

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 355 (Becker)
Version: March 5, 2021
Hearing Date: March 16, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Court fees and costs: waiver

DIGEST

This bill expands eligibility for initial court filing-fee waivers and alters the calculation to determine income-based eligibility for such waivers.

EXECUTIVE SUMMARY

Under current law, a litigant may seek and obtain a waiver of court fees if they do not have the financial means to pay those fees. Government Code section 68632 sets forth a number of criteria entitling individuals to an initial fee waiver, including the receipt of a wide range of public benefits, an income at 125 percent or less of the Department of Health and Human Services' (HHS) poverty guidelines, or an inability to pay for court fees without using funds used to pay for basic living expenses.

This bill expands access to fee waivers by (1) adding receipt of California Special Supplemental Nutrition Program for Women, Infants, and Children or unemployment benefits to the list of benefits entitling a person to a fee waiver, and (2) setting the income-based eligibility criterion at 80 percent of the Unadjusted Area Median Income as set by United States Department of Housing and Urban Development (HUD) for the HUD Metro Fair Market Rent Area in the county, instead of relying on the HHS poverty guidelines. The author also intends to accept amendments extending benefits to recipients of California's Earned Income Tax Credit, and Medi-Cal's targeted low-income children and Access Programs, to further expand low-income individuals' access to automatic fee waivers.

The bill is sponsored by Community Legal Services in Palo Alto and supported by a wide range of legal aid and access-to-justice organizations. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Recognizes that “our legal system cannot provide ‘equal justice under law’ unless all persons have access to the courts without regard to their economic means.” (Gov. Code, § 68630.)
- 2) Requires courts to grant an initial fee waiver to a person who, at any point in a proceeding, establishes eligibility for such a waiver. An initial fee waiver “excuses the applicant from paying fees for the first pleading or other paper, and other court fees and costs.” (Gov. Code, § 68630; *see id.*, §§ 68634, 68634.5; Cal. Rules of Court, rs. 3.55-3.56.)
- 3) Mandates that initial fee waivers be granted to an applicant who satisfies one or more of the following bases for eligibility:
 - a) Receives Supplemental Security Income (SSI) and/or State Supplementary Payment benefits;
 - b) Receives California Work Opportunity, Responsibility to Kids Act, and/or federal Tribal Temporary Assistance for Needy Families (TANF) grants;
 - c) Receives Supplemental Nutrition Assistance Program (SNAP) and/or California Food Assistance Program benefits;
 - d) Receives County Relief, General Relief, and/or General Assistance benefits;
 - e) Receives Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants benefits;
 - f) Receives In-Home Supportive Services benefits;
 - g) Receives Medi-Cal benefits;
 - h) Has a monthly income of 125 percent or less of the current poverty guidelines set forth in the Federal Register by the United States Department of Health and Human Services (HHS).
 - i) Is determined by the court, on an individual basis, to be unable to pay for court fees without using monies that would normally pay for the common necessities of life for the applicant and the applicant’s family. The court may also grant a partial fee waiver or order that the applicant pay fees over time if the court finds an arrangement to be equitable under the applicant’s individual circumstances.
 - j) Is filing a petition for appointment of a fiduciary in a guardianship or conservatorship, or files pleadings as the appointed fiduciary of a conservatee or ward, when the financial condition of the conservatee or ward meets one of the criteria set forth in items a)-j) above. (Gov. Code, § 68632.)
- 4) Requires the Judicial Council to create an application form with which a fee waiver applicant can present the necessary personal and financial information, under penalty of perjury, and request a fee waiver. (Gov. Code, § 68633.)

- 5) Permits the court to reconsider or retroactively deny the fee waiver if the recipient's financial circumstances change or the court learns other information suggesting the recipient is not entitled to a fee waiver (Gov. Code, §§ 68630, 68636), or to recover previously waived fees if the applicant is the prevailing party entitled fees under Civil Code section 1032 or recovered over \$10,000 in certain types of cases (Gov. Code, § 68637).

