

Introduced by Senator UmbergFebruary 17, 2021

An act to amend Sections 6213 and 6214 of the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 498, as introduced, Umberg. Funds for the provision of legal services to indigent persons: disabled veterans.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law requires an attorney or law firm receiving or disbursing trust funds to establish and maintain an Interest On Lawyers' Trust Accounts (IOLTA) account in which the attorney or law firm is required to deposit or invest all specified client deposits or funds. Existing law directs IOLTA account interest and dividends to be paid to the State Bar of California to be distributed for the provision of civil legal services to indigent persons in a prescribed order, including, after payment of administrative costs, 85% of remaining funds to qualified legal services projects.

Existing law defines terms for these purposes. Existing law also presumes that projects funded either in whole or part by the Legal Services Corporation or with certain federal funds, that otherwise meet the definition of "qualified legal services project," are qualified legal services projects for these purposes. Under existing law, certain other projects that otherwise meet that definition, but do not qualify under the presumption, may also qualify for funds if they meet prescribed additional criteria, including that they provide one or both of specified special services, including the provision of legal representation, training, or technical assistance on matters concerning special client groups,

including the elderly, disabled persons, juveniles, and non-English-speaking groups, or on matters of specialized substantive law important to the special client groups.

This bill would expand the definition of “indigent person” by increasing one measure of income eligibility from 125% to 200% of a specified poverty threshold and by including within that definition, a veteran with a service-related disability receiving disability compensation from the United States Veterans Administration. The bill would also include disabled veterans within special client groups for purposes of the certain other projects that may qualify for funds.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6213 of the Business and Professions
2 Code is amended to read:
3 6213. As used in this article:
4 (a) “Qualified legal services project” means either of the
5 following:
6 (1) A nonprofit project incorporated and operated exclusively
7 in California that provides as its primary purpose and function
8 legal services without charge to indigent persons and that has
9 quality control procedures approved by the State Bar of California.
10 (2) A program operated exclusively in California by a nonprofit
11 law school accredited by the State Bar of California that meets the
12 requirements of subparagraphs (A) and (B).
13 (A) The program shall have operated for at least two years at a
14 cost of at least twenty thousand dollars (\$20,000) per year as an
15 identifiable law school unit with a primary purpose and function
16 of providing legal services without charge to indigent persons.
17 (B) The program shall have quality control procedures approved
18 by the State Bar of California.
19 (b) “Qualified support center” means an incorporated nonprofit
20 legal services center that has as its primary purpose and function
21 the provision of legal training, legal technical assistance, or
22 advocacy support without charge and which actually provides
23 through an office in California a significant level of legal training,
24 legal technical assistance, or advocacy support without charge to
25 qualified legal services projects on a statewide basis in California.

1 (c) “Recipient” means a qualified legal services project or
2 support center receiving financial assistance under this article.

3 (d) “Indigent person” means a person whose income is (1) ~~125~~
4 200 percent or less of the current poverty threshold established by
5 the United States Office of Management and Budget, ~~or~~ (2) who
6 is eligible for Supplemental Security Income or free services under
7 the Older Americans Act or Developmentally Disabled Assistance
8 ~~Act~~, *Act*, or (3) who is a veteran with a service-related disability
9 receiving disability compensation from the United States Veterans
10 Administration. With regard to a project that provides free services
11 of attorneys in private practice without compensation, “indigent
12 person” also means a person whose income is 75 percent or less
13 of the maximum levels of income for lower income households
14 as defined in Section 50079.5 of the Health and Safety Code. For
15 the purpose of this subdivision, the income of a person who is
16 disabled shall be determined after deducting the costs of medical
17 and other disability-related special expenses.

18 (e) “Fee generating case” means a case or matter that, if
19 undertaken on behalf of an indigent person by an attorney in private
20 practice, reasonably may be expected to result in payment of a fee
21 for legal services from an award to a client, from public funds, or
22 from the opposing party. A case shall not be considered fee
23 generating if adequate representation is unavailable and any of the
24 following circumstances exist:

25 (1) The recipient has determined that free referral is not possible
26 because of any of the following reasons:

27 (A) The case has been rejected by the local lawyer referral
28 service, or if there is no such service, by two attorneys in private
29 practice who have experience in the subject matter of the case.

30 (B) Neither the referral service nor any attorney will consider
31 the case without payment of a consultation fee.

