



Rep. Karen A. Yarbrough

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1 AMENDMENT TO HOUSE BILL 943

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 943 by replacing  
3 everything after the enacting clause with the following:

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

1 in, or attendance at, any mandatory process or procedure  
2 including, but not limited to, conciliation, mediation,  
3 arbitration, counseling, evaluation, "Children First",  
4 "Focus on Children" or similar programs; fees for  
5 supplementary proceedings; charges for translation  
6 services; guardian ad litem fees; charges for certified  
7 copies of court documents; and all other processes and  
8 procedures deemed by the court to be necessary to commence,  
9 prosecute, defend, or enforce relief in a civil action.

10 (2) "Indigent person" means any natural person who  
11 meets one or more of the following criteria:

12 (i) He or she is receiving assistance under one or  
13 more of the following public benefits programs:  
14 Supplemental Security Income (SSI), Aid to the Aged,  
15 Blind and Disabled (AABD), Temporary Assistance for  
16 Needy Families (TANF), Food Stamps, General  
17 Assistance, State Transitional Assistance, or State  
18 Children and Family Assistance.

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

26 (iii) He or she is, in the discretion of the court,

1           unable to proceed in an action without payment of fees,  
2           costs, and charges and who is unable to give security  
3           therefor, and whose payment of those fees, costs, and  
4           charges, or security therefor, would result in  
5           substantial hardship to the person or his or her  
6           family.

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

9           (b) On the application of any person, before, or after the  
10          commencement of an action and on a yearly basis within the same  
11          action thereafter when the petition is granted, a court, on  
12          finding that the applicant is an indigent person and that no  
13          other person beneficially interested in the recovery sought is  
14          able to pay the fees, costs, and charges of the action, shall  
15          grant the applicant leave to sue or defend the action without  
16          payment of the fees, costs, and charges of the action.

17          (c) An application for leave to sue or defend an action as  
18          an indigent person shall be in writing and supported by the  
19          affidavit of the applicant or, if the applicant is a minor or  
20          an incompetent adult, by the affidavit of another person having  
21          knowledge of the facts. The affidavit shall state that it is  
22          sworn under penalty of perjury and shall be sworn before a  
23          notary public or other officer authorized to administer oaths.  
24          The contents of the affidavit shall be established by Supreme  
25          Court Rule. The court may require the moving party to file with  
26          the affidavit a copy of the applicant's most recent State and

1 federal income tax returns and a certificate of an attorney  
2 stating that the attorney has examined the action and believes  
3 there is merit to the moving party's contentions. An applicant  
4 may not pay a fee for preparation of an indigent application  
5 unless the preparation of the application is part of a  
6 contingency fee agreement described in subsection (g). Any  
7 other party in interest may contest the truth of an affidavit  
8 of indigency by verifying affirmatively under oath that the  
9 same is untrue. The issue that arises from the affidavits shall  
10 be heard and determined by the court. The court shall provide,  
11 through the office of the clerk of the court, simplified forms  
12 consistent with the requirements of this Section and applicable  
13 Supreme Court Rules to any person seeking to sue or defend an  
14 action who indicates an inability to pay the fees, costs, and  
15 charges of the action. The application and supporting affidavit  
16 may be incorporated into one simplified form. The clerk of the  
17 court shall post in a conspicuous place in the courthouse a  
18 notice no smaller than 8.5 x 11 inches, using no smaller than  
19 30-point typeface printed in English and in Spanish, advising  
20 the public that they may ask the court for permission to sue or  
21 defend a civil action without payment of fees, costs, and  
22 charges. The notice shall be substantially as follows:

23 "If you are unable to pay the fees, costs, and charges  
24 of an action you may ask the court to allow you to proceed  
25 without paying them. However, you will be required to  
26 reimburse these court fees, costs, and charges at the end

1 of the case if you receive a monetary judgment or  
2 settlement. Ask the clerk of the court for forms."

