



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3618

Introduced 2/14/2020, by Sen. Celina Villanueva

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.930 new

Creates the Access to Legal Services Act. Provides that a covered individual has the right to legal services: in a covered proceeding in an immigration court in the State; or who is facing a covered proceeding in a covered venue other than an immigration court in the State and is found by a legal services provider to have a viable application for appeal, challenge to a court order, or other form of relief from removal from the United States. Provides for circumstances in which the right to legal services is applicable. Provides for the termination of the right to legal services, and exceptions to termination. Charges the Governor's Office of New Americans with implementing the requirements of the Act no later than January 1, 2021. Provides for the Office's power and responsibility under the Act. Creates the Access to Legal Services Fund. Provides that all money in the Fund shall be used by the Office to enable it to carry out the requirements of the Act. Creates the Advisory Committee for Access to Legal Services. Provides for: duties; appointment; term limits; compensation; meetings; and reporting requirements. Provides that nothing in the Act shall be construed to create a private right of action on the part of any individual or entity against the State or any agency, instrumentality, official, or employee of the State. Contains other provisions. Makes a corresponding change in the State Finances Act. Limits home rule. Effective immediately.

LRB101 19893 LNS 69413 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning courts.

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 Access  
5 to Legal Services Act.

6 Section 5. Definitions. As used in this Act:

7 "Committee" means the Advisory Committee for Access to  
8 Legal Services.

9 "Covered individual" means any income-eligible individual  
10 subject to removal under 8 U.S.C. 1229a or 8 U.S.C. 1225, or a  
11 final order of removal under 8 CFR 1241.1, regardless of age,  
12 in a covered proceeding who is:

13 (1) a domiciliary of this State who is a non-United  
14 States citizen;

15 (2) a domiciliary of this State who is a United States  
16 citizen or whose United States citizenship is in dispute;  
17 or

18 (3) an individual who is not a domiciliary of this  
19 State if his or her nondomiciliary and the proceedings have  
20 a significant nexus to this State that he or she should be  
21 provided relief under this Act, as determined by the Office  
22 on a case-by-case basis.

23 "Covered proceeding" means any proceeding in a covered

1 venue in which a covered individual is seeking an avenue of  
2 relief from removal from the United States, or is challenging  
3 his or her arrest or detention under the Immigration and  
4 Nationality Act. "Covered proceeding" includes: (i) a  
5 proceeding or hearing in immigration court; (ii) a proceeding  
6 in family court for purposes of obtaining a special findings  
7 order; (iii) a habeas corpus petition in a federal district  
8 court located in this State challenging detention under the  
9 Immigration and Nationality Act; (iv) a motion to reopen or  
10 reconsider challenging detention under the Immigration and  
11 Nationality Act; (v) a petition for review under 8 U.S.C. 1252;  
12 (vi) a remand to a federal district court in this State from  
13 the United States Circuit Court of Appeals for fact-finding  
14 purposes; and (vii) any appeal related to any of the foregoing  
15 to the Board of Immigration Appeals, the United States Circuit  
16 Court of Appeals, or the United States Supreme Court.

17 "Covered venue" means: (i) any tribunal located within this  
18 State, including family court, immigration court, and federal  
19 district court; (ii) any location within this State where  
20 expedited removals are processed; (iii) the Board of  
21 Immigration Appeals; (iv) the United States Circuit Court of  
22 Appeals; and (v) the United States Supreme Court.

23 "Domicile" means a fixed, permanent, and principal home to  
24 which an individual, wherever temporarily located, always  
25 intends to return.

26 "Domiciliary" means an individual that has established a

1 domicile with respect to a particular jurisdiction.

2 "Immigration court" means a tribunal of the Executive  
3 Office for Immigration Review, or a successor entity, tasked  
4 with deciding the inadmissibility or deportability of a  
5 noncitizen of the United States that is presided over by an  
6 immigration judge as defined by 8 U.S.C. 1101(b)(4).

7 "Income-eligible individual" means an individual who is  
8 deemed eligible for legal services in a covered proceeding  
9 based on preset income-related criteria adopted by the Office,  
10 but shall, at a minimum, include any individual whose annual  
11 gross household income is not in excess of 200% of the federal  
12 poverty guidelines as set forth in the Federal Register by the  
13 United States Department of Health and Human Services.

14 "Legal services" means individualized legal assistance in  
15 a single consultation or ongoing legal representation provided  
16 by a legal services provider to a covered individual, and all  
17 legal advice, advocacy, and assistance associated with the  
18 service.

19 "Legal services provider" means an individual,  
20 organization, or association that has the authority to provide  
21 legal services and is designated by the Office to provide legal  
22 services.

23 "Office" means the Governor's Office of New Americans.