This bill:

- 1) Expands access to fee waivers by adding two additional bases for eligibility, mandating fee waivers where an applicant:
 - a) Receives California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) benefits; or
 - b) Receives unemployment compensation, as established in Part 1 of Title 1 of the Unemployment and Insurance Code.
- 2) Alters the income-based threshold for fee-waiver eligibility: instead of granting fee waivers to persons earning up to 125 percent of HHS's poverty guidelines, fee waivers would be granted to persons earning up to 80 percent of the Unadjusted Area Median Income set by United States Department of Housing and Urban Development (HUD) for the HUD Metro Fair Market Rent Area in the county, or the geographic area of the state as described in subdivision (c) of section 50079.5 of the Health and Safety Code, in which the applicant is filing.
- 3) Requires the Judicial Council to annually publish a table setting forth the threshold monthly income for a fee waiver pursuant to the HUD Unadjusted Area Median Income, with adjustments for family size, to be used with the Judicial Council's fee waiver application form.

COMMENTS

1. Author's comment

According to the author:

SB 355 provides greater access to justice for low-income Californians and reduces the burden on courts. It achieves this by expanding the number of low-income Californians who can automatically request [and receive] fee waivers of all court filing fees through 1) adding public benefits that automatically qualify for a fee waiver and 2) increasing the waiver income threshold to people whose income falls at or below the "low" threshold of the HUD income guidelines for each county.

2. This bill's expansion of the criteria entitling a litigant to a filing-fee waiver are consistent with the purpose of the fee-waiver statute

Litigation is expensive. In California, filing a complaint or an answer in an unlimited civil case costs \$435 – with another \$1,000 added on if the case is “complex.”¹ Filing a motion costs anywhere from \$60 to \$500 apiece.² For many Californians, these fees are simply too high.³

This Legislature has recognized that access to justice should not be contingent on a litigant's financial status.⁴ To ensure the courthouse doors are open to all, regardless of ability to pay, the Legislature has adopted a procedure by which individuals who satisfy certain income-related criteria may seek and obtain a waiver of court fees.⁵

Under current law, an individual can establish eligibility for a fee waiver in one of three ways: (1) by showing they receive at least one of several enumerated state and federal public benefits, such as Medi-Cal, SNAP payments, or SSI; (2) by showing their income falls at or below 125 percent of HHS's poverty line; or (3) by otherwise showing that they would not be able to pay court fees without using funds that would otherwise go to pay for necessities of daily life.⁶ This bill would expand eligibility for a fee waiver in two ways: (1) by adding additional benefits-related criteria; and (2) by changing the basis of the income-based criterion from 125 percent of HHS's poverty line to up to 80 percent of the HUD's Unadjusted Area Median Income for the area in which the individual is litigating.

With respect to the additional benefits-related criteria, this bill would expand eligibility for fee waivers to individuals receiving WIC benefits and unemployment payments. These benefits programs serve similar purposes to the programs that are currently in the statute – for example, WIC benefits, like SNAP benefits, are intended to help low-

¹ Judicial Council, Superior Court of California Statewide Civil Fee Schedule (eff. 1/1/20) pp. 1-2, available at https://www.scscourt.org/documents/fee_schedules/FeeSchedule.pdf [last visited 3/1/21].

² *Id.* at pp. 3-4.

³ Prior to the COVID-19 pandemic, approximately 39 percent of Americans reported they either could not cover an unexpected \$400 expense, or that they would have to take out a loan or sell something to cover it. (See Board of Governors of the Federal Reserve System, Press Release, *Federal Reserve Board issues Report on the Economic Well-Being of U.S. Households* (May 23, 2019),

<https://www.federalreserve.gov/newsevents/pressreleases/other20190523b.htm> [last visited Mar. 1, 2021].) Given that the pandemic has left many Americans struggling to pay for basic necessities like food and rent, it seems likely that fewer Californians than ever would be able to pay for court fees out-of-pocket. (See Findling, et al., *Despite trillions in coronavirus aid, many US families are still struggling to pay for basic necessities like food and rent*, Business Insider (Feb. 21, 2021), <https://www.businessinsider.com/americans-are-still-struggling-despite-trillions-in-covid-19-aid-2021-2> [last visited Mar. 1, 2021].)