3 (c-1) In addition to filing the affidavit required by  
4 subsection (c), if the applicant in a civil action is a  
5 prisoner, the applicant shall be required to pay the full  
6 amount of any filing fees. At the time the application and  
7 affidavit are filed, the applicant prisoner shall submit a  
8 certified copy of the trust fund account statement (or  
9 institutional equivalent) for the prisoner for the 6-month  
10 period immediately preceding the filing of the complaint or  
11 appearance, obtained from the appropriate official of each  
12 prison at which the prisoner is or was confined. The court  
13 shall assess and, when funds exist, collect, as partial payment  
14 of any court fees required by law, an initial filing fee of 20%  
15 of the greater of (1) the average monthly deposits to the  
16 prisoner's account, or (2) the average monthly balance in the  
17 prisoner's account for the 6-month period immediately  
18 preceding the filing of the complaint or notice of appeal.  
19 After payment of the initial filing fee, the prisoner shall be  
20 required to make monthly payments of 20% of the preceding  
21 month's income credited to the prisoner's account until the  
22 court fees are paid. The agency having custody of the prisoner  
23 shall forward payments from the prisoner's account to the clerk  
24 of court each time the amount in the account exceeds \$10 until  
25 the court fees are paid. In no event shall the court fees  
26 collected exceed the amount of fees permitted by statute, and

1 in no event shall a prisoner be prohibited from bringing a  
2 civil action or appealing a civil judgment for the reason that  
3 the prisoner has no assets and no means by which to pay the  
4 court fees.

5 (c-2) In an action for dissolution of marriage or spousal  
6 maintenance, if the applicant is determined by the court to be  
7 an indigent person, the court shall require the payment of the  
8 applicant's fees and costs to be paid by the spouse. If the  
9 spouse is determined to be an indigent person, the applicant  
10 and spouse may proceed without payment of the fees, costs, and  
11 charges of the action.

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 tax returns unless the court, in its  
15 discretion, requires the applicant to personally appear to  
16 explain or clarify information contained in the application. If  
17 the court finds that the applicant is an indigent person, the  
18 court shall enter an order permitting the applicant to sue or  
19 defend without payment of fees, costs, or charges. If the  
20 application is denied, the court shall enter an order to that  
21 effect stating the specific reasons for the denial. If the  
22 court denies the application, the court will give notice to the  
23 applicant by written order that the case will be dismissed if  
24 the fee is not paid within 90 days after the date of the order,  
25 unless otherwise ordered by the court. The clerk of the court  
26 shall promptly mail or deliver a copy of the order to the

1 applicant.

2 (e) The clerk of the court shall not refuse to accept and  
3 file any complaint, appearance, or other paper presented by the  
4 applicant if accompanied by an application to sue or defend in  
5 forma pauperis, and those papers shall be considered filed on  
6 the date the application is presented. If the application is  
7 denied, the order shall state a date certain by which the  
8 necessary fees, costs, and charges must be paid. Unless  
9 otherwise ordered by the court, if the necessary fees, costs,  
10 and charges are not paid within 90 days after the denial, the  
11 case shall be dismissed. The court, for good cause shown, may  
12 allow an applicant whose application is denied to defer payment  
13 of fees, costs, and charges, make installment payments, or make  
14 payment upon reasonable terms and conditions stated in the  
15 order. The court's order shall contain the payment due date and  
16 payment amount. The court shall ~~may~~ dismiss the claims or  
17 defenses of any party failing to pay the fees, costs, or  
18 charges within 90 days after the time and in the manner ordered  
19 by the court. A determination concerning an application to sue  
20 or defend in forma pauperis shall not be construed as a ruling  
21 on the merits.

