

## CHAPTER 352

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**GOVERNMENT - STATE**

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**HOUSE BILL 21-1194**

BY REPRESENTATIVE(S) Tipper and Ricks, Amabile, Bacon, Benavidez, Bennett, Bird, Boesenecker, Caraveo, Daugherty, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Gray, Hooton, Jackson, Jodeh, Kipp, Lontine, McCluskie, McCormick, McLachlan, Michaelson Jenet, Mullica, Ortiz, Sirota, Valdez A., Weissman, Woodrow, Young, Garnett, Cutter, Herod, Kennedy; also SENATOR(S) Moreno, Fenberg, Fields, Ginal, Gonzales, Hansen, Jaquez Lewis, Kolker, Lee, Pettersen, Story, Winter, Garcia.

**AN ACT**

**CONCERNING CREATION OF THE IMMIGRATION LEGAL DEFENSE FUND, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) Colorado is a welcoming state that believes that separating families harms our communities and our state. We recognize the many contributions that immigrants have made, historically and today, to Colorado's economy, communities, and culture. Tearing Coloradans away from their communities causes harm, financial instability, and trauma that radiates throughout the state.

(b) Although immigration detention and proceedings are civil in nature, immigrants are subjected to adversarial legal proceedings and are often detained throughout their legal cases. Additionally, according to Transactional Records Access Clearinghouse data, seventy percent of immigrants detained in civil immigration custody in Aurora, Colorado, faced deportation hearings without a lawyer.

(c) Many people in immigration court proceedings have valid legal claims to remain in the United States but are unable to argue their cases effectively absent legal expertise in complex U.S. immigration law. Only five percent of immigration cases were won between 2007 and 2012 without an attorney, while ninety-five percent of successful cases involved persons who were represented by an attorney.

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(d) Deportations and immigration detention are costly to Colorado communities, taxpayers, and employers. A recent report from the Colorado Fiscal Institute shows Coloradans could save nearly \$18.6 million by providing universal representation for Coloradans in immigration court, thereby supporting families with legal fees, saving employers turnover costs, and allowing individuals to work and remain with their families as they fight their immigration cases.

(2) Therefore, the general assembly declares that it is prudent for Colorado to create an immigration legal defense fund to help individuals with their immigration court proceedings in order to promote due process, increase judicial efficiency, and protect civil liberties.

**SECTION 2.** In Colorado Revised Statutes, **add** article 3.8 to title 8 as follows:

**ARTICLE 3.8**  
**Immigration Legal Assistance**

**8-3.8-101. Immigration legal assistance - fund - report - definitions.** (1) As USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADMINISTRATOR" MEANS THE STATE DEPARTMENT OF LABOR AND EMPLOYMENT, CREATED IN SECTION 24-1-121.

(b) "FUND" MEANS THE IMMIGRATION LEGAL DEFENSE FUND ESTABLISHED IN SUBSECTION (2) OF THIS SECTION.

(c) "INDIGENT" MEANS A PERSON WHOSE HOUSEHOLD INCOME DOES NOT EXCEED TWO HUNDRED PERCENT OF THE FAMILY FEDERAL POVERTY GUIDELINES, ADJUSTED FOR FAMILY SIZE, DETERMINED ANNUALLY BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(d) "QUALIFYING ORGANIZATION" MEANS AN ORGANIZATION THAT:

(I) IS EXEMPT FROM TAXATION PURSUANT TO SECTION 501(c)(3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED;

(II) HAS A PHYSICAL PLACE OF BUSINESS IN COLORADO;

(III) OBTAINS MORE THAN TWENTY-FIVE PERCENT OF ITS FUNDING FROM SOURCES OTHER THAN GRANTS FROM THE FUND;

(IV) CAN PROVIDE SERVICES USING GRANT DOLLARS WITHIN SIX MONTHS OF RECEIVING FUNDING; AND

(V) INCLUDES ON THE STAFF OF THE ORGANIZATION AN ATTORNEY WITH AT LEAST THREE YEARS' EXPERIENCE AND EXPERTISE IN PROVIDING LEGAL REPRESENTATION TO INDIGENT CLIENTS IN CIVIL IMMIGRATION PROCEEDINGS BEFORE THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW WITHIN THE UNITED STATES DEPARTMENT OF JUSTICE; OR