⁴ Gov. Code, § 68630(a) (finding that “our legal system cannot provide ‘equal justice under law’ unless all persons have access to the courts without regard to their economic means”).

⁵ See Gov. Code, §§ 68630-68641.

⁶ *Id.*, § 68632(a)-(c).

income individuals with food costs.⁷ And unemployment payments are, by definition, paid to persons with little or reduced income. Adding the receipt of WIC benefits and/or unemployment benefits as criteria for fee-waiver eligibility is thus consistent with the purpose of the statute.

With respect to the alteration of the income-based criterion, the author contends that moving from HHS's poverty line to HUD's area-dependent median income calculation will provide a more just result. Specifically, the author notes that, because HUD's median income numbers are calculated on a county-by-county basis, they will more accurately reflect the poverty threshold in each county and, by extension, more accurately identify the individuals who should qualify for fee waivers.

The difference between HHS's poverty guideline and HUD's county-specific data is stark. HHS's poverty line – which is not calculated on a county-specific, or even a state-specific basis, but rather applies to all 48 contiguous states and the District of Columbia – places the poverty line at \$12,880 for a single person and at \$26,500 for a family of four.⁸ There is not a single county in California where 30 percent of the median income – defined as “extra low income” – is as low as HHS's poverty line.⁹ Indeed, to qualify as merely “low income” (set at 80 percent of a county's median income) in California, county-specific numbers *start* at \$39,150 for an individual and \$55,900 for a family of four.¹⁰ In other words, even in California's counties with the lowest cost of living, a person qualifies as “low income” with annual incomes of approximately \$26,000-29,000 *above the national poverty line*.

In light of the extreme disparity between national and state poverty numbers, the statute's current income-based eligibility calculation appears woefully inadequate: even at 125 percent of HHS's poverty guideline, fee-waiver eligibility currently maxes out at \$16,100 for a single person or \$33,125 for a family of four, which is around \$20,000

⁷ Compare California Department of Health, WIC Program Overview, <https://www.cdph.ca.gov/Programs/CFH/DWICSN/Pages/AboutWIC.aspx> [last visited Mar. 1, 2021] (WIC provides nutritional assistance to “more than 6 million pregnant and post-partum women, infants, and children in the US”; individuals who are eligible for SNAP benefits also satisfy the WIC income requirement) with U.S. Dept. of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program (SNAP)*, <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program> [last visited Mar. 1, 2021] (“SNAP provides nutrition benefits to supplement the food budget of needy families so they can purchase healthy food and move towards self-sufficiency”).

⁸ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *2021 Poverty Guidelines* (Jan. 26, 2021), <https://aspe.hhs.gov/2021-poverty-guidelines> [last visited Mar. 1, 2021] (hereafter HHS Poverty Guidelines).

⁹ See Cal. Code Regs., tit. 25, § 6932 (setting forth HUD income levels by California County); Health & Saf. Code, § 50093 (adopting HUD income calculations and definitions for state housing policy purposes); see also Department of Housing and Urban Development, Office of Policy Development and Research, *FY 2020 Tables for Section 8 Income Limits*, <https://www.huduser.gov/portal/datasets/il/il20/Section8-IncomeLimits-FY20.pdf> [last visited Mar. 1, 2021], pp. 17-20 (setting forth HUD's county-specific extra low, very low, and low income numbers).

