
A BILL FOR AN ACT

RELATING TO SURCHARGE FOR INDIGENT LEGAL SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in November 2007,
2 the Access to Justice Hui released a report entitled:
3 "Achieving Access to Justice for Hawai'i's People". Part of that
4 report, "The 2007 Assessment of Civil Legal Needs and Barriers
5 of Low- and Moderate-Income People in Hawai'i", noted that four
6 out of five low- and moderate-income residents did not have
7 their legal needs met, and that legal service providers are only
8 able to assist one in three who contact them for assistance.

9 The legislature also finds that to increase the delivery of
10 legal services, more funding is necessary. Additional funds
11 could be generated by increasing the surcharge for indigent
12 legal services, as recommended by another component of the above
13 report, "The Community Wide Action Plan: Ten Steps to Increase
14 Access to Justice in Hawai'i by 2010".

15 The purpose of this Act is to implement the funding
16 recommendation of the Access to Justice Hui by increasing the
17 amount of the surcharges for indigent legal fees.



1 SECTION 2. Section 607-5.7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]**§607-5.7**[~~f~~] **Surcharge for indigent legal services.**

4 (a) In addition to the costs and fees prescribed in section
5 607-5, any person in a civil action in the circuit court who is
6 required to pay an initial filing fee shall pay an additional
7 surcharge [~~of \$25~~] at the time of the person's initial filing [~~-~~
8 ~~Initial filings for which this surcharge shall be assessed~~
9 ~~include-~~

10 ~~(1) Complaints, petitions, interventions, applications for~~
11 ~~special proceedings, and answers containing one or~~
12 ~~more cross claims or counter claims; and~~

13 ~~(2) Third party complaints, but shall not include post-~~
14 ~~judgment civil process.] as follows:~~

15 (1) Effective January 1, 2012, \$50; and

16 (2) Effective January 1, 2014, \$65.

17 (b) In addition to the costs and fees prescribed in
18 section 607-4, any person [~~who files an action for summary~~
19 ~~possession in the district court]~~ in a civil action in the
20 district court who is required to pay an initial filing fee
21 shall pay an additional surcharge [~~of \$10~~] at the time of the
22 person's initial filing[~~-~~] as follows:



1 (1) Effective January 1, 2012, \$25; and

2 (2) Effective January 1, 2014, \$35.

3 Any person in a civil action in the [~~supreme court~~] courts
4 of appeal who is required to pay an initial filing fee also
5 shall pay an additional surcharge [~~of \$25~~] at the time of the
6 person's filing[-] as follows:

7 (1) Effective January 1, 2012, \$50; and

8 (2) Effective January 1, 2014, \$65.

9 Initial filings for which surcharges in this section shall be
10 assessed include:

11 (1) Complaints, petitions, interventions, applications for
12 special proceedings, and answers containing one or
13 more cross-claims or counter-claims; and

14 (2) Third-party complaints, but not post-judgment civil
15 process.

16 No surcharge in this section shall be assessed against:

17 (1) Small claims cases;

18 (2) Petitions for temporary restraining orders;

19 (3) Petitions for protective orders;

20 (4) Any party who has received the court's permission to
21 proceed in forma pauperis; or

22 (5) Any party proceeding on behalf of the county or State.



1 Surcharges subject to this section shall be limited to one
2 payment per party.

3 (c) There is established a special fund to be known as the
4 indigent legal assistance fund. The funds raised under
5 subsections (a) and (b) shall be transmitted to the
6 administrative director of the courts and deposited in the
7 indigent legal assistance fund.

8 (d) This fund shall be administered by the administrative
9 director of the courts, or pursuant to contract with the
10 administrative director of the courts. If the fund is
11 administered pursuant to contract with the administrative
12 director of the courts, the contractor shall be a nonprofit
13 organization that has at least one year's experience in
14 administering grants to providers of civil legal services for
15 indigents. The fund administrator shall receive not more than
16 five per cent of the total amount collected under this section
17 each fiscal year as compensation for performing the duties under
18 this section.