24 Section 10. Right to counsel in immigration proceedings.

25 (a) A covered individual has the right to legal services:

1           (1) in a covered proceeding in an immigration court in  
2 this State; or

3           (2) who is facing a covered proceeding in a covered  
4 venue other than an immigration court in this State and is  
5 found by a legal services provider, after consultation with  
6 the legal services provider, to have a viable application  
7 for appeal, challenge to a court order, or other form of  
8 relief from removal from the United States.

9           (b) The right to legal services under subsection (a)  
10 applies in:

11           (1) Proceedings for removal under 8 U.S.C. 1229a, upon  
12 receipt of a Notice to Appear, as defined in 8 U.S.C. 1229.  
13 The obligations under this paragraph are satisfied if legal  
14 services are provided to a covered individual no later than  
15 his or her first appearance in a covered proceeding, or as  
16 soon thereafter as is practicable.

17           (2) Removal proceedings under 8 U.S.C. 1225, upon the  
18 commencement of the proceedings, or as soon thereafter as  
19 is practicable.

20           (3) A referral to an immigration judge for a hearing  
21 under 8 U.S.C. 1231(b)(3) or 8 U.S.C. 1158, upon receipt of  
22 a Notice of Referral to Immigration Judge, or as soon  
23 thereafter as is practicable.

24           (4) A reinstatement of a final order of removal, upon  
25 the reinstatement, or as soon as is practicable.

26           (5) All other cases, as soon as is practicable.

1 (c) Except as provided in subsection (d), the right to  
2 legal services under subsection (a) shall terminate:

3 (1) upon the termination or dismissal of removal  
4 proceedings, or any related appellate matter concerning a  
5 covered individual, by the immigration court or other  
6 competent tribunal or authority;

7 (2) upon the issuance of a final order or judgment in  
8 respect to a covered individual's removal proceedings from  
9 which there remains no opportunity for appeal or other  
10 avenue for relief, including, but not limited to, motions  
11 to reopen, motions to reconsider, and petitions for review;  
12 however, the legal services provider is not required to  
13 pursue appeals or other avenues for relief that are  
14 speculative or frivolous;

15 (3) if a covered individual ceases to be a domiciliary  
16 of this State and establishes domicile in a jurisdiction  
17 outside of this State;

18 (4) if it is discovered that the initial determination  
19 that an individual was an income-eligible individual was  
20 erroneous at the time that the determination was made, as  
21 soon as the discovery occurs; however, that individual will  
22 continue to be provided with legal services under this Act  
23 for a reasonable amount of time to enable the individual to  
24 obtain alternative legal services so as not to materially  
25 prejudice the individual's chance of success in any covered  
26 proceeding;

1           (5) if a covered individual knowingly and voluntarily  
2           waives the right to legal services on the record in the  
3           presence of the legal services provider; or

4           (6) upon a determination by a legal services provider  
5           after consultation under paragraph (2) of subsection (a)  
6           that a covered individual facing a covered proceeding in a  
7           covered venue other than an immigration court in this State  
8           has no viable application for appeal, challenge to a court  
9           order, nor other form of relief from removal from the  
10          United States.

11          (d) Notwithstanding the requirements under subsection (c),  
12          the right to legal services established under subsection (a)  
13          shall not terminate if:

14               (1) an immigration judge declines to allow a legal  
15               services provider to withdraw from providing legal  
16               services to a covered individual; or

17               (2) a legal services provider is prohibited from  
18               ceasing to provide legal services under the Illinois Rules  
19               of Professional Conduct or the Executive Office for  
20               Immigration Review's Practice Manual.

21          Section 15. Powers and duties of the Office. The Office is  
22          charged with implementing the requirements of this Act no later  
23          than January 1, 2021, and may adopt any rules, policies, and  
24          procedures necessary to implement this Act. The Office shall:

25               (1) ensure that each covered individual is advised of

1 his or her right to legal services under subsection (a) of  
2 Section 10;

3 (2) ensure independent, competent, and zealous legal  
4 representation of a covered individual receiving legal  
5 services;

6 (3) examine, evaluate, and monitor legal services  
7 provided under this Act;

8 (4) collect and receive information and data regarding  
9 the provision of legal services that is not protected by  
10 attorney-client privilege, work-product privilege, or any  
11 other applicable privilege or that can be disclosed by a  
12 legal service provider without violating the Illinois  
13 Rules of Professional Conduct, including, but not limited  
14 to:

15 (i) the type and combination of legal services  
16 being used across this State;

17 (ii) the salary and other compensation paid to an  
18 individual administrator, attorney, and staff member  
19 in connection with the provision of legal services;

20 (iii) the caseload of a legal services provider  
21 providing legal services in connection with the  
22 provision of those legal services;