¹⁰ Cal. Code Regs., tit. 25, § 6932.

below the definition of “low income” in California’s most affordable counties.¹¹ As bill supporter The Access Project argues, the HUD county-specific income standards “reflect a more accurate standard to determine who qualifies as low income,” so this bill’s move to adopt the HUD standards will increase eligibility for automatic fee waivers, thereby reducing the need to expend judicial resources making case-specific fee determinations.

4. The bill’s expansion of fee-waiver access is not made redundant by the catchall provision

As noted above, the statute does have a catchall provision for individuals who do not meet the enumerated benefits or income-based criteria but who, nevertheless, cannot pay for court fees without dipping into funds intended for the costs of daily life.¹² One could argue that the added eligibility bases in this bill are unnecessary because persons receiving the enumerated benefits, or persons qualifying as “low income” under the HUD county-specific definition, would still qualify for fee waivers under that catchall provision. But this bill’s proposed changes seem likely to increase successful applications for fee waivers, for three reasons.

First, the process for obtaining a fee waiver under the catchall provision is not as straightforward as obtaining a fee waiver under one of the enumerated criteria. Whereas a litigant who falls into one of the enumerated eligibility criteria is not subject to an individualized finding of need, the catchall requires the court to make an individualized finding based on the applicant’s overall financial condition. The need for an individualized finding necessarily makes the process more complicated, and subject to disparate outcomes based on the exercise of judicial discretion. By adding additional eligibility criteria, this bill would reduce the number of applicants who are subject to an individualized finding.

Second, because the catchall requires consideration of the litigant’s finances as a whole, applying for a waiver under the catchall may be more burdensome than providing proof of the receipt of a single benefit and/or annual income. Even if, as it appears happens in many courts, catchall waivers are granted as a matter of course, the possibility of having to provide a full financial picture might deter eligible litigants from applying.

Third, many litigants who are eligible for fee waives are unfamiliar with the litigation system and may be intimidated by legal language and forms. Because the terms of the catchall provision are less straightforward than the specific eligibility criteria, litigants

¹¹ Compare HHS Poverty Guidelines *with* Cal. Code Regs., tit. 25, § 6932 (setting forth HUD’s county-specific guidelines). The disparity between HHS’s poverty guidelines and HUD’s county-specific “low income” numbers is even more severe in California’s more urban counties, because HHS’s poverty guidelines do not take into account local cost of living. (See Cal. Code Regs., tit. 25, § 6932.)

¹² Gov. Code, § 68632(c).

may be confused as to whether they qualify and err on the side of foregoing seeking a fee waiver.

In sum, by adding express eligibility criteria, this bill will likely capture fee-eligible litigants who might not be willing, or might not understand that they are able, to apply for a fee waiver under the catchall provision. In particular, the bill's provision requiring Judicial Council to put together an income schedule for the county will inform litigants, in a straightforward fashion, whether their income qualifies them for fee waivers. The bill is thus likely to streamline access to fee waivers and increase access to justice, even if the new criteria would technically fall within the current catchall.

5. Amendments to expand fee waivers to additional benefits recipients

As bill supporter Western Center on Law and Poverty noted, there are additional categories of public programs which, if added to the express list of benefits entitling a litigant to a fee waiver, would likely expand the use of fee waivers by those who need them. These benefits include California's version of the Earned Income Tax Credit – the inclusion of which will ensure that low-income immigrants using Individual Tax Identification Numbers are clearly eligible for fee waivers – and Medi-Cal's targeted low-income children and Access programs. In order to further expand access, and to add a clarification regarding when the state's geographic-area-based income calculations should be used, the author has agreed to the following amendments:

Amendment 1

On page 3, in line 34, strike out "Code)" and insert "Code), including the optional targeted low-income children program pursuant to Section 14005.26 of the Welfare and Institutions Code, and the Medi-Cal Access Program (Chapter 2 (commencing with Section 15810) of Part 3.3 of Division 9 of the Welfare and Institutions Code)."

Amendment 2

On page 4, between lines 3 and 4, insert "(10) California Earned Income Tax Credit (EITC) as defined in Section 17052 of the Revenue and Taxation Code."