(VI) (A) PARTNERS WITH A NONPROFIT LEGAL SERVICE PROVIDER THAT HAS AT LEAST THREE YEARS' EXPERIENCE AND EXPERTISE IN PROVIDING LEGAL REPRESENTATION TO INDIGENT CLIENTS IN CIVIL IMMIGRATION PROCEEDINGS BEFORE THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW WITHIN THE UNITED STATES DEPARTMENT OF JUSTICE; OR

(B) ONLY IF THERE ARE NO NONPROFIT LEGAL SERVICES PROVIDERS AVAILABLE TO PROVIDE LEGAL SERVICES, PARTNERS WITH A PRIVATE IMMIGRATION ATTORNEY WHO HAS A PHYSICAL PLACE OF BUSINESS IN OR NEAR THE GEOGRAPHIC AREA THAT THE QUALIFYING ORGANIZATION SERVES, AND THE PRIVATE IMMIGRATION ATTORNEY HAS AT LEAST THREE YEARS' EXPERIENCE AND EXPERTISE IN PROVIDING LEGAL REPRESENTATION TO INDIGENT CLIENTS IN CIVIL IMMIGRATION PROCEEDINGS BEFORE THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW WITHIN THE UNITED STATES DEPARTMENT OF JUSTICE.

(2) THERE IS ESTABLISHED IN THE STATE TREASURY THE IMMIGRATION LEGAL DEFENSE FUND. THE MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE ADMINISTRATOR. PURSUANT TO SUBSECTION (5)(b) OF THIS SECTION, THE ADMINISTRATOR IS AUTHORIZED TO MAKE GRANTS FROM THE FUND TO QUALIFYING ORGANIZATIONS TO REPRESENT INDIGENT INDIVIDUALS APPEARING BEFORE AN IMMIGRATION COURT IN COLORADO WHO LACK PRIVATE COUNSEL.

(3) A QUALIFYING ORGANIZATION THAT RECEIVES A GRANT FROM THE FUND SHALL ONLY USE THE GRANT FOR SERVICES THAT INCLUDE PROVIDING INDIGENT CLIENTS WITH:

(a) LEGAL REPRESENTATION BEFORE AN IMMIGRATION COURT IN COLORADO;

(b) REPRESENTATION BEFORE THE BOARD OF IMMIGRATION APPEALS WITHIN THE UNITED STATES DEPARTMENT OF JUSTICE, BUT DOES NOT INCLUDE PROVIDING INDIGENT CLIENTS WITH REPRESENTATION BEFORE A UNITED STATES DISTRICT COURT, A UNITED STATES CIRCUIT COURT OF APPEALS, OR THE UNITED STATES SUPREME COURT ON APPEAL FROM AN IMMIGRATION ORDER OR ON ANY OTHER RELATED MATTERS;

(c) ANY OTHER REPRESENTATION BEFORE AN IMMIGRATION AGENCY NECESSARY TO PROTECT THE INTERESTS OF THE INDIGENT CLIENT FROM REMOVAL OR CIVIL IMMIGRATION DETENTION, INCLUDING CUSTODY REDETERMINATION PROCEEDINGS, REINSTATEMENT OF REMOVAL PROCEEDINGS, WITHHOLDING-ONLY PROCEEDINGS, REQUEST FOR RELEASE FROM CIVIL IMMIGRATION DETENTION, OR APPLICATION FOR ANCILLARY RELIEF FROM REMOVAL;

(d) ANY OTHER CONTINUED REPRESENTATION AFTER THE ISSUANCE OF A FINAL ORDER BY THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW THAT IS NECESSARY TO CONCLUDE THE INDIGENT CLIENT'S REPRESENTATION, SECURE THE INDIGENT CLIENT'S IMMIGRATION BENEFITS, OR OBTAIN THE INDIGENT CLIENT'S RELEASE FROM IMMIGRATION DETENTION; AND

(e) LITIGATION EXPENSES, SUCH AS APPLICATION FEES, INTERPRETATION AND TRANSLATION COSTS, MEDICAL OR PSYCHOLOGICAL EVALUATIONS, AND EXPERT FEES, AS WELL AS ASSOCIATED OVERHEAD EXPENSES.