23 (iv) the type, nature, and timing of a disposition  
24 of a case handled by a legal service provider providing  
25 legal services;

26 (v) the actual expenditures currently being made



1 in connection with the provision of legal services; and

2 (vi) the time, funds, and resources currently  
3 being spent on providing the legal services and the  
4 amount being spent on ancillary services, such as  
5 support staff and expert witnesses;

6 (5) analyze and evaluate collected data, and undertake  
7 any necessary research and studies, in order to consider  
8 and recommend measures to enhance the provision of  
9 effective legal services and to ensure that a recipient of  
10 legal services is provided with quality legal services from  
11 a fiscally responsible legal services provider, which  
12 shall include, but not be limited to, standards, criteria,  
13 and a process for qualifying and requalifying a legal  
14 service provider to provide legal services under this Act;

15 (6) establish measures of performance, which programs  
16 shall regularly report to the Office to assist the Office  
17 in monitoring the quality of legal services;

18 (7) establish the standards and criteria used in  
19 programs to determine whether an individual legal services  
20 provider is qualified to provide legal services;

21 (8) establish the criteria and procedures used to  
22 determine whether an individual is eligible to receive  
23 legal services, including requirements related to income  
24 and domicile, and to track the number of individuals  
25 considered for and applicants denied legal services, the  
26 reasons for a denial, and the results of any review of a

1 denial;

2 (9) establish standards and criteria for the provision  
3 of legal services in cases involving a conflict of  
4 interest;

5 (10) develop recommendations to improve the delivery  
6 of legal services;

7 (11) target grants in support of innovative and  
8 cost-effective solutions that enhance the provision of  
9 legal services, including collaborative efforts serving  
10 multiple jurisdictions within this State;

11 (12) investigate and monitor any other matter relevant  
12 to the provision of legal services that the Office deems  
13 important;

14 (13) request and receive, from any department,  
15 division, board, bureau, commission, or other agency of  
16 this State, any political subdivision of this State, or any  
17 public authority assistance, information, and data to  
18 enable the Office to properly carry out its functions,  
19 powers, and duties, subject to limitations on the  
20 disclosure of information provided on a privileged basis to  
21 a legal services provider, as well as limitations on the  
22 disclosure of information by a legal service provider under  
23 the Illinois Rules of Professional Conduct;

24 (14) apply for and accept any grant or other source of  
25 funding for purposes of carrying out the requirements of  
26 this Act;

1           (15) develop, publish, and implement a written plan,  
2           and monitor and periodically report on the implementation  
3           and compliance with the plan, that establishes numerical  
4           caseload or workload standards for a legal services  
5           provider, with the plan to be completed and published  
6           within 180 days after the effective date of this Act;

7           (16) develop and implement a written plan, and monitor  
8           and periodically report on the implementation of and  
9           compliance with the plan, to improve the quality of legal  
10          services provided to a covered individual, and to ensure  
11          that a legal services provider providing the legal services  
12          receives effective supervision and training, has access to  
13          and appropriately uses interpreters and expert witnesses  
14          on behalf of clients, communicates effectively with his or  
15          her clients, and has the necessary qualifications and  
16          experience; and

17          (17) beginning September 15, 2022, and every September  
18          15 of each year thereafter, submit a report to the  
19          Governor, the Speaker of the House, and the President of  
20          the Senate describing compliance with the requirements of  
21          this Act, including, but not limited to:

22                 (i) the criteria used to determine whether an  
23                 individual is eligible for legal services;

24                 (ii) the procedures used to determine whether an  
25                 individual is eligible to receive legal services;

26                 (iii) the number of individuals deemed eligible

1           and ineligible for legal services;  
2                 (iv) the number of cases started and completed and  
3           the outcomes of those cases; and  
4                 (v) qualitative review of the legal services  
5           provided.

6           The report shall also include the report of the  
7           Advisory Committee for Access to Legal Services required  
8           under subsection (f) of Section 25.

9           Section 20. Funding.

10           (a) The Access to Legal Services Fund is created as a  
11           special fund in the State treasury. All money in the Fund shall  
12           be used by the Office to enable it to carry out the  
13           requirements of this Act. The General Assembly shall  
14           appropriate money to the Fund as it deems necessary for the  
15           Office to carry out the requirements of this Act.

16           (b) The Office is charged with ensuring that appropriated  
17           funds are timely distributed to a legal service provider for  
18           the provision of legal services.

19           (c) Notwithstanding the requirements of subsections (a)  
20           and (b), funds appropriated to carry out the requirements of  
21           this Act shall be used to supplement and not supplant any  
22           State, local, or private funding that is, or is anticipated to  
23           be, expended for the provision of legal services to a covered  
24           individual, and the General Assembly is not required to  
25           appropriate any funds for legal services to the extent that

1 obligations associated with the provision of legal services are  
2 otherwise fully satisfied by funds received from State, local,  
3 or private sources, or by the United States government in  
4 satisfaction of any legal obligation.