Amendment 3

On page 4, line 7, after "or" insert "if an area is not designated by HUD,"

6. Arguments in Support

According to the bill's sponsor, Community Legal Services in East Palo Alto:

The COVID-19 pandemic has laid bare the stark economic reality of the disparity between low-income Californians and those fortunate enough to work in

industries left relatively unscathed by the pandemic. The most vulnerable communities affected by the pandemic are at risk of a combination of eviction, foreclosure, unemployment, and insurmountable debt. Low-income Californians are forced to defend themselves in court actions and lawsuits aimed at collecting debt from predatory lenders, landlords, or creditors. The courts charge filing fees that cost a few dollars to \$1,000 whether initiating or defending against court action. SB 355 would expand the number of low-income Californians who can automatically request fee waivers of their court filing fees.

According to supporter Western Center on Law and Poverty:

Our clients must rely on the courts for a host of legal issues including protective orders, family law, consumer debt issues, unlawful detainer, wage garnishments and child support just to name a few. When low[-]income people have to file with the court, the need to include a filing fee can be a significant barrier. Unfortunately, the current fee waiver statute mostly limits the waivers to people who are living at or near the federal poverty level. This benchmark was created nearly 60 years ago and was intended to reflect the cost of basic food items in a family budget. In the past 15 years, there has been growing recognition that that the federal poverty level does not reflect an accurate measure of poverty because it excludes many costs (such as housing and child care) and also excludes income transfers (EITC, SNAP). New measures such as the Supplemental Poverty Level or the California Poverty Measure have been developed that include some of the excluded costs and sources of income. Even these measures fall short of what a family or individual needs to afford basic needs. Thus we think utilizing a standard like the HUD definition as proposed in SB 35 is appropriate and will [ensure] that fees get waived for those who are struggling to pay their bills each month based on a California cost of living standard.

According to supporters Center for Responsible Lending, Ella Baker Center for Human Rights, Rubicon Project, and Young Women's Freedom Center:

Currently, low-income Californians may automatically waive filing fees if they receive government benefits or their income is at or below 125% of the Federal Poverty Level (FPL). However, the FPL calculation is based on the United States as a whole and does not take into consideration the high cost of living in our state, compared to the HUD/HCD limits. Many low-income Californians are forced to pay filing fees that they cannot afford as their income falls above the FPL, but well below the HUD/HCD standards for low[]income. The HUD/HCD standards account for cost of living in each county in California and reflect a more accurate standard to determine who qualifies as low[]income. By increasing who is eligible to file for fee waivers automatically, SB 355 will reduce judicial resources and time spent allowing low-income Californians to proceed on the merits of their cases.

SUPPORT

Community Legal Services in Palo Alto (sponsor)
California Low-Income Consumer Coalition
Center for Responsible Lending
Ella Baker Center for Human Rights
Legal Aid Society of San Mateo County
Legal Services of Northern California
Public Counsel
Root & Rebound
Rubicon Programs
The Access Project
Western Center on Law and Poverty
Young Women's Freedom Center

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 586 (Bradford, 2021) would, among other steps to reduce the cycle of court fees driving individuals into further poverty, would provide that a person sentenced to state prison or confined in a county jail cannot be required to pay any trial court filing fees or costs related to the person's underlying criminal conviction for which the person is incarcerated. SB 586 is pending before the Senate Public Safety Committee.

Prior Legislation: AB 2747 (Assembly Judiciary Committee, Ch. 913, Stats. 2014) clarified that, for waiver purposes, a conservatee, ward, or person for whom a conservatorship or guardianship is sought, shall be deemed the "applicant," and the conservator, guardian, or person or persons seeking to establish the conservatorship or guardianship shall be deemed the "petitioner"; and that in such cases the petitioner is responsible for completing all forms and providing all information required under this article, but eligibility for the fee waiver is based on the applicant's financial condition.