19 (e) The fund administrator shall annually accept
20 applications for grants funded from the indigent legal
21 assistance fund from organizations that provide civil legal
22 assistance to indigent persons. Applications shall be received



1 no later than April 15 for assistance in the following fiscal
2 year. The fund administrator shall determine the specific
3 information required of the applicant and, at a minimum, shall
4 require applicants to provide information concerning:

5 (1) Their governance, staffing, and total annual budget;

6 (2) Other funding sources;

7 (3) Geographic area of service;

8 (4) The number of clients served in the previous fiscal
9 year; and

10 (5) The nature and scope of services provided.

11 (f) To be eligible for assistance from the indigent legal
12 assistance fund, an applicant shall meet all of the following
13 standards at the time of application:

14 (1) Be either a nonprofit organization incorporated and
15 operated exclusively in Hawaii and determined by the
16 Internal Revenue Service to be exempt from federal
17 income tax or a program operated exclusively in Hawaii
18 by an accredited nonprofit law school, which
19 organization or program provides as its primary
20 purpose and function civil legal services to indigent
21 persons;



- 1 (2) Have a governing board whose members have no material
2 conflict of interest and serve without compensation;
- 3 (3) Have bylaws or policies that describe the manner in
4 which business is conducted, and policies that relate
5 to nepotism and management of potential conflict of
6 interest situations;
- 7 (4) Have at least one year's experience in providing civil
8 legal services to indigents;
- 9 (5) Be licensed and accredited, as applicable, in
10 accordance with the requirements of federal, state,
11 and county governments;
- 12 (6) Agree not to charge client fees for services that are
13 funded in any part by a grant from the indigent legal
14 assistance fund, except that token payments for costs
15 and expenses shall not be considered fees;
- 16 (7) Agree to use any grant received under this section
17 exclusively to provide civil legal services to
18 indigent persons; and
- 19 (8) Have in place sound financial management systems, a
20 client grievance procedure, a method of ensuring the
21 quality of service provided, and a policy that
22 provides that no person may interfere with any



1 attorneys funded in whole or in part by this section
2 in carrying out their professional responsibilities to
3 their clients, as established by the Hawaii rules of
4 professional conduct.

5 (g) The Hawaii Justice Foundation shall review, on a
6 biennial basis, the indigent legal assistance fund to determine
7 whether it is meeting the civil legal needs of indigent persons
8 and shall report its findings and recommendations to the
9 legislature no later than twenty days before the convening of
10 the regular session of the legislature in each even-numbered
11 year beginning with the regular session of 2014.

12 [~~g~~] (h) Funds shall be distributed on a pro rata basis
13 to organizations that meet the criteria in subsection (f), based
14 upon the portion of their total budget expended in the prior
15 year for civil legal services to indigent persons as compared to
16 the combined total expended in the prior year for legal services
17 by all qualifying organizations applying for funding. An
18 applicant that provides services other than civil legal services
19 to indigent persons may establish its proportionate entitlement
20 to funds based upon financial statements which strictly
21 segregate that portion of the organization's expenditures in the



1 prior year which were devoted exclusively to the provision of
2 civil legal services for indigents.

3 ~~[(h)]~~ (i) As used in this section, unless the context
4 otherwise requires:

5 "Civil legal services" means direct legal services provided
6 by attorneys or by attorney-supervised staff to clients in civil
7 matters, including pro bono, judicial, and administrative
8 advocacy relating to the civil legal problems of indigents.

9 "Indigent person" means:

- 10 (1) Any individual whose income is not greater than one
11 hundred twenty-five per cent of the official poverty
12 line established by the Secretary of Health and Human
13 Services under the Community Services Block Grant Act,
14 42 ~~[U.S.C. section]~~ United States Code Section 9902;
- 15 (2) Any individual who is eligible for free services under
16 the Older Americans Act or Developmentally Disabled
17 Act; or
- 18 (3) Any organization or client group whose purpose is to
19 further the interests of indigent persons and which is
20 at least fifty per cent composed of persons who meet
21 the requirements of paragraph (1) or (2)."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on January 7, 2059;
4 provided that section 2 of this Act is repealed on January 1,
5 2017, and section 607-5.7, Hawaii Revised Statutes, is reenacted
6 in the form in which it read on the day before the approval of
7 this Act.



Report Title:

Indigent Legal Fees; Surcharge

Description:

Increases the amount of surcharges for indigent legal fees.
Effective January 7, 2059. (SB1073 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

