

**SUBSTITUTE FOR
SENATE BILL NO. 245**

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



1 have been necessary for the preparation of ~~a~~**the** party's case.

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

4 (2) "Party" means a named plaintiff or defendant involved in
5 the ~~particular~~ civil action. ~~, but does not include any of the~~
6 ~~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~~
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 is not either exempt from taxation pursuant to~~
13 ~~section 501(c)(3) of the internal revenue code or a cooperative~~
14 ~~association as defined in section 15(a) of the agricultural~~
15 ~~marketing act, 12 U.S.C. 1141j(a).~~

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

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

24 (3) "Prevailing party" means ~~as follows:~~**either of the**
25 **following, as applicable:**

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

29 (b) In an action involving only 1 issue or count stating only



1 1 cause of action or defense, the party prevailing on the entire
2 record.

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

20 Sec. 2421c. (1) ~~The~~**On stipulation of the parties or motion**
21 **under subsection (3),** a court that conducts a civil action brought
22 by or against ~~the~~**this** state as a party, except for a civil
23 infraction action, shall award to a prevailing party, other than
24 ~~the~~**this** state, the costs and fees incurred by that party in
25 connection with the civil action, **unless this state demonstrates**
26 **that this state's position was substantially justifiable. However,**
27 **subsection (2) applies in any of the following:**

28 (a) An action involving illegal gambling and a licensee under
29 the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101



1 to 436.2303, to which the liquor control commission is a party.

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

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

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

7 (c) An action related to the summary suspension of a license
8 that was required under section 92(2) of the administrative
9 procedures act of 1969, 1969 PA 306, MCL 24.292.

10 (2) In an action described in subsection (1)(a) to (c), the
11 court shall only award costs and fees under subsection (1) if the
12 court finds that the position of ~~the~~**this** state ~~to~~**in** the civil
13 action was frivolous. To find that ~~the~~**this** state's position was
14 frivolous, the court ~~shall~~**must** determine that at least 1 of the
15 following conditions has been met:

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

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

20 (c) ~~The~~**This** state's legal position was devoid of arguable
21 legal merit.

22 (3) ~~(2)~~—If the parties to an action do not agree on the
23 awarding of costs and fees under sections 2421a to 2421f, ~~a motion~~
24 ~~may be brought regarding the awarding of~~ **the prevailing party may**
25 **move the court to award** costs and fees. ~~and the amount thereof.~~ The
26 ~~moving party seeking an award of costs and fees under sections~~
27 ~~2421a to 2421f shall~~ **must** establish all of the following:

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



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

2 (c) The amount of costs and fees sought including an itemized
3 statement from any attorney ~~who represented the party and any~~
4 agent ~~or expert witness who represented the party~~ showing the
5 rate at which the costs and fees were computed.

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

10 **(4)** ~~(3)~~ The court may reduce the amount of the costs and fees
11 to be awarded **under this section**, or deny an award, to the extent
12 that the party seeking the award engaged in conduct ~~which~~ **that**
13 unduly and unreasonably protracted the ~~civil~~ action.

14 **(5)** ~~(4)~~ Subject to subsection ~~(5)~~, **(6)**, the amount of costs
15 and fees awarded under this section ~~shall~~ **must** include those
16 reasonable costs actually incurred by the party and any costs
17 allowed by law or by court rule. Subject to subsection ~~(5)~~, **(6)**,
18 the amount of fees awarded under this section ~~shall~~ **must** be based
19 ~~upon~~ **on** the prevailing market rate for the kind and quality of the
20 services furnished. ~~except that an attorney fee shall not be~~
21 ~~awarded at a rate of more than \$75.00 per hour unless the court~~
22 ~~determines that special circumstances existed justifying a higher~~
23 ~~rate or an applicable law or court rule provides for the payment of~~
24 ~~a higher rate.~~ **In awarding an attorney fee under this section, the**
25 **court shall award a reasonable attorney fee as determined by the**
26 **court following applicable supreme court precedent.**

27 **(6)** ~~(5)~~ The **court shall only award** costs and fees awarded
28 under this section ~~shall only be awarded~~ to the extent and amount
29 that ~~the~~ **this** state caused the prevailing party to incur those



1 costs and fees.

2 (7) ~~(6)~~—This section does not apply to an agency or department
 3 in establishing a rate; in approving, disapproving, or withdrawing
 4 approval of a form; ~~nor~~**or** in its role of hearing or adjudicating a
 5 case. Unless an agency had discretion to proceed, this section does
 6 not apply to an agency or department acting ex rel on the
 7 information and at the instigation of a nonagency or
 8 nondepartmental person who has a private interest in the matter ~~nor~~
 9 **or** to an agency or department required by law to commence ~~a case~~**an**
 10 **action** upon the action or request of another nonagency or
 11 nondepartmental person.

12 (8) ~~(7)~~—This section does not apply to an agency or department
 13 that has such a minor role as a party in the ~~case~~**action** in
 14 comparison to other nonprevailing parties ~~so~~ as to make its
 15 liability for costs and fees under this section unreasonable,
 16 unjust, or unfair.

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

28 Sec. 2421e. (1) The director of the department of **technology,**
 29 management, and budget shall report annually to the legislature



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

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

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

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

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

