

**SUBSTITUTE FOR
SENATE BILL NO. 189**

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 2421b, 2421c, 2421d, and 2421e (MCL 600.2421b,
600.2421c, 600.2421d, and 600.2421e), as added by 1984 PA 197.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2421b. (1) "Costs and fees" means the normal costs
2 incurred in being a party in a civil action after ~~an~~**THE** action has
3 been filed with the court ~~—AND~~ those provided by law or court
4 rule, and include all of the following:

5 (a) The reasonable and necessary expenses of expert witnesses
6 as determined by the court.

7 (b) The reasonable cost of any study, analysis, engineering
8 report, test, or project ~~which~~**THAT** is determined by the court to
9 have been necessary for the preparation of ~~a~~**THE** party's case.

1 (c) Reasonable ~~A~~ **REASONABLE** and necessary attorney fees ~~FEE~~,
2 including ~~those~~ ~~A~~ **FEE** for purposes of ~~ANY~~ appeal.

3 (2) "Party" means a named plaintiff or defendant involved in
4 the ~~particular~~ civil action. ~~, but~~ **HOWEVER, IF THE ACTION IS AN**
5 **ACTION DESCRIBED IN SECTION 2421C(1) (A) TO (C), PARTY** does not
6 include any of the following:

7 (a) An individual whose net worth was more than \$500,000.00 at
8 the time the civil action was commenced.

9 (b) The sole owner of an unincorporated business or ~~any~~ ~~A~~
10 partnership, corporation, association, or organization whose net
11 worth exceeded \$3,000,000.00 at the time the civil action was
12 commenced and ~~which~~ ~~THAT~~ is not either exempt from taxation
13 ~~pursuant to~~ **UNDER** section 501(c)(3) of the internal revenue code **OF**
14 **1986, 26 USC 501**, or a cooperative association as defined in
15 ~~section 15(a) of the agricultural marketing act, 12 U.S.C.~~
16 ~~1141j(a).~~ **12 USC 1141J.**

17 (c) The sole owner of an unincorporated business or ~~any~~ ~~A~~
18 partnership, corporation, association, or organization that had
19 more than 250 full-time equivalent employees as determined by the
20 total number of employees multiplied by their working hours divided
21 by 40, at the time the civil action was commenced.

22 (d) As used in this subsection, "net worth" means the amount
23 remaining after the deduction of liabilities from assets as
24 determined according to generally accepted accounting principles.

25 (3) "Prevailing party" means ~~as follows:~~ **EITHER OF THE**
26 **FOLLOWING, AS APPLICABLE:**

27 (a) In ~~an~~ ~~A~~ **CIVIL** action involving several remedies, ~~or~~

1 issues, or counts ~~which~~ **THAT** state different causes of ~~actions~~
 2 **ACTION** or defenses, the party prevailing as to each remedy, issue,
 3 or count.

4 (b) In an action involving only 1 issue or count stating only
 5 1 cause of action or defense, the party prevailing on the entire
 6 record.

7 (4) "State" means an agency or department of ~~the~~ **THIS** state, 1
 8 or more members of an agency or department of ~~the~~ **THIS** state, or
 9 any official of ~~the~~ **THIS** state or of an agency or department of ~~the~~
 10 **THIS** state acting in his or her official capacity. ~~but~~ **STATE** does
 11 not include an institution of higher education established pursuant
 12 ~~to~~ **UNDER** article ~~8~~ **VIII** of the state constitution of 1963; the
 13 department of ~~labor as administrator of~~ **LICENSING AND REGULATORY**
 14 **AFFAIRS OR ANY OF ITS AGENCIES IN ADMINISTERING** the worker's
 15 disability compensation act of 1969, Act No. ~~317 of the Public Acts~~
 16 ~~of 1969, being sections 418.101 to 418.941 of the Michigan Compiled~~
 17 ~~Laws, 1969 PA 317, MCL 418.101 TO 418.941, the Michigan employment~~
 18 ~~security act, Act No. 1 of the Public Acts of Extra Session of~~
 19 ~~1936, being sections 421.1 to 421.72 of the Michigan Compiled Laws,~~
 20 ~~and Act No. 176 of the Public Acts of 1939, being sections 423.1 to~~
 21 ~~423.30 of the Michigan Compiled Laws; 1936 (EX SESS) PA 1, MCL~~
 22 ~~421.1 TO 421.75, OR 1939 PA 176, MCL 423.1 TO 423.30; or the~~
 23 department of corrections.