5 Section 25. Advisory Committee for Access to Legal  
6 Services.

7 (a) The Advisory Committee for Access to Legal Services is  
8 created. The Committee shall work, as necessary and in  
9 collaboration with the Office, to develop programs, policies,  
10 training, and procedures necessary to effectuate the  
11 requirements of this Act. The matters the Committee shall  
12 consider include, but are not limited to:

- 13 (1) the rates of compensation for legal services;
- 14 (2) community engagement efforts;
- 15 (3) the sufficiency of access to legal services in a  
16 covered venue;
- 17 (4) the sufficiency of space available for a designated  
18 legal service provider in a covered venue;
- 19 (5) ensuring an individual with limited English  
20 proficiency has access to appropriate translation  
21 services; and
- 22 (6) other efforts by other states to support  
23 individuals facing deportation.

24 (b) The Committee shall be comprised of the following  
25 members, appointed as follows:

1           (1) the Governor shall appoint 5 members that offer  
2           legal services to an individual in a covered proceeding,  
3           including at least one representative of a private bar and  
4           2 representatives of a designated legal services provider  
5           and 2 representatives of a community-based organization;

6           (2) the Speaker of the House shall appoint 2 members;

7           (3) the President of the Senate shall appoint 2  
8           members; and

9           (4) the Office shall appoint one member to serve ex  
10          officio.

11          The Governor shall designate one member to serve as Chair  
12          of the Committee.

13          (c) Each member, other than the member serving in an ex  
14          officio capacity, shall serve for a term of 2 years with  
15          initial terms for each seat commencing on January 1, 2021 and  
16          expiring on December 31, 2022. Initial appointments shall be  
17          made within 20 days of the effective date of this Act. Any  
18          vacancies shall be filled promptly and in the same manner as  
19          the original appointment, and the appointee filling the vacancy  
20          shall serve for the unexpired portion of the term of the  
21          succeeded member. Any member may be reappointed for additional  
22          terms. A member shall continue in the position upon the  
23          expiration of his or her term and until the time as he or she is  
24          reappointed or his or her successor is appointed.

25          (d) Members shall serve without compensation, but shall be  
26          reimbursed by the Office for their reasonable and necessary

1 expenses incurred in the performance of their functions under  
2 this Section.

3 (e) The Committee's initial meeting shall take place within  
4 30 days of the appointment of all required members, or within  
5 60 days of the effective date of this Act, whichever is sooner.  
6 The Committee shall meet at least 4 times per year. The  
7 Committee may establish its own procedures with respect to the  
8 conduct of its meetings and its other affairs, except that all  
9 actions taken by the Committee shall be done by the affirmative  
10 vote of a majority of the members.

11 (f) Membership on the Committee shall not constitute the  
12 holding of an office. The Committee shall not have the power to  
13 exercise any portion of the sovereign power of this State.  
14 Notwithstanding the provisions of any other law, no member of  
15 the Committee shall be disqualified from holding any public  
16 office or employment, nor shall he or she forfeit any public  
17 office or employment by reason of his or her appointment to the  
18 Committee.

19 (g) Beginning in 2022, the Committee shall produce a report  
20 concerning its duties under this Act and any related  
21 recommendations, and the report shall be included in the report  
22 submitted under paragraph (17) of Section 15.

23 Section 30. No private right of action. Nothing in this Act  
24 shall be construed to create a private right of action on the  
25 part of any individual or entity against this State or any

1 agency, instrumentality, official, or employee of this State.

2 Section 35. Other law or policy.

3 (a) Any legal services performed by a legal services  
4 provider under this Act shall not supplant, replace, or satisfy  
5 any obligations or responsibilities of the legal services  
6 provider pursuant to any other program, agreement, or contract.

7 (b) Nothing in this Act shall be interpreted or applied to  
8 create any power, duty, or obligation prohibited by federal  
9 law.

10 (c) Except to the extent that the provisions of a State or  
11 local law, rule, policy, procedure, or practice may provide any  
12 additional or greater right or protection, the provisions of  
13 this Act supersede conflicting State or local laws, rules,  
14 policies, procedures, and practices. This Section is a  
15 limitation under subsection (i) of Section 6 of the Illinois  
16 Constitution on the concurrent exercise by home rule units of  
17 powers and functions exercised by the State.

18 Section 97. Severability. The provisions of this Act are  
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 100. The State Finance Act is amended by adding  
21 Section 5.930 as follows:

22 (30 ILCS 105/5.930 new)



1           Sec. 5.930. The Access to Legal Services Fund.

2           Section 999. Effective date. This Act takes effect upon  
3           becoming law.