

# HOUSE BILL No. 6331

November 9, 2004, Introduced by Reps. Bradstreet, Acciavatti, Tabor, Hummel, Garfield, Pumford, Drolet, Casperson and Hoogendyk and referred to the Committee on Judiciary.

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

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2421c. (1) The court that conducts a civil action  
2 brought by or against the state as a party, except for a civil  
3 infraction action, shall award to a prevailing party other than  
4 the state the costs and fees incurred by that party in connection  
5 with the civil action, if the court finds that the position of  
6 the state to the civil action was frivolous **or if the state was**  
7 **the sole appellant from a lower court.** To find that the state's  
8 position was frivolous, the court shall determine that at least 1  
9 of the following conditions has been met:

10       (a) The state's primary purpose in initiating the action was

1 to harass, embarrass, or injure the prevailing party.

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

4 (c) The state's legal position was devoid of arguable legal  
5 merit.

6 (2) If the parties to an action do not agree on the awarding  
7 of costs and fees under sections 2421a to 2421f, a motion may be  
8 brought regarding the awarding **and amount** of costs and fees. ~~and~~  
9 ~~the amount thereof.~~ The party seeking an award of costs and fees  
10 under sections 2421a to 2421f shall establish all of the  
11 following:

12 (a) That the position of the state was frivolous **or that the**  
13 **state was the sole appellant from a lower court.**

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

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

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

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

27 (4) Subject to subsection (5), the amount of costs and fees

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

11 (5) The costs and fees awarded under this section shall only  
12 be awarded to the extent and amount that the state caused the  
13 prevailing party to incur those costs and fees.

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

24 (7) This section does not apply to an agency or department  
25 that has such a minor role as a party in the case in comparison  
26 to other nonprevailing parties so as to make its liability for  
27 costs and fees under this section unreasonable, unjust, or

1 unfair.