24 Sec. 2421c. (1) ~~The~~ **ON STIPULATION OF THE PARTIES OR MOTION**
 25 **UNDER SUBSECTION (3), A** court that conducts a civil action brought
 26 by or against ~~the~~ **THIS** state as a party, except for a civil
 27 infraction action, shall award to a prevailing party, other than

1 ~~the~~ **THIS** state, the costs and fees incurred by that party in
2 connection with the civil action, **UNLESS THIS STATE DEMONSTRATES BY**
3 **CLEAR AND CONVINCING EVIDENCE THAT THIS STATE'S POSITION WAS**
4 **SUBSTANTIALLY JUSTIFIABLE. HOWEVER, SUBSECTION (2) APPLIES IN ANY**
5 **OF THE FOLLOWING:**

6 (A) AN ACTION INVOLVING ILLEGAL GAMBLING AND A LICENSEE UNDER
7 THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101
8 TO 436.2303, TO WHICH THE LIQUOR CONTROL COMMISSION IS A PARTY.

9 (B) AN ACTION TO WHICH THE DEPARTMENT OF HEALTH AND HUMAN
10 SERVICES IS A PARTY THAT RELATES TO THE CHILD ABUSE AND NEGLECT
11 CENTRAL REGISTRY.

12 (C) AN ACTION RELATED TO THE SUMMARY SUSPENSION OF A LICENSE
13 THAT WAS REQUIRED UNDER SECTION 92(2) OF THE ADMINISTRATIVE
14 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.292.

15 (2) IN AN ACTION DESCRIBED IN SUBSECTION (1) (A) TO (C), THE
16 COURT SHALL ONLY AWARD COSTS AND FEES UNDER SUBSECTION (1) if the
17 court finds that the position of ~~the~~ **THIS** state ~~to~~ **IN** the civil
18 action was frivolous. To find that ~~the~~ **THIS** state's position was
19 frivolous, the court ~~shall~~ **MUST** determine that at least 1 of the
20 following conditions has been met:

21 (a) ~~The~~ **THIS** state's primary purpose in initiating the action
22 was to harass, embarrass, or injure the prevailing party.

23 (b) ~~The~~ **THIS** state had no reasonable basis to believe that the
24 facts underlying its legal position were in fact true.

25 (c) ~~The~~ **THIS** state's legal position was devoid of arguable
26 legal merit.

27 (3) ~~(2)~~—If the parties to an action do not agree on the

1 awarding of costs and fees under sections 2421a to 2421f, a motion
 2 may be brought regarding the awarding of **THE PREVAILING PARTY MAY**
 3 **MOVE THE COURT TO AWARD** costs and fees. and the amount thereof. The
 4 **MOVING** party seeking an award of costs and fees under sections
 5 2421a to 2421f shall **MUST** establish all of the following:

6 (a) ~~That~~ **IF SUBSECTION (2) APPLIES, THAT** the position of the
 7 **THIS** state was frivolous.

8 (b) That the party was the prevailing party.

9 (c) The amount of costs and fees sought including an itemized
 10 statement from any attorney, ~~WHO REPRESENTED THE PARTY AND ANY~~
 11 agent, ~~or expert witness who represented the party~~ showing the
 12 rate at which the costs and fees were computed.

13 (d) That the party is eligible to receive an award of costs
 14 and fees under sections 2421a to 2421f. For good cause shown, a
 15 party may seek a protective order regarding the financial records
 16 of ~~that~~ **THE** party.

17 (4) ~~(3)~~ The court may reduce the amount of the costs and fees
 18 to be awarded **UNDER THIS SECTION**, or deny an award, to the extent
 19 that the party seeking the award engaged in conduct ~~which~~ **THAT**
 20 unduly and unreasonably protracted the ~~civil~~ action.

