

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Senators Casperson, Colbeck, Booher, Shirkey, Hansen, Horn and MacGregor

ENROLLED SENATE BILL No. 100

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 2421b, 2421c, 2421d, 2421e, and 3212 (MCL 600.2421b, 600.2421c, 600.2421d, 600.2421e, and 600.3212), sections 2421b, 2421c, 2421d, and 2421e as added by 1984 PA 197 and section 3212 as amended by 2011 PA 301, and by adding section 2979.

The People of the State of Michigan enact:

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

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

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

(c) A reasonable and necessary attorney fee, including a fee for any appeal.

(2) "Party" means a named plaintiff or defendant involved in the civil action.

(3) "Prevailing party" means either of the following, as applicable:

(a) In a civil action involving several remedies, or issues or counts that state different causes of action or defenses, the party prevailing as to each remedy, issue, or count.

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

(4) "State" means an agency or department of this state, 1 or more members of an agency or department of this state, or any official of this state or of an agency or department of this state acting in his or her official capacity. State does not include an institution of higher education established under article VIII of the state constitution of 1963; the department of licensing and regulatory affairs or any of its agencies in administering the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, or 1939 PA 176, MCL 423.1 to 423.30; or the department of corrections.

Sec. 2421c. (1) On stipulation of the parties or motion under subsection (4), a court that conducts a civil action brought by or against this state as a party, except for a civil infraction action, shall award to a prevailing party, other than this state, the costs and fees incurred by that party in connection with the civil action, unless this state demonstrates

by clear and convincing evidence that this state's position was substantially justifiable. However, subsection (2) applies to actions described in subsection (2) and subsection (3) applies in any of the following:

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

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

(i) The child abuse and neglect central registry.

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

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

(2) In an action involving a tax administered by the department of treasury under 1941 PA 122, MCL 205.1 to 205.31, the court shall not award costs and fees under subsection (1) if this state demonstrates that the department of treasury's position was substantially justified. A demonstration by clear and convincing evidence is not required under this subsection.

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

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

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

(c) This state's legal position was devoid of arguable legal merit.

(4) If the parties to an action do not agree on the awarding of costs and fees under sections 2421a to 2421f, the prevailing party may move the court to award costs and fees. The moving party must establish all of the following:

(a) If subsection (3) applies, that the position of this state was frivolous.

(b) That the party was the prevailing party.

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

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

(5) The court may reduce the amount of the costs and fees to be awarded under this section, or deny an award, to the extent that the party seeking the award engaged in conduct that unduly and unreasonably protracted the action.

(6) Subject to subsection (7), the amount of costs and fees awarded under this section must include those reasonable costs actually incurred by the party and any costs allowed by law or by court rule. Subject to subsection (7), the amount of fees awarded under this section must be based on the prevailing market rate for the kind and quality of the services furnished.

(7) The court shall only award costs and fees under this section to the extent and amount that this state caused the prevailing party to incur those costs and fees.

(8) This section does not apply to an agency or department in establishing a rate; in approving, disapproving, or withdrawing approval of a form; or in its role of hearing or adjudicating a case. Unless an agency had discretion to proceed, this section does not apply to an agency or department acting ex rel on the information and at the instigation of a nonagency or nondepartmental person who has a private interest in the matter or to an agency or department required by law to commence an action upon the action or request of another nonagency or nondepartmental person.

(9) This section does not apply to an agency or department that has such a minor role as a party in the action in comparison to other nonprevailing parties as to make its liability for costs and fees under this section unreasonable, unjust, or unfair.

Sec. 2421d. If the court awards costs and fees to a prevailing party upon judicial review of the final action of a presiding officer in a contested case under section 125 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.325, the court shall award those costs and fees provided for in section 123 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.323.

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

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

(3) Sections 2421a to 2421d do not apply to a civil action that is settled or a civil action in which a consent agreement is entered into.

