

2021 Regular Session

HOUSE BILL NO. 108

BY REPRESENTATIVES LARVADAIN AND JAMES

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/PROCEDURE: Provides with respect to in forma pauperis proceedings

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 5183(A)(introductory paragraph),  
3 (1), and (2) and (B) and 5185(A) and (B), relative to proceeding in forma pauperis;  
4 to provide with respect to applications to proceed in forma pauperis; to provide for  
5 the rights of parties proceeding in forma pauperis; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Articles 5183(A)(introductory paragraph), (1),  
8 and (2) and (B) and 5185(A) and (B) are hereby amended and reenacted to read as follows:

9 Art. 5183. Affidavits of poverty; documentation; order

10 A. A person who wishes to exercise the privilege granted in this Chapter  
11 shall apply to the court for permission to do so in his first pleading, or in an ex parte  
12 written motion if requested later, to which ~~he~~ the applicant shall annex the following:

13 (1) ~~His~~ The applicant's affidavit that ~~he~~ the applicant is unable to pay the  
14 costs of court in advance, or as they accrue, or to furnish security therefor, because  
15 of ~~his~~ the applicant's poverty and lack of means, accompanied by any supporting  
16 documentation; ~~and~~.

17 (2) The affidavit of a third person other than ~~his~~ the applicant's attorney that  
18 he knows the applicant, knows ~~his~~ the applicant's financial condition, and believes  
19 that ~~he~~ the applicant is unable to pay the costs of court in advance, or as they accrue,  
20 or to furnish security therefor.

21 \* \* \*

1 B.(1) ~~When~~ Upon the filing of the completed application and supporting  
2 affidavits, ~~are presented to the court, it the court shall inquire into the facts, and if~~  
3 ~~satisfied that the applicant is entitled to the privilege granted in this Chapter it shall~~  
4 render an order permitting that does one of the following:

5 (a) Grants the application and allows the applicant to litigate; or to continue  
6 the litigation of, the action or proceeding without paying the costs in advance, or as  
7 they accrue, or furnishing security therefor.

8 (b) Denies the application with written reasons for such denial.

9 (c) Sets the matter for a contradictory hearing.

10 (2) The submission by the applicant of supporting documentation that the  
11 applicant is receiving public assistance benefits or that the applicant's income is less  
12 than or equal to one hundred twenty-five percent of the federal poverty level shall  
13 create a rebuttable presumption that the applicant is entitled to the privilege granted  
14 in this Chapter. If the court finds that the presumption has been rebutted, it shall  
15 provide written reasons for its finding.

16 (3) The court may reconsider ~~such an~~ its original order granting the  
17 application on its own motion at any time in a contradictory hearing.

18 Comments - 2021

19 Paragraph B of this Article has been amended to require the court to do one  
20 of three things after a person has filed a completed application to proceed in forma  
21 pauperis with the requisite supporting affidavits: (1) grant the application and allow  
22 the applicant to proceed in forma pauperis, (2) deny the application and provide  
23 written reasons for such denial, or (3) set the matter for a contradictory hearing. The  
24 requirement under this provision that written reasons be provided by the court upon  
25 the denial of an application is intended to provide the applicant with additional  
26 information necessary to, for example, correct a deficiency in the application. The  
27 form and contents of these written reasons are left to the discretion of the court.

28 \* \* \*

29 Art. 5185. Rights of party permitted to litigate without payment of costs

30 A. When an order of court permits a party to litigate without the payment of  
31 costs until this order is rescinded or expires, ~~he~~ the party is entitled to:

32 (1) All services required by law of a sheriff, clerk of court, court reporter,  
33 notary, or other public officer in, or in connection with, the judicial proceeding,

1 including but not limited to the filing of pleadings and exhibits, the issuance of  
2 certificates, the certification of copies of notarial acts and public records, the  
3 issuance and service of subpoenas and process, the taking and transcribing of  
4 testimony, and the preparation of a record of appeal;

5 (2)(a) The right to the compulsory attendance of not more than six witnesses  
6 for the purpose of testifying, either in court or by deposition, without the payment  
7 of the fees, mileage, and other expenses allowed these witnesses by law. If a party  
8 has been permitted to litigate without full payment of costs and is unable to pay for  
9 witnesses desired by ~~him~~ the party, in addition to those summoned at the expense of  
10 the parish, ~~he~~ the party shall make a sworn application to the court for the additional  
11 witnesses. The application ~~must~~ shall allege that the testimony is relevant and  
12 material and not cumulative and that the defendant cannot safely go to trial without  
13 it. A short summary of the expected testimony of each witness shall be attached to  
14 the application.

15 (b) The court shall make a private inquiry into the facts and, if satisfied that  
16 the party is entitled to the privilege, shall render an order permitting the party to  
17 subpoena additional witnesses at the expense of the parish. If the application is  
18 denied, the court shall state the reasons for the denial in writing, which shall become  
19 part of the record.

20 (3) The right to a trial by jury and to the services of jurors, when allowed by  
21 law and applied for timely, ~~and~~.

22 (4) The right to have any judgment or order filed and to receive one certified  
23 copy of the judgment or order.

24 (5) The right to a devolutive appeal, and to apply for supervisory writs.

25 B. ~~He~~ The party is not entitled to a suspensive appeal, or to an order or  
26 judgment required by law to be conditioned on his furnishing security other than for  
27 costs, unless ~~he~~ the party furnishes the necessary security therefor.

28 \* \* \*

1 Comments - 2021

2 Paragraph (A)(4) of this Article has been added to provide an applicant  
3 proceeding in forma pauperis with the right to have a judgment or order filed and to  
4 receive a certified copy of such judgment or order, regardless of whether the costs  
5 of court have been paid. See *Carline v. Carline*, 644 So.2d 835 (La. App. 1 Cir.  
6 1994) (holding that it was improper to require a plaintiff proceeding in forma  
7 pauperis to pay court costs before providing a certified copy of the judgment  
8 rendered in the proceedings).

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 108 Original

2021 Regular Session

Larvadain

**Abstract:** Provides with respect to in forma pauperis proceedings.

Present law (C.C.P. Art. 5183) provides for the filing of an application to proceed in forma pauperis and permits the court to grant the application and allow the applicant to proceed without the payment of costs in advance.

Proposed law retains present law but requires the court to do one of three things upon the filing of an application to proceed in forma pauperis: (1) grant the application, (2) deny the application and provide written reasons for the denial, or (3) set the matter for a contradictory hearing.

Present law (C.C.P. Art. 5183) also sets forth a rebuttable presumption that the applicant is entitled to proceed in forma pauperis if the applicant is receiving public assistance benefits or if the applicant's income is less than or equal to 125% of the federal poverty level.

Proposed law retains present law and further requires a court that finds that this presumption has been rebutted to provide written reasons for its finding. Proposed law also makes minor technical corrections.

Present law (C.C.P. Art. 5185) sets forth the rights of a party who has been permitted to litigate without the payment of costs in advance until the order granting the application to proceed in forma pauperis is rescinded.

Proposed law retains present law but recognizes the possibility that the order granting the application to proceed in forma pauperis may expire in accordance with local court rules. Proposed law also gives the party proceeding in forma pauperis the right to have a judgment or order filed and to receive a certified copy of such judgment or order and makes minor technical corrections.

(Amends C.C.P. Arts. 5183(A)(intro. para.), (1), and (2) and (B) and 5185(A) and (B))