32 (C) The case is of the type that attorneys in private practice in
33 the area ordinarily do not accept, or do not accept without
34 prepayment of a fee.

35 (D) Emergency circumstances compel immediate action before
36 referral can be made, but the client is advised that, if appropriate
37 and consistent with professional responsibility, referral will be
38 attempted at a later time.

39 (2) Recovery of damages is not the principal object of the case
40 and a request for damages is merely ancillary to an action for

1 equitable or other nonpecuniary relief, or inclusion of a
2 counterclaim requesting damages is necessary for effective defense
3 or because of applicable rules governing joinder of counterclaims.

4 (3) A court has appointed a recipient or an employee of a
5 recipient pursuant to a statute or a court rule or practice of equal
6 applicability to all attorneys in the jurisdiction.

7 (4) The case involves the rights of a claimant under a publicly
8 supported benefit program for which entitlement to benefit is based
9 on need.

10 (f) “Legal Services Corporation” means the Legal Services
11 Corporation established under the Legal Services Corporation Act
12 of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

13 (g) “Older Americans Act” means the *federal* Older Americans
14 Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

15 (h) “Developmentally Disabled Assistance Act” means the
16 *federal* Developmentally Disabled Assistance and Bill of Rights
17 Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

18 (i) “Supplemental security income recipient” means an
19 individual receiving or eligible to receive payments under Title
20 XVI of the federal Social Security Act, Act (42 U.S.C. Sec. 1381
21 et seq.) or payments under Chapter 3 (commencing with Section
22 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

23 (j) “IOLTA account” means an account or investment product
24 established and maintained pursuant to subdivision (a) of Section
25 6211 that is any of the following:

26 (1) An interest-bearing checking account.

27 (2) An investment sweep product that is a daily (overnight)
28 financial institution repurchase agreement or an open-end money
29 market fund.

30 (3) An investment product authorized by California Supreme
31 Court rule or order.

32 A daily financial institution repurchase agreement shall be fully
33 collateralized by United States Government Securities or other
34 comparably conservative debt securities, and may be established
35 only with any eligible institution that is “well-capitalized” or
36 “adequately capitalized” as those terms are defined by applicable
37 federal statutes and regulations. An open-end money market fund
38 shall be invested solely in United States Government Securities
39 or repurchase agreements fully collateralized by United States
40 Government Securities or other comparably conservative debt

1 securities, shall hold itself out as a “money market fund” as that
2 term is defined by federal statutes and regulations under the *federal*
3 Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.),
4 and, at the time of the investment, shall have total assets of at least
5 two hundred fifty million dollars (\$250,000,000).

6 (k) “Eligible institution” means either of the following:

7 (1) A bank, savings and loan, or other financial institution
8 regulated by a federal or state agency that pays interest or dividends
9 ~~in~~ on the IOLTA account and carries deposit insurance from an
10 agency of the federal government.

11 (2) Any other type of financial institution authorized by the
12 California Supreme Court.

13 SEC. 2. Section 6214 of the Business and Professions Code is
14 amended to read:

15 6214. (a) Projects meeting the requirements of subdivision (a)
16 of Section 6213 which are funded either in whole or part by the
17 Legal Services Corporation or with Older ~~American~~ *Americans*
18 Act funds shall be presumed qualified legal services projects for
19 the purpose of this article.

20 (b) Projects meeting the requirements of subdivision (a) of
21 Section 6213 but not qualifying under the presumption specified
22 in subdivision (a) shall qualify for funds under this article if they
23 meet all of the following additional criteria:

24 (1) They receive cash funds from other sources in the amount
25 of at least twenty thousand dollars (\$20,000) per year to support
26 free legal representation to indigent persons.

27 (2) They have demonstrated community support for the
28 operation of a viable ongoing program.

29 (3) They provide one or both of the following special services:

30 (A) The coordination of the recruitment of substantial numbers
31 of attorneys in private practice to provide free legal representation
32 to indigent persons or to qualified legal services projects in
33 California.

34 (B) The provision of legal representation, training, or technical
35 assistance on matters concerning special client groups, including
36 the elderly, ~~the disabled~~, *disabled persons*, juveniles, *disabled*
37 *veterans*, and non-English-speaking groups, or on matters of
38 specialized substantive law important to the special client groups.

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