Sec. 2979. (1) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, there is a rebuttable presumption that there is no unreasonable or material increase in the burden on the property subjected to the easement if the Michigan electric cooperative can show 1 of the following:

(a) That the new or additional facility was installed above the electric space, as defined by the Michigan electric cooperative.

(b) That the new facility replaced a previously existing facility in the same or substantially similar location on the pole or poles.

(c) That the new or additional facility was installed within the electric space or within the communications space, as defined by the Michigan electric cooperative.

(d) That the new or additional facility was placed underground along the same or substantially similar location of existing underground electric facilities.

(2) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, the Michigan electric cooperative is not liable unless the plaintiff establishes that 1 of the following applies to the new or additional facility installed on an existing easement:

(a) The facility was installed outside the geographic bounds of the express or prescriptive easement granted or obtained.

(b) The facility unreasonably or materially increases the burden on the land.

(3) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, evidence of revenue realized by the Michigan electric cooperative from services using the new or additional facility is inadmissible for purposes of proving damages. Any damages in a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative must be determined by actual diminution of value of the property subject to the easement and directly related to the installation of the additional facility. However, damages awarded must not exceed \$3.00 per linear foot.

(4) As used in this section:

(a) "Facility" means new or expanded broadband fiber infrastructure used, at least partially, for electric service purposes.

(b) "Michigan electric cooperative" includes entities engaged in the transmission or distribution of electric service and that are either of the following:

(i) An electric cooperative headquartered in this state organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, serving primarily members of the cooperative electric utility.

(ii) Another cooperative corporation headquartered in this state.

Sec. 3212. A notice of foreclosure by advertisement must include all of the following:

(a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.

(b) The date of the mortgage and the date the mortgage was recorded.

(c) The amount claimed to be due on the mortgage on the date of the notice.

(d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.

(e) A description of the property by giving its street address, if any. The validity of the notice and the validity of any eventual sale under this chapter are not affected by the fact that the street address in the notice is erroneous or that the street address is omitted.

(f) For a mortgage executed after December 31, 1964, the length of the redemption period as determined under section 3240.

(g) A statement that if the property is sold at a foreclosure sale under this chapter, under section 3278 the borrower will be held responsible to the person who buys the property at the mortgage foreclosure sale or to the mortgage holder for damaging the property during the redemption period.

(h) The name, address, and telephone number of the attorney for the party foreclosing the mortgage.

(i) A statement in the following form: "This firm is a debt collector attempting to collect a debt. Any information we obtain will be used for that purpose."

(j) For a residential mortgage, a statement in the following form: "Attention homeowner: Are you a homeowner who is having trouble making your mortgage payments? There are a number of programs from a variety of organizations to help you. The Michigan state housing development authority, or MSHDA, may be able to help you in finding local resources. Information is available by going to the MSHDA website, www.michigan.gov/mshda. Please contact the telephone number for the attorney for the party foreclosing the mortgage if you are in active military duty."

(k) A statement in the following form: "Notice of foreclosure by advertisement. Notice is given under section 3212 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3212, that the following mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, at a public auction sale to the highest bidder for cash or cashier's check at the place of holding the circuit court in _____ County, at (time), on (date). The auction sale will close at (time). The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note or notes secured by the mortgage, with interest and late charges on the remaining principal sum, as provided in the note or notes, advances, under the terms of the mortgage, interest on the advances, fees, and charges and expenses of the attorney, for the total amount, at the time of the initial publication of the notice of foreclosure, reasonably estimated to be set forth below. The amount may be greater on the day of the sale. Placing the highest bid at the sale does not automatically entitle the purchaser to free and clear ownership of the property. The purchaser is encouraged to investigate the existence, priority, and size of any other outstanding liens that may exist on this property by contacting the county register of deeds office or a title insurance company, either of which may charge a fee for this information."

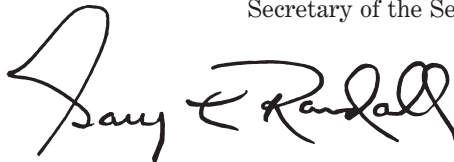
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 101 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor