

HOUSE BILL No. 4379

March 24, 2015, Introduced by Reps. Johnson, Cole, Lucido, Kelly, Glenn, Chatfield and Franz and referred to the Committee on Government Operations.

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.

10 (c) ~~Reasonable~~**A REASONABLE** and necessary attorney fees~~—FEE,~~

1 including ~~those~~ **A FEE** for purposes of ~~ANY~~ appeal.

2 (2) "Party" means a named plaintiff or defendant involved in
3 the ~~particular~~ civil action. ~~, but does not include any of the~~
4 ~~following:~~

5 ~~—— (a) An individual whose net worth was more than \$500,000.00 at~~
6 ~~the time the civil action was commenced.~~

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

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

19 ~~—— (d) As used in this subsection "net worth" means the amount~~
20 ~~remaining after the deduction of liabilities from assets as~~
21 ~~determined according to generally accepted accounting principles.~~

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

24 (a) In an ~~an~~ **A CIVIL** action involving several remedies, ~~or~~
25 issues, or counts ~~which~~ **THAT** state different causes of ~~actions~~
26 **ACTION** or defenses, the party prevailing as to each remedy, issue,
27 or count.

1 (b) In an action involving only 1 issue or count stating only
2 1 cause of action or defense, the party prevailing on the entire
3 record.

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

21 Sec. 2421c. (1) ~~The~~ **A** court that conducts a civil action
22 brought by or against ~~the~~**THIS** state as a party, except for a civil
23 infraction action, shall award to a prevailing party other than ~~the~~
24 **THIS** state the costs and fees incurred by that party in connection
25 with the civil action. ~~, if the court finds that the position of~~
26 ~~the state to the civil action was frivolous. To find that the~~
27 ~~state's position was frivolous, the court shall determine that at~~

1 ~~least 1 of the following conditions has been met:~~

2 ~~—— (a) The state's primary purpose in initiating the action was~~
3 ~~to harass, embarrass, or injure the prevailing party.~~

4 ~~—— (b) The state had no reasonable basis to believe that the~~
5 ~~facts underlying its legal position were in fact true.~~

6 ~~—— (c) The state's legal position was devoid of arguable legal~~
7 ~~merit.~~

8 (2) If the parties to an action do not agree on the awarding
9 of costs and fees under sections 2421a to 2421f, a ~~motion may be~~
10 ~~brought regarding the awarding of~~ **PARTY MAY MOVE THE COURT TO AWARD**
11 ~~costs and fees. and the amount thereof.~~ The **MOVING** party seeking an
12 ~~award of costs and fees under sections 2421a to 2421f shall~~ **MUST**
13 establish all of the following:

14 ~~—— (a) That the position of the state was frivolous.~~

15 (A) ~~(b)~~ That the party was the prevailing party.

16 (B) ~~(e)~~ The amount of costs and fees sought including an
17 itemized statement from any attorney, **WHO REPRESENTED THE PARTY**
18 **AND ANY** agent, or expert witness ~~who represented the party~~ showing
19 the rate at which the costs and fees were computed.

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

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

1 (4) Subject to subsection (5), the amount of costs and fees
2 awarded under this section ~~shall~~**MUST** include those reasonable
3 costs actually incurred by the party and any costs allowed by law
4 or by court rule. Subject to subsection (5), the amount of fees
5 awarded under this section ~~shall~~**MUST** be based upon the prevailing
6 market rate for the kind and quality of the services furnished. ~~7~~
7 ~~except that an attorney fee shall not be awarded at a rate of more~~
8 ~~than \$75.00 per hour unless the court determines that special~~
9 ~~circumstances existed justifying a higher rate or an applicable law~~
10 ~~or court rule provides for the payment of a higher rate.~~

11 (5) The **COURT SHALL ONLY AWARD** costs and fees ~~awarded~~ under
12 this section ~~shall only be awarded~~ to the extent and amount that
13 ~~the~~**THIS** state caused the prevailing party to incur those costs and
14 fees.

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

25 (7) This section does not apply to an agency or department
26 that has such a minor role as a party in the ~~case~~**ACTION** in
27 comparison to other nonprevailing parties ~~so~~ as to make its

1 liability for costs and fees under this section unreasonable,
2 unjust, or unfair.

3 Sec. 2421d. If the court awards costs and fees to a prevailing
4 party upon judicial review of the final action of a presiding
5 officer in a contested case ~~pursuant to~~ **UNDER** section 125 of Act
6 No. 306 of the Public Acts of 1969, being section 24.325 of the
7 Michigan Compiled Laws, **THE ADMINISTRATIVE PROCEDURES ACT OF 1969,**
8 **1969 PA 306, MCL 24.325,** the court shall award those costs and fees
9 provided for in section 123 of Act No. 306 of the Public Acts of
10 1969, being section 24.323 of the Michigan Compiled Laws, if the
11 court finds that the position of the state involved in the
12 contested case was frivolous. **THE ADMINISTRATIVE PROCEDURES ACT OF**
13 **1969, 1969 PA 306, MCL 24.323.**

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

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

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

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

6 Enacting section 2. This amendatory act does not take effect
7 unless Senate Bill No. ____ or House Bill No. 4378 (request no.
8 00851'15) of the 98th Legislature is enacted into law.