

# HB4279



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4279

Introduced 1/16/2024, by Rep. Dave Vella

### SYNOPSIS AS INTRODUCED:

735 ILCS 5/5-105

from Ch. 110, par. 5-105

Amends the Costs Article of the Code of Civil Procedure. Provides that on the application of any person, before or after the commencement of an action for child support, if the court finds that the applicant is a person whose income is below the poverty level, the court shall grant the applicant a full waiver entitling the applicant to sue or defend the action without payment of any of the fees, costs, and charges.

LRB103 35557 LNS 65629 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  
11 of 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  
4 or more of the following criteria:

5 (i) The person ~~He or she~~ is receiving assistance  
6 under one or more of the following means-based  
7 governmental public benefits programs: Supplemental  
8 Security Income (SSI), Aid to the Aged, Blind and  
9 Disabled (AABD), Temporary Assistance for Needy  
10 Families (TANF), Supplemental Nutrition Assistance  
11 Program (SNAP), General Assistance, Transitional  
12 Assistance, or State Children and Family Assistance.

13 (ii) The person's ~~His or her~~ available personal  
14 income is 125% or less of the current poverty level,  
15 unless the applicant's assets that are not exempt  
16 under Part 9 or 10 of Article XII of this Code are of a  
17 nature and value that the court determines that the  
18 applicant is able to pay the fees, costs, and charges.

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

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

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

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

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

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

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

26               (ii) the court shall waive 50% of all fees, costs,

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

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

16 (3) In an action for child support, if the court finds  
17 that the applicant is a person whose income is below the  
18 poverty level, the court shall grant the applicant a full  
19 waiver entitling the applicant to sue or defend the action  
20 without payment of any of the fees, costs, and charges.

21 (c) An application for waiver of court fees, costs, and  
22 charges shall be in writing and signed by the applicant, or, if  
23 the applicant is a minor or an incompetent adult, by another  
24 person having knowledge of the facts. The contents of the  
25 application for waiver of court fees, costs, and charges, and  
26 the procedure for the decision of the applications, shall be

1 established by Supreme Court Rule. Factors to consider in  
2 evaluating an application shall include:

3 (1) the applicant's receipt of needs based  
4 governmental public benefits, including Supplemental  
5 Security Income (SSI); Aid to the Aged, Blind and Disabled  
6 (AABD); Temporary Assistance for Needy Families (TANF);  
7 Supplemental Nutrition Assistance Program (SNAP or "food  
8 stamps"); General Assistance; Transitional Assistance; or  
9 State Children and Family Assistance;

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

12 (3) income received from the applicant's pension,  
13 Social Security benefits, unemployment benefits, and other  
14 sources;

15 (4) income received by the applicant from other  
16 household members;

17 (5) the applicant's monthly expenses, including rent,  
18 home mortgage, other mortgage, utilities, food, medical,  
19 vehicle, childcare, debts, child support, and other  
20 expenses; and

21 (6) financial affidavits or other similar supporting  
22 documentation provided by the applicant showing that  
23 payment of the imposed fees, costs, and charges would  
24 result in substantial hardship to the applicant or the  
25 applicant's family.

26 (c-5) The court shall provide, through the office of the

1 clerk of the court, the application for waiver of court fees,  
2 costs, and charges to any person seeking to sue or defend an  
3 action who indicates an inability to pay the fees, costs, and  
4 charges of the action. The clerk of the court shall post in a  
5 conspicuous place in the courthouse a notice no smaller than  
6 8.5 x 11 inches, using no smaller than 30-point typeface  
7 printed in English and in Spanish, advising the public that  
8 they may ask the court for permission to sue or defend a civil  
9 action without payment of fees, costs, and charges. The notice  
10 shall be substantially as follows:

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

15 (d) (Blank).

16 (e) The clerk of the court shall not refuse to accept and  
17 file any complaint, appearance, or other paper presented by  
18 the applicant if accompanied by an application for waiver of  
19 court fees, costs, and charges, and those papers shall be  
20 considered filed on the date the application is presented. If  
21 the application is denied or a partial fees, costs, and  
22 charges waiver is granted, the order shall state a date  
23 certain by which the necessary fees, costs, and charges must  
24 be paid. For good cause shown, the court may allow an applicant  
25 who receives a partial fees, costs, and charges waiver to  
26 defer payment of fees, costs, and charges, make installment

1 payments, or make payment upon reasonable terms and conditions  
2 stated in the order. The court may dismiss the claims or strike  
3 the defenses of any party failing to pay the fees, costs, and  
4 charges within the time and in the manner ordered by the court.  
5 A judicial ruling on an application for waiver of court  
6 assessments does not constitute a decision of a substantial  
7 issue in the case under Section 2-1001 of this Code.

8 (f) The order granting a full or partial fees, costs, and  
9 charges waiver shall expire after one year. Upon expiration of  
10 the waiver, or a reasonable period of time before expiration,  
11 the party whose fees, costs, and charges were waived may file  
12 another application for waiver and the court shall consider  
13 the application in accordance with the applicable Supreme  
14 Court Rule.

15 (f-5) If, before or at the time of final disposition of the  
16 case, the court obtains information, including information  
17 from the court file, suggesting that a person whose fees,  
18 costs, and charges were initially waived was not entitled to a  
19 full or partial waiver at the time of application, the court  
20 may require the person to appear at a court hearing by giving  
21 the applicant no less than 10 days' written notice of the  
22 hearing and the specific reasons why the initial waiver might  
23 be reconsidered. The court may require the applicant to  
24 provide reasonably available evidence, including financial  
25 information, to support the applicant's ~~his or her~~ eligibility  
26 for the waiver, but the court shall not require submission of



1 information that is unrelated to the criteria for eligibility  
2 and application requirements set forth in subdivision (b)(1)  
3 or (b)(2) of this Section. If the court finds that the person  
4 was not initially entitled to any waiver, the person shall pay  
5 all fees, costs, and charges relating to the civil action,  
6 including any previously waived fees, costs, and charges. The  
7 order may state terms of payment in accordance with subsection  
8 (e). The court shall not conduct a hearing under this  
9 subsection more often than once every 6 months.

10 (f-10) If, before or at the time of final disposition of  
11 the case, the court obtains information, including information  
12 from the court file, suggesting that a person who received a  
13 full or partial waiver has experienced a change in financial  
14 condition so that the person ~~he or she~~ is no longer eligible  
15 for that waiver, the court may require the person to appear at  
16 a court hearing by giving the applicant no less than 10 days'  
17 written notice of the hearing and the specific reasons why the  
18 waiver might be reconsidered. The court may require the person  
19 to provide reasonably available evidence, including financial  
20 information, to support the person's ~~his or her~~ continued  
21 eligibility for the waiver, but shall not require submission  
22 of information that is unrelated to the criteria for  
23 eligibility and application requirements set forth in  
24 subdivisions (b)(1) and (b)(2) of this Section. If the court  
25 enters an order finding that the person is no longer entitled  
26 to a waiver, or is entitled to a partial waiver different than

1 that which the person had previously received, the person  
2 shall pay the requisite fees, costs, and charges from the date  
3 of the order going forward. The order may state terms of  
4 payment in accordance with subsection (e) of this Section. The  
5 court shall not conduct a hearing under this subsection more  
6 often than once every 6 months.

7 (g) A court, in its discretion, may appoint counsel to  
8 represent an indigent person, and that counsel shall perform  
9 the counsel's ~~his or her~~ duties without fees, charges, or  
10 reward.

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

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

1 (h-10) (Blank).

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

4 (Source: P.A. 101-36, eff. 6-28-19; 102-558, eff. 8-20-21.)