(4) (a) A QUALIFYING ORGANIZATION SHALL PROVIDE REPRESENTATION ON ALL LEGAL MATTERS NECESSARY FOR PROTECTION FROM REMOVAL AND DETENTION, THROUGH APPEALS TO THE BOARD OF IMMIGRATION APPEALS, AND SHALL ACCEPT CASES WITHOUT REGARD TO THE INDIGENT CLIENT'S LIKELIHOOD OF SUCCESS OR ELIGIBILITY FOR IMMIGRATION RELIEF.

(b) (I) A QUALIFYING ORGANIZATION SHALL MOVE TO WITHDRAW FROM REPRESENTATION IF:

(A) THE VENUE IN THE CASE IS TRANSFERRED TO AN IMMIGRATION COURT OUTSIDE OF COLORADO;

(B) THE INDIGENT CLIENT NO LONGER RESIDES IN COLORADO; OR

(C) WITHDRAWAL IS REQUIRED BY THE RULES OF PROFESSIONAL CONDUCT.

(II) IF THE QUALIFYING ORGANIZATION'S WITHDRAWAL MOTION IS DENIED, THE ORGANIZATION SHALL PROVIDE LEGAL SERVICES AS REQUIRED BY THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

(5) (a) A QUALIFYING ORGANIZATION SEEKING TO RECEIVE A GRANT FROM THE FUND SHALL SUBMIT AN APPLICATION EACH YEAR TO THE ADMINISTRATOR ON A FORM PROVIDED BY THE ADMINISTRATOR. THE APPLICATION FORM MUST REQUEST ANY INFORMATION THAT THE ADMINISTRATOR NEEDS TO DETERMINE WHETHER THE APPLYING ORGANIZATION MEETS THE QUALIFICATIONS FOR RECEIPT OF A GRANT, THE DOLLAR AMOUNT REQUESTED, AND INTENDED USE OF ANY FUNDING.

(b) (I) THE ADMINISTRATOR SHALL EVALUATE APPLICATIONS OF QUALIFYING ORGANIZATIONS TO DETERMINE IF THE APPLICATIONS SATISFY THE CRITERIA DEFINED IN SUBSECTION (1)(d) OF THIS SECTION AND SHALL SELECT GRANT RECIPIENTS BASED ON THEIR EXPERTISE AND QUALIFICATIONS TO PROVIDE QUALIFIED SERVICES THROUGH A GRANT FROM THE FUND.

(II) ON OR BEFORE JANUARY 31, 2022, AND ON JANUARY 2 EACH YEAR THEREAFTER, THE ADMINISTRATOR SHALL AWARD GRANTS FROM THE FUND, SUBJECT TO AVAILABLE APPROPRIATIONS, TO QUALIFYING ORGANIZATIONS.

(III) THE ADMINISTRATOR SHALL AWARD LARGER GRANTS TO FEWER QUALIFYING ORGANIZATIONS TO ACHIEVE A GREATER, MEASURABLE IMPACT. THE ADMINISTRATOR MAY DETERMINE THE AMOUNT OF EACH GRANT AWARD, WHICH MAY DIFFER FROM THE QUALIFYING ORGANIZATION'S REQUESTED DOLLAR AMOUNT.

(6) THE ADMINISTRATOR SHALL AWARD GRANTS SO THAT SEVENTY PERCENT OF THE MONEY IS ALLOCATED TO QUALIFYING ORGANIZATIONS SERVING INDIGENT CLIENTS WHO ARE DETAINED IN THE CUSTODY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY FOR DEPORTATION PROCEEDINGS AND THIRTY PERCENT OF THE MONEY IS ALLOCATED TO QUALIFYING ORGANIZATIONS SERVING INDIGENT CLIENTS WHO ARE NOT DETAINED FOR DEPORTATION PROCEEDINGS; EXCEPT THAT THIS SPLIT DOES NOT APPLY IF THE NEED FOR DETAINED INDIGENT CLIENT REPRESENTATION CAN BE MET WITH LESS THAN SEVENTY PERCENT OF THE MONEY. TWO-THIRDS OF THE MONEY FOR THOSE QUALIFYING ORGANIZATIONS SERVING

INDIGENT CLIENTS WHO ARE NOT DETAINED MUST BE USED FOR IN-PERSON LEGAL SERVICES SERVING INDIGENT CLIENTS OUTSIDE OF THE DENVER-METRO AREA, UNLESS THERE ARE NO QUALIFYING APPLICANTS SERVING NONDETAINED INDIGENT CLIENTS OUTSIDE THE DENVER-METRO AREA.

