

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 602

Session of
1985

INTRODUCED BY KUKOVICH, PRATT, IRVIS, WAMBACH, DAWIDA, COHEN,
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CAWLEY, SEVENTY, PETRARCA AND J. J. TAYLOR, MARCH 20, 1985

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 20, 1985

AN ACT

1 Providing that attorney trust funds may be placed in interest-
2 bearing accounts and that the interest generated on such
3 accounts be used to provide legal services for the indigent;
4 and establishing a mechanism for the funding.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Interest on
9 Lawyers' Trust Accounts Act.

10 Section 2. Legislative findings.

11 The General Assembly hereby finds that:

12 (1) There is a need to provide equal access to the
13 system of justice for individuals who seek redress of
14 grievances.

15 (2) The availability of civil legal services to indigent
16 persons is essential to the due administration of justice.

17 (3) Due to a reduction in Federal funds, the programs

1 providing legal assistance in civil matters to indigent
2 persons lack resources to adequately meet the needs of these
3 persons, and it is necessary to provide a supplemental
4 funding mechanism to accomplish this purpose.

5 (4) The funding of legal assistance programs for those
6 who are unable to afford legal counsel will serve the ends of
7 justice and the general welfare of all Pennsylvania citizens.

8 (5) In current practice, attorneys do not deposit
9 certain funds held in a fiduciary capacity in interest-
10 bearing accounts because insufficient interest would be
11 earned to justify the expense of administration. When pooled,
12 funds which would be unproductive as individual accounts will
13 generate income, the beneficial interest in which may be made
14 available through this act for charitable purposes.

15 (6) It is the purpose of this act to create a
16 supplemental funding mechanism for providers of civil legal
17 assistance to the indigent in order to ensure effective
18 access to the legal process of all citizens of the
19 Commonwealth to the extent practicable.

20 Section 3. Definitions.

21 The following words and phrases when used in this act shall
22 have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

24 "Attorney." An individual attorney, partnership,
25 professional association or professional corporation engaged in
26 the practice of law.

27 "Board." The Lawyer Trust Account Board.

28 "Depository institution." A bank, bank and trust company,
29 trust company, savings bank, savings and loan association,
30 credit union or foreign banking corporation, whether

1 incorporated, chartered, organized or licensed under the laws of
2 this Commonwealth or the United States, doing business in
3 Pennsylvania and insured by the Federal Deposit Insurance
4 Corporation, the Federal Savings and Loan Insurance Corporation
5 or the National Credit Union Administration or an alternate
6 share insurer.

7 "Eligible client." Any person unable to afford the cost of
8 private legal assistance who satisfies the financial eligibility
9 standards established in the Federally funded Statewide legal
10 services system.

11 "Interest on Lawyer Trust Accounts" or "IOLTA." An
12 unsegregated interest-bearing deposit account with a depository
13 institution for the deposit of qualified funds by an attorney.

14 "Legal assistance." Civil legal services for eligible
15 clients, including advice, counsel, direct representation,
16 training, research coordination with private attorneys and other
17 activities necessary to insure the cost-effective delivery of
18 quality legal services.

19 "Qualified funds." Moneys received by an attorney in a
20 fiduciary capacity which, in the judgment of the attorney, are
21 nominal in amount or are reasonably expected to be held for such
22 a short term that sufficient interest income will not be
23 generated to justify the expense of administering a segregated
24 account. Qualified funds include moneys received from any client
25 or beneficial owner which are too small in amount or are
26 expected to be held for too short a period of time to generate
27 at least \$50 of interest.

28 "Qualified recipients." Not-for-profit entities incorporated
29 in Pennsylvania, tax exempt under the Internal Revenue Code (26
30 U.S.C. § 501(c)(3)), or any successor provision, eligible to

1 receive distributions of IOLTA funds pursuant to one or both of
2 the following categories:

3 (1) "Qualified Legal Services Providers." An entity
4 which operates within this Commonwealth for the exclusive
5 purpose of providing civil legal services without charge to
6 poor persons within a geographical area in this Commonwealth.

