of the
19 application for waiver of court fees, costs, and charges, and
20 the procedure for the decision of the applications, shall be
21 established by Supreme Court Rule. Factors to consider in
22 evaluating an application shall include:

23 (1) the applicant's receipt of needs based
24 governmental public benefits, including Supplemental
25 Security Income (SSI); Aid to the Aged, Blind and Disabled
26 (AABD ~~ADDD~~); Temporary Assistance for Needy Families

1 (TANF); Supplemental Nutrition Assistance Program (SNAP or
2 "food stamps"); General Assistance; Transitional
3 Assistance; or State Children and Family Assistance;

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

6 (3) income received from the applicant's pension,
7 Social Security benefits, unemployment benefits, and other
8 sources;

9 (4) income received by the applicant from other
10 household members;

11 (5) the applicant's monthly expenses, including rent,
12 home mortgage, other mortgage, utilities, food, medical,
13 vehicle, childcare, debts, child support, and other
14 expenses; and

15 (6) financial affidavits or other similar supporting
16 documentation provided by the applicant showing that
17 payment of the imposed fees, costs, and charges would
18 result in substantial hardship to the applicant or the
19 applicant's family.

20 (c-5) The court shall provide, through the office of the
21 clerk of the court, the application for waiver of court fees,
22 costs, and charges to any person seeking to sue or defend an
23 action who indicates an inability to pay the fees, costs, and
24 charges of the action. The clerk of the court shall post in a
25 conspicuous place in the courthouse a notice no smaller than
26 8.5 x 11 inches, using no smaller than 30-point typeface

1 printed in English and in Spanish, advising the public that
2 they may ask the court for permission to sue or defend a civil
3 action without payment of fees, costs, and charges. The notice
4 shall be substantially as follows:

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

8 (d) (Blank).

9 (e) The clerk of the court shall not refuse to accept and
10 file any complaint, appearance, or other paper presented by the
11 applicant if accompanied by an application for waiver of court
12 fees, costs, and charges, and those papers shall be considered
13 filed on the date the application is presented. If the
14 application is denied or a partial fees, costs, and charges
15 waiver is granted, the order shall state a date certain by
16 which the necessary fees, costs, and charges must be paid. For
17 good cause shown, the court may allow an applicant who receives
18 a partial fees, costs, and charges waiver to defer payment of
19 fees, costs, and charges, make installment payments, or make
20 payment upon reasonable terms and conditions stated in the
21 order. The court may dismiss the claims or strike the defenses
22 of any party failing to pay the fees, costs, and charges within
23 the time and in the manner ordered by the court. A judicial
24 ruling on an application for waiver of court assessments does
25 not constitute a decision of a substantial issue in the case
26 under Section 2-1001 of this Code.

1 (f) The order granting a full or partial fees, costs, and
2 charges waiver shall expire after one year. Upon expiration of
3 the waiver, or a reasonable period of time before expiration,
4 the party whose fees, costs, and charges were waived may file
5 another application for waiver and the court shall consider the
6 application in accordance with the applicable Supreme Court
7 Rule.

8 (f-5) If, before or at the time of final disposition of the
9 case, the court obtains information, including information
10 from the court file, suggesting that a person whose fees,
11 costs, and charges were initially waived was not entitled to a
12 full or partial waiver at the time of application, the court
13 may require the person to appear at a court hearing by giving
14 the applicant no less than 10 days' written notice of the
15 hearing and the specific reasons why the initial waiver might
16 be reconsidered. The court may require the applicant to provide
17 reasonably available evidence, including financial
18 information, to support his or her eligibility for the waiver,
19 but the court shall not require submission of information that
20 is unrelated to the criteria for eligibility and application
21 requirements set forth in subdivision (b)(1) or (b)(2) of this
22 Section. If the court finds that the person was not initially
23 entitled to any waiver, the person shall pay all fees, costs,
24 and charges relating to the civil action, including any
25 previously waived fees, costs, and charges. The order may state
26 terms of payment in accordance with subsection (e). The court

1 shall not conduct a hearing under this subsection more often
2 than once every 6 months.

3 (f-10) If, before or at the time of final disposition of
4 the case, the court obtains information, including information
5 from the court file, suggesting that a person who received a
6 full or partial waiver has experienced a change in financial
7 condition so that he or she is no longer eligible for that
8 waiver, the court may require the person to appear at a court
9 hearing by giving the applicant no less than 10 days' written
10 notice of the hearing and the specific reasons why the waiver
11 might be reconsidered. The court may require the person to
12 provide reasonably available evidence, including financial
13 information, to support his or her continued eligibility for
14 the waiver, but shall not require submission of information
15 that is unrelated to the criteria for eligibility and
16 application requirements set forth in subdivisions (b)(1) and
17 (b)(2) of this Section. If the court enters an order finding
18 that the person is no longer entitled to a waiver, or is
19 entitled to a partial waiver different than that which the
20 person had previously received, the person shall pay the
21 requisite fees, costs, and charges from the date of the order
22 going forward. The order may state terms of payment in
23 accordance with subsection (e) of this Section. The court shall
24 not conduct a hearing under this subsection more often than
25 once every 6 months.

26 (g) A court, in its discretion, may appoint counsel to

1 represent an indigent person, and that counsel shall perform
2 his or her duties without fees, charges, or reward. An indigent
3 person may retain counsel of his or her choosing to represent
4 the indigent person, with leave of the court, and that counsel
5 shall perform his or her duties without fees, charges, or
6 reward.

7 (h) Nothing in this Section shall be construed to affect
8 the right of a party to sue or defend an action in forma
9 pauperis without the payment of fees, costs, charges, or the
10 right of a party to court-appointed counsel, as authorized by
11 any other provision of law or by the rules of the Illinois
12 Supreme Court. Nothing in this Section shall be construed to
13 limit the authority of a court to order another party to the
14 action to pay the fees, costs, and charges of the action.

15 (h-5) If a party is represented by a civil legal services
16 provider or an attorney in a court-sponsored pro bono program
17 as defined in Section 5-105.5 of this Code, the attorney
18 representing that party shall file a certification with the
19 court in accordance with Supreme Court Rule 298 and that party
20 shall be allowed to sue or defend without payment of fees,
21 costs, and charges without filing an application under this
22 Section.

23 (h-10) (Blank).

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

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

1 101-36, eff. 6-28-19; revised 8-6-19.)