21 (5) ~~(4)~~ Subject to subsection ~~(5)~~, ~~(6)~~, the amount of costs
 22 and fees awarded under this section shall **MUST** include those
 23 reasonable costs actually incurred by the party and any costs
 24 allowed by law or by court rule. Subject to subsection ~~(5)~~, ~~(6)~~,
 25 the amount of fees awarded under this section shall **MUST** be based
 26 ~~upon~~ **ON** the prevailing market rate for the kind and quality of the
 27 services furnished. ~~except that~~ **IF SUBSECTION (2) APPLIES, THE**

1 **COURT SHALL NOT AWARD** an attorney fee ~~shall not be awarded~~ at a
 2 rate of more than \$75.00 per hour unless the court determines that
 3 special circumstances existed justifying a higher rate or an
 4 applicable law or court rule provides for the payment of a higher
 5 rate.

6 (6) ~~(5)~~—The **COURT SHALL ONLY AWARD** costs and fees awarded
 7 under this section ~~shall only be awarded~~ to the extent and amount
 8 that ~~the~~**THIS** state caused the prevailing party to incur those
 9 costs and fees.

10 (7) ~~(6)~~—This section does not apply to an agency or department
 11 in establishing a rate; in approving, disapproving, or withdrawing
 12 approval of a form; ~~nor~~**OR** in its role of hearing or adjudicating a
 13 case. Unless an agency had discretion to proceed, this section does
 14 not apply to an agency or department acting ex rel on the
 15 information and at the instigation of a nonagency or
 16 nondepartmental person who has a private interest in the matter ~~nor~~
 17 **OR** to an agency or department required by law to commence a ~~case~~**AN**
 18 **ACTION** upon the action or request of another nonagency or
 19 nondepartmental person.

20 (8) ~~(7)~~—This section does not apply to an agency or department
 21 that has such a minor role as a party in the ~~case~~**ACTION** in
 22 comparison to other nonprevailing parties ~~so~~ as to make its
 23 liability for costs and fees under this section unreasonable,
 24 unjust, or unfair.

25 Sec. 2421d. If the court awards costs and fees to a prevailing
 26 party upon judicial review of the final action of a presiding
 27 officer in a contested case ~~pursuant to~~**UNDER** section 125 of Act

1 ~~No. 306 of the Public Acts of 1969, being section 24.325 of the~~
2 ~~Michigan Compiled Laws, **THE ADMINISTRATIVE PROCEDURES ACT OF 1969,**~~
3 ~~**1969 PA 306, MCL 24.325,** the court shall award those costs and fees~~
4 ~~provided for in section 123 of Act No. 306 of the Public Acts of~~
5 ~~1969, being section 24.323 of the Michigan Compiled Laws, if the~~
6 ~~court finds that the position of the state involved in the~~
7 ~~contested case was frivolous.~~**THE ADMINISTRATIVE PROCEDURES ACT OF**
8 **1969, 1969 PA 306, MCL 24.323.**

9 Sec. 2421e. (1) The director of the department of **TECHNOLOGY,**
10 management, and budget shall report annually to the legislature
11 regarding the amount of costs and fees paid by ~~the~~**THIS** state
12 during the preceding fiscal year ~~pursuant to~~**UNDER** sections 2421 to
13 2421d. The report shall describe the number, nature, and amount of
14 the awards; the claims involved; and any other relevant information
15 ~~which~~**THAT** would aid the legislature in evaluating the scope and
16 impact of the awards. Each agency or department of this state shall
17 provide the director of the department of **TECHNOLOGY,** management,
18 and budget with information as is necessary for the director to
19 comply with the requirements of this section.

20 (2) If costs and fees are awarded under sections 2421 to 2421d
21 to a prevailing party, the agency or department over which the
22 party prevailed shall pay those costs and fees.

23 (3) Sections 2421a to 2421d do not apply to a civil action
24 ~~which~~**THAT** is settled ~~,~~**OR** a civil action in which a consent
25 agreement is entered into. ~~,~~~~or to a civil action based in tort.~~

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.

1 Enacting section 2. This amendatory act does not take effect
2 unless Senate Bill No. 190 of the 98th Legislature is enacted into
3 law.