7 (2) "Administration of Justice Providers." An entity
8 which operates within this Commonwealth to:

9 (i) enhance civil legal services to the poor through
10 innovative and cost-effective means;

11 (ii) provide direct civil legal services either to
12 groups of clients currently underserved by legal
13 services, such as the elderly or the disabled, or in an
14 area of representation, whether substantive or
15 geographical, that is underserved by individual qualified
16 legal services providers;

17 (iii) provide legal, management, operational
18 training or support services, technical assistance, or
19 litigation support to qualified legal services providers;
20 or

21 (iv) otherwise promote the improvement of the
22 administration of justice.

23 Section 4. Establishment of Lawyer Trust Account Board.

24 (a) Establishment.--There is hereby established the Lawyer
25 Trust Account Board as an independent not-for-profit
26 corporation. The board shall be responsible for administering
27 the IOLTA fund and shall receive and distribute moneys in the
28 IOLTA fund to qualified recipients as further specified in this
29 act.

30 (b) Source of fund revenues.--The IOLTA fund will receive

1 the interest generated by qualified funds deposited by attorneys
2 in unsegregated interest-bearing accounts designated IOLTA
3 accounts.

4 (c) Ownership.--The board shall hold the beneficial interest
5 in trust accounts participating in the IOLTA program.

6 (d) Open meeting law.--The meetings of the board shall not
7 be subject to the act of July 19, 1974 (P.L.486, No.175),
8 referred to as the Public Agency Open Meeting Law, except that
9 the board shall adopt rules providing that decisions on grants
10 and contracts to qualified recipients be open to the public.

11 Section 5. Attorney participation.

12 (a) Participation.--An attorney electing to participate
13 under the provisions of this act shall place all qualified funds
14 in an IOLTA account.

15 (b) Liability.--No attorney shall be liable in damages or
16 held to answer for a charge of professional misconduct because
17 of a deposit of moneys to an IOLTA account pursuant to a
18 judgment in good faith that the moneys were qualified funds.

19 (c) Other investments.--Nothing in this act shall be
20 construed as regulating the ability of an attorney to invest
21 nonqualified funds in any other investment vehicle specified by
22 the client or beneficial owner or as they and the attorney may
23 agree upon.

24 Section 6. Establishment of funding mechanism.

25 (a) Establishment.--An attorney may establish and maintain
26 an IOLTA account by designating the account as "(name of
27 attorney or law firm IOLTA account)" and notifying the board in
28 such manner as may be prescribed in the bylaws.

29 (b) Interest.--The rate of interest payable on any IOLTA
30 account shall not be less than the rate paid by the depository

1 institution on similar accounts maintained at that institution,
2 and the depository institution shall not impose on such accounts
3 any charges or fees greater than it imposes on non-IOLTA
4 accounts maintained at that institution.

5 (c) Duties of depository institution.--With respect to each
6 IOLTA account, the depository institution shall:

7 (1) Remit at least quarterly any interest earned on the
8 account to the IOLTA fund.

9 (2) Transmit to the IOLTA fund with each remittance a
10 statement showing at least the name of the account, service
11 charges or fees deducted, if any, and the amount of interest
12 remitted from the account.

13 (3) Transmit to the attorney who maintains the IOLTA
14 account a statement showing at least the name of the account,
15 service charges or fees deducted, if any, and the amount of
16 interest remitted from the account.

17 (4) Have no duty to inquire or determine whether
18 deposits consist of qualified funds.

19 (d) Payment from account.--Payment from an IOLTA account to
20 or upon the order of the attorney maintaining the account shall
21 be a valid and sufficient release of any claims by any person or
22 entity against any banking institution for any payments so made.