(7) EACH QUALIFYING ORGANIZATION THAT RECEIVES A GRANT PURSUANT TO THIS SECTION SHALL SUBMIT AN ANNUAL REPORT TO THE ADMINISTRATOR THAT INCLUDES THE FOLLOWING INFORMATION, TO THE EXTENT POSSIBLE AND TO THE EXTENT THAT IT DOES NOT VIOLATE THE PRIVILEGE AND CONFIDENTIALITY OF AN ATTORNEY-CLIENT RELATIONSHIP:

- (a) NUMBER OF CLIENTS SERVED;
- (b) CASE OUTCOMES;
- (c) TYPE OF DEFENSE, INCLUDING DETAINED AND NONDETAINED;
- (d) TYPE OF CASE, INCLUDING REMOVAL, ASYLUM, ADJUSTMENT OF STATUS, AND WORK AUTHORIZATION;
- (e) LOCATION OF COURT AND JUDGE FOR EACH CASE;
- (f) CLIENT FAMILY DATA, INCLUDING NUMBER OF CHILDREN AND WHETHER THE HOUSEHOLD HAS MIXED IMMIGRATION STATUS;
- (g) CLIENT COUNTRY OF ORIGIN;
- (h) CLIENT ETHNICITY;
- (i) CLIENT ZIP CODE;
- (j) CLIENT'S DURATION IN COLORADO AND THE UNITED STATES;
- (k) WHETHER BOND OR RELEASE WAS GRANTED TO CLIENT;
- (l) COST OF BOND FOR CLIENT;
- (m) INCOME RANGE OF CLIENT;
- (n) WHETHER OR NOT CLIENT HAD PREVIOUS IMMIGRATION STATUS IN THE UNITED STATES; AND
- (o) NUMBER OF DAYS CLIENT SPENT IN DETENTION.

(8) (a) IN ADDITION TO ANY APPROPRIATION FROM THE GENERAL FUND, THE ADMINISTRATOR MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION. THE ADMINISTRATOR MAY RECEIVE AND EXPEND THE MONEY RECEIVED THROUGH GIFTS, GRANTS, AND DONATIONS.

- (b) THE ADMINISTRATOR MAY EXPEND NO MORE THAN THE LESSER OF FIFTEEN

THOUSAND DOLLARS OR UP TO FIVE PERCENT PER YEAR FROM THE FUND FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE ADMINISTRATION OF THIS SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND.

(9) NOTWITHSTANDING SECTION 24-1-136(11)(a)(I), THE ADMINISTRATOR SHALL SUBMIT A CONSOLIDATED REPORT OF THE REPORTED INFORMATION DESCRIBED IN SUBSECTION (7) OF THIS SECTION TO THE JOINT BUDGET COMMITTEE ON JULY 1, 2022, AND EACH JULY 1 THEREAFTER.

(10) A COUNTY MAY APPROPRIATE LOCAL OR STATE FUNDS TO IMPLEMENT ITS OWN IMMIGRATION LEGAL DEFENSE FUND, PARTNER WITH A LOCAL IMMIGRATION LEGAL DEFENSE FUND, OR PARTNER WITH THE ADMINISTRATOR TO ENHANCE THE EFFECTIVENESS OF THE IMMIGRATION LEGAL DEFENSE FUND.

**SECTION 3. Appropriation.** For the 2021-22 state fiscal year, \$100,000 is appropriated to the immigration legal defense fund created in section 26-2-1201 (2), C.R.S. This appropriation is from the general fund. The department of labor and employment is responsible for the accounting related to this appropriation.

**SECTION 4. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 25, 2021