

SENATE BILL NO. 245

March 21, 2019, Introduced by Senators MCBROOM, HOLLIER, HORN, WOJNO and DALEY
and referred to the Committee on Oversight.

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

1 rule, and include all of the following:

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

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

7 (c) ~~Reasonable~~**A reasonable** and necessary attorney ~~fees~~**fee**,
8 including ~~those~~**a fee** for ~~purposes of~~**any** appeal.

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

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

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

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

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

29 (3) "Prevailing party" means ~~as follows:~~**either of the**

1 following, as applicable:

2 (a) In ~~an~~ **a civil** action involving several remedies, or issues
3 or counts ~~which~~ **that** state different causes of ~~actions~~ **action** or
4 defenses, the party prevailing as to each remedy, issue, or count.

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

8 (4) "State" means an agency or department of ~~the~~ **this** state, 1
9 or more members of an agency or department of ~~the~~ **this** state, or
10 any official of ~~the~~ **this** state or of an agency or department of ~~the~~
11 **this** state acting in his or her official capacity. ~~, but~~ **State** does
12 not include an institution of higher education established ~~pursuant~~
13 ~~to~~ **under** article ~~8~~ **VIII** of the state constitution of 1963; the
14 department of ~~labor as administrator of~~ **licensing and regulatory**
15 **affairs or any of its agencies in administering** the worker's
16 disability compensation act of 1969, ~~Act No. 317 of the Public Acts~~
17 ~~of 1969, being sections 418.101 to 418.941 of the Michigan Compiled~~
18 ~~Laws, 1969 PA 317, MCL 418.101 to 418.941,~~ the Michigan employment
19 security act, ~~Act No. 1 of the Public Acts of Extra Session of~~
20 ~~1936, being sections 421.1 to 421.72 of the Michigan Compiled Laws,~~
21 ~~and Act No. 176 of the Public Acts of 1939, being sections 423.1 to~~
22 ~~423.30 of the Michigan Compiled Laws, 1936 (Ex Sess) PA 1, MCL~~
23 **421.1 to 421.75, or 1939 PA 176, MCL 423.1 to 423.30;** or the
24 department of corrections.

25 Sec. 2421c. (1) ~~The~~ **On stipulation of the parties or motion**
26 **under subsection (3),** a court that conducts a civil action brought
27 by or against ~~the~~ **this** state as a party, except for a civil
28 infraction action, shall award to a prevailing party, other than
29 ~~the~~ **this** state, the costs and fees incurred by that party in

1 connection with the civil action, **unless this state demonstrates**
 2 **that this state's position was substantially justifiable. However,**
 3 **subsection (2) applies in any of the following:**

4 (a) An action involving illegal gambling and a licensee under
 5 the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101
 6 to 436.2303, to which the liquor control commission is a party.

7 (b) An action to which the department of health and human
 8 services is a party that relates to either of the following:

9 (i) The child abuse and neglect central registry.

10 (ii) Child support or the establishment of paternity under part
 11 D of subchapter IV of the social security act, 42 USC 651 to 669b.

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
 28 awarding of costs and fees under sections 2421a to 2421f, ~~a motion~~
 29 ~~may be brought regarding the awarding of~~ **the prevailing party may**

1 ~~move the court to award~~ costs and fees. ~~and the amount thereof.~~ The
 2 ~~moving~~ party seeking an award of costs and fees under sections
 3 2421a to 2421f shall **must** establish all of the following:

4 (a) ~~That~~ **If subsection (2) applies, that** the position of the
 5 **this** state was frivolous.

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

7 (c) The amount of costs and fees sought including an itemized
 8 statement from any attorney ~~, who represented the party and any~~
 9 agent ~~, or expert witness who represented the party~~ showing the
 10 rate at which the costs and fees were computed.

