

## Senate Bill No. 498

### CHAPTER 688

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

[Approved by Governor October 8, 2021. Filed with Secretary  
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#### legislative counsel's digest

SB 498, 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, including the definition of "indigent person." Existing law requires, for the purpose of that definition, that the income of a person who is disabled be determined after deducting the costs of medical and other disability-related special expenses. 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 specific poverty threshold. The bill would further require, for the purpose of that definition, that the income of a person who is disabled be determined after deducting disability compensation from the United States Veterans Administration paid to a veteran with a service-related disability. The bill would also include disabled veterans within special client groups for purposes of the certain

other projects that may qualify for funds. The bill would also state the intent of the Legislature relating to the distribution of funds for the provision of legal services to indigent persons, as described.

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

SECTION 1. (a) It is the intent of the Legislature that, for funds distributed pursuant to Article 14 (commencing with Section 6210) of Chapter 4 of Division 3 of the Business and Professions Code, beginning January 1, 2022, grantees may use the new definition of “indigent person” set forth in this act for determining eligibility for services and for use of the funds.

(b) It is further the intent of the Legislature that, for funds distributed prior to January 1, 2024, pursuant to Article 14 (commencing with Section 6210) of Chapter 4 of Division 3 of the Business and Professions Code, the State Bar of California use, in determining eligibility to receive funds and the amounts to be distributed to grantees, the definition of “indigent person” set forth in subdivision (d) of Section 6213 of the Business and Professions Code as it read on January 1, 2021. That definition provided: “‘Indigent person’ means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, ‘indigent person’ also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.”

SEC. 2. Section 6213 of the Business and Professions Code is amended to read:

6213. As used in this article:

(a) “Qualified legal services project” means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) “Qualified support center” means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

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

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

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

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

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

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

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

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

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is

necessary for effective defense or because of applicable rules governing joinder of counterclaims.

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

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

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

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

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

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

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

- (1) An interest-bearing checking account.
- (2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.
- (3) An investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a “money market fund” as that term is defined by federal statutes and regulations under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

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

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

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

SEC. 3. Section 6214 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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