23 (e) Payment of interest.--Any remittance of interest to the
24 IOLTA fund by a banking institution under this section shall be
25 a valid and sufficient release and discharge of any claims by
26 any person or entity against the depository institution for any
27 payment so made, and no action shall be maintained against any
28 depository institution solely for opening, offering or
29 maintaining an IOLTA account, for accepting any funds for
30 deposit to any IOLTA account, or for remitting any interest to

1 the IOLTA fund.

2 (f) Limitation of liability.--The depository institution
3 shall not be subject to any action solely by reason of its
4 opening, offering or maintaining an IOLTA account, accepting any
5 funds for deposit to any such accounts or remitting any interest
6 to the IOLTA fund.

7 (g) Confidentiality.--All papers, records, documents or
8 other information identifying an attorney, client or beneficial
9 owner of an IOLTA account shall be confidential and shall not be
10 disclosed by a depository institution except with the consent of
11 the attorney maintaining the account or as permitted by law or
12 Supreme Court rule.

13 Section 7. Uses of funds; restrictions.

14 (a) Uses.--The IOLTA fund may be used only for the following
15 purposes:

- 16 (1) Delivery of legal assistance to the indigent.
- 17 (2) Administration of justice as defined in this act.
- 18 (3) Administration and development of the IOLTA program.

19 (b) Restrictions.--Funds made available to grantees under
20 this act may not be used to:

- 21 (1) Provide legal assistance with respect to any fee-
22 generating case as defined by the board.
- 23 (2) Provide legal assistance with respect to the defense
24 of any criminal prosecution.
- 25 (3) Provide legal assistance in civil actions to persons
26 who have been convicted of a criminal charge where the civil
27 action arises out of alleged acts or failures to act and the
28 action is brought against an official of the court or against
29 a law enforcement official for the purpose of challenging the
30 validity of the criminal conviction.

1 (4) Contribute to or be made available to any political
2 party or association, or the campaign of any candidate for
3 public or party office or similar political activities.

4 (5) Provide for capital expenditures.

5 Section 8. Lawyer Trust Account Board of Directors.

6 (a) Members.--The board shall consist of 15 members, all of
7 whom shall be knowledgeable and supportive of the delivery of
8 civil legal services to the indigent. Two members shall be
9 appointed by the Governor; one shall be an attorney and one
10 shall be a public member who is not an attorney. Two members
11 shall be appointed by the Supreme Court; one shall be an
12 attorney and one shall be a public member who is not an
13 attorney. Two members shall be appointed by the Speaker of the
14 House of Representatives and two members shall be appointed by
15 the President pro tempore of the Senate; in both cases, one
16 shall be an attorney and one shall be a public member who is not
17 an attorney. One member shall be appointed by each of the
18 Presidents or Chancellors of the Pennsylvania, Philadelphia and
19 Allegheny County Bar Associations. Four members shall be
20 appointed by the President of the Board of Directors of the
21 Pennsylvania Legal Services Corporation, at least one of whom
22 shall be an eligible client. The members of the board shall
23 elect a chairperson at their first meeting.

24 (b) Term of office.--The term of office and the manner of
25 filling vacancies shall be as provided in the bylaws, which
26 shall be adopted by a majority vote of the board within six
27 months of the effective date of this act, except for the
28 legislative and gubernatorial appointees, whose terms shall be
29 concurrent with the term of the appointing officer.

30 (c) Compensation.--The members shall receive no compensation

1 for their services as members but shall be reimbursed for their
2 actual and necessary expenses incurred in the performance of
3 their duties.

4 Section 9. Powers and duties of board.

5 (a) Powers.--The board shall exercise the powers conferred
6 upon not-for-profit corporations under Title 15 of the
7 Pennsylvania Consolidated Statutes (relating to corporations and
8 unincorporated associations).

9 (b) Management of funds.--The board shall have the power to
10 receive, hold and manage any moneys and property received under
11 this act. It shall enter into contracts or make grants with
12 qualified providers on a regular and periodic basis.