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

15 **(4)** ~~(3)~~ The court may reduce the amount of the costs and fees
 16 to be awarded **under this section**, or deny an award, to the extent
 17 that the party seeking the award engaged in conduct ~~which~~ **that**
 18 unduly and unreasonably protracted the ~~civil~~ action.

19 **(5)** ~~(4)~~ Subject to subsection ~~(5)~~, **(6)**, the amount of costs
 20 and fees awarded under this section shall ~~shall~~ **must** include those
 21 reasonable costs actually incurred by the party and any costs
 22 allowed by law or by court rule. Subject to subsection ~~(5)~~, **(6)**,
 23 the amount of fees awarded under this section shall ~~shall~~ **must** be based
 24 ~~upon~~ **on** the prevailing market rate for the kind and quality of the
 25 services furnished. ~~, except that an attorney fee shall not be~~
 26 ~~awarded at a rate of more than \$75.00 per hour unless the court~~
 27 ~~determines that special circumstances existed justifying a higher~~
 28 ~~rate or an applicable law or court rule provides for the payment of~~
 29 ~~a higher rate.~~

1 (6) ~~(5)~~—The **court shall only award** costs and fees ~~awarded~~
 2 under this section ~~shall only be awarded~~ to the extent and amount
 3 that ~~the~~**this** state caused the prevailing party to incur those
 4 costs and fees.

5 (7) ~~(6)~~—This section does not apply to an agency or department
 6 in establishing a rate; in approving, disapproving, or withdrawing a
 7 approval of a form; ~~nor~~**or** in its role of hearing or adjudicating a
 8 case. Unless an agency had discretion to proceed, this section does
 9 not apply to an agency or department acting ex rel on the
 10 information and at the instigation of a nonagency or
 11 nondepartmental person who has a private interest in the matter ~~nor~~
 12 **or** to an agency or department required by law to commence ~~a case~~**an**
 13 **action** upon the action or request of another nonagency or
 14 nondepartmental person.

15 (8) ~~(7)~~—This section does not apply to an agency or department
 16 that has such a minor role as a party in the ~~case~~**action** in
 17 comparison to other nonprevailing parties ~~so~~ as to make its
 18 liability for costs and fees under this section unreasonable,
 19 unjust, or unfair.

20 Sec. 2421d. If the court awards costs and fees to a prevailing
 21 party upon judicial review of the final action of a presiding
 22 officer in a contested case pursuant to ~~under~~ section 125 of Act
 23 No. 306 of the Public Acts of 1969, being section 24.325 of the
 24 Michigan Compiled Laws, **the administrative procedures act of 1969,**
 25 **1969 PA 306, MCL 24.325,** the court shall award those costs and fees
 26 provided for in section 123 of Act No. 306 of the Public Acts of
 27 1969, being section 24.323 of the Michigan Compiled Laws, if the
 28 court finds that the position of the state involved in the
 29 ~~contested case was frivolous.~~**the administrative procedures act of**

1 1969, 1969 PA 306, MCL 24.323.

2 Sec. 2421e. (1) The director of the department of **technology**,
3 management, and budget shall report annually to the legislature
4 regarding the amount of costs and fees paid by ~~the~~**this** state
5 during the preceding fiscal year ~~pursuant to~~**under** sections 2421 to
6 2421d. The report shall describe the number, nature, and amount of
7 the awards; the claims involved; and any other relevant information
8 ~~which~~**that** would aid the legislature in evaluating the scope and
9 impact of the awards. Each agency or department of this state shall
10 provide the director of the department of **technology**, management,
11 and budget with information as is necessary for the director to
12 comply with the requirements of this section.

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

16 (3) Sections 2421a to 2421d do not apply to a civil action
17 ~~which~~**that** is settled ~~or~~ a civil action in which a consent
18 agreement is entered into. ~~or to a civil action based in tort.~~

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

21 Enacting section 2. This amendatory act does not take effect
22 unless Senate Bill No. 246 of the 100th Legislature is enacted into
23 law.