22 (f) The court shall ~~may~~ order the non-prevailing party, who  
23 is paying the judgment or settlement, an indigent person to  
24 first pay to the clerk of the circuit court and to the sheriff  
25 for service of process, if any, all ~~or a portion~~ of the fees,  
26 costs, or charges waived pursuant to this Section out of moneys

1 recovered by the indigent person pursuant to a judgment or  
2 settlement resulting from the civil action, in an amount not to  
3 exceed the amount of the settlement or judgment. If the court  
4 has paid on behalf of the prevailing party the cost of  
5 stenographic transcript, printed record, postage, service by  
6 publication, notice by publication, translation services, or  
7 any other fee, cost, or charge, the same shall be taxed in  
8 favor of the court and paid by the non-prevailing party from  
9 the judgment or settlement. However, nothing in this Section  
10 shall be construed to limit the authority of a court to order  
11 another party to the action to pay the fees, costs, or charges  
12 of the action. If a judgment against a prisoner includes the  
13 payment of costs under this subsection, the prisoner shall be  
14 required to pay the full amount of the costs ordered. The  
15 prisoner shall be required to make payments for costs under  
16 this subsection in the same manner as provided for filing fees  
17 under subsection (c-1). In no event shall the costs collected  
18 exceed the amount of the costs ordered by the court.

19 (g) A court, in its discretion, may appoint counsel to  
20 represent an indigent person, and that counsel shall perform  
21 his or her duties without fees, charges, or reward. An  
22 applicant under this Section may proceed pro se, or may be  
23 represented by court-appointed counsel pursuant to this  
24 subsection, a civil legal services provider pursuant to  
25 subsection (a)(2)(iv), or another attorney representing the  
26 person on a contingent fee basis or without fees, charges, or



1 reward. Any applicant represented by an attorney shall be  
2 represented without fees, charges, or reward or on a contingent  
3 fee basis, or shall immediately file a motion with the court to  
4 have the indigent status invalidated with all fees, costs, and  
5 charges in the case immediately due. If the attorney enters  
6 into a contingency fee agreement with the applicant, the amount  
7 of the court fees, costs, and charges to be paid from the  
8 judgment or settlement pursuant to subsection (e) shall not be  
9 considered as part of the judgment or settlement amount for  
10 purposes of the contingency fee agreement. If the applicant  
11 fails to file a motion to invalidate the indigent status within  
12 10 days after the filing of the appearance in the case, the  
13 clerk of the circuit court shall send a notice to the applicant  
14 and the applicant's attorney notifying them that the case will  
15 be dismissed within 30 days unless all fees, costs, and charges  
16 in the case are immediately paid. If all fees, costs, and  
17 charges in the case are not paid within 30 days, the case shall  
18 be dismissed.

19 (g-1) Notwithstanding any filing fee, or any portion  
20 thereof, that may have been paid, the court shall revoke the  
21 provision of any relief under this Section and dismiss the case  
22 at any time, on its own initiative or upon motion, if the court  
23 determines that (1) the allegation of poverty is untrue, or (2)  
24 the action or appeal (i) is frivolous, malicious, has no  
25 arguable basis in law or fact, or reasonably appears to be  
26 intended to harass one or more named defendants, (ii) fails to

1 state a claim on which relief may be granted, (iii) seeks  
2 monetary relief against a defendant who is immune from such  
3 relief, (iv) seeks relief for mental or emotional injury where  
4 there has been no related allegation of a physical injury, or  
5 (v) is substantially similar to a previous claim filed by the  
6 applicant in that it involves the same parties or arises from  
7 the same operative facts as a previous claim. This Section  
8 shall be construed liberally in favor of the applicant.

9 (g-2) A person who knowingly provides false information to  
10 the court in seeking a determination of indigent status under  
11 this Section commits a Class C misdemeanor. If the court has  
12 reason to believe that any applicant, through fraud or  
13 misrepresentation, was improperly determined to be indigent,  
14 the matter shall be referred by the court to the State's  
15 Attorney.

16 (h) Nothing in this Section shall be construed to affect  
17 the right of a party to sue or defend an action in forma  
18 pauperis without the payment of fees, costs, or charges, or the  
19 right of a party to court-appointed counsel, as authorized by  
20 any other provision of law or by the rules of the Illinois  
21 Supreme Court.

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

24 (Source: P.A. 91-621, eff. 8-19-99.)"