13 (c) Executive director.--The board may appoint an executive
14 director to carry out the purposes of this act and to be paid
15 reasonable compensation as the board shall fix. The director may
16 employ persons or contract for services as the board approves.
17 Employees will serve at the pleasure of the board. All expenses
18 of the operation of the board shall be paid from moneys the
19 board receives from the IOLTA fund.

20 (d) Adoption of bylaws.--The board shall adopt bylaws for
21 the administration of the IOLTA fund to carry out the purposes
22 and provisions of this act.

23 (e) Confidentiality of records.--Notwithstanding any statute
24 or rule to the contrary, the board shall maintain all papers,
25 records, documents or other information identifying an attorney,
26 client or beneficial owner of an IOLTA account on a private and
27 confidential basis and shall not disclose such information
28 except with the consent of the attorney maintaining the account
29 or as permitted by law or Supreme Court rule.

30 (f) Government interest.--Moneys received in the IOLTA fund

1 are not State or Federal funds and are not subject to Article VI
2 of the act of April 9, 1929 (P.L.177, No.175), known as The
3 Administrative Code of 1929, or the act of June 29, 1976
4 (P.L.469, No.117), entitled "An act relating to the fiscal
5 affairs of the Commonwealth concerning duties of the Governor,
6 the Secretary of Revenue and the Budget Secretary, with respect
7 to the submission of and signing the budget for any fiscal year;
8 and, after a budget is enacted, regulating the issuance of
9 warrants by the State Treasurer for certain requisitioned funds
10 and imposing duties on persons authorized by law to issue
11 requisitions for the payment of moneys from the State Treasury;
12 and prescribing that Federal funds received by the Commonwealth
13 shall be deposited in the General Fund account with certain
14 exceptions."

15 Section 10. Distribution of IOLTA funds.

16 (a) Allocation of funds generally.--No less than 75% of the
17 total funds available to the board for grants in any fiscal year
18 shall be allocated to qualified legal services providers for the
19 purpose of delivering legal assistance to eligible clients. Such
20 funds shall be allocated according to the geographical
21 distribution of persons eligible for legal assistance throughout
22 this Commonwealth.

23 (b) Allocation to administration of justice providers.--The
24 board shall determine an appropriate allocation, not to exceed
25 25% of the total funds available in any fiscal year, for the
26 delivery of legal assistance to eligible clients whose
27 circumstances create obstacles to their seeking this assistance,
28 including, but not limited to, the elderly and the disabled, and
29 for other administration of justice purposes.

30 (c) Allocation for administration.--The board shall

1 determine an appropriate allocation, not to exceed 10% of the
2 funds available in any fiscal year, for administration of the
3 program, including, but not limited to, development of the
4 program throughout this Commonwealth, except that in the first
5 year of implementation, the board may use such additional funds
6 as are reasonably necessary to initiate the program.

7 (d) Local option.--An attorney or law firm may designate a
8 bar foundation to receive no more than 20% of the total funds
9 which that attorney or firm generates, if the following
10 conditions are met:

11 (1) The bar foundation is approved by the board.

12 (2) No funds are used for administrative purposes or
13 support services.

14 (3) All funds collected are distributed as grants to
15 qualified recipients.

16 (4) All grants are awarded in a manner which is
17 consistent with the purposes of this act.

18 All bar foundations which establish funds shall make an annual
19 report to the board and are subject to audit by the board.

20 Section 11. Audit; report to General Assembly.

21 (a) Audit.--The IOLTA fund, administered by the board, shall
22 be audited annually. The audit shall be performed in accordance
23 with generally accepted auditing standards by independent
24 certified public accountants.

25 (b) Report to General Assembly.--The board shall make an
26 annual report to the Supreme Court, the President of the
27 Pennsylvania Bar Association and the Chairman of the Board of
28 Pennsylvania Legal Services Corporation on the status of the
29 IOLTA fund, reflecting the number of eligible clients served,
30 the attorney participation rate and the development of the

1 program. A summary of the findings of the audit shall be
2 included in this report.
3 Section 12. Effective date.
4 This act shall take effect in 60 days.