

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 100

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
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:

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

1 report, test, or project ~~which~~ **THAT** is determined by the court to
 2 have been necessary for the preparation of ~~a~~ **THE** party's case.

3 (c) Reasonable ~~A~~ **REASONABLE** and necessary attorney fees ~~FEE~~,
 4 including those ~~A~~ **FEE** for purposes of ~~ANY~~ appeal.

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

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

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

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

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

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

27 (a) In ~~an~~ **A CIVIL** action involving several remedies, or issues

1 or counts ~~which~~ **THAT** state different causes of ~~actions~~ **ACTION** or
 2 defenses, the party prevailing as to each remedy, issue, or count.

3 (b) In an action involving only 1 issue or count stating only
 4 1 cause of action or defense, the party prevailing on the entire
 5 record.

6 (4) "State" means an agency or department of ~~the~~ **THIS** state, 1
 7 or more members of an agency or department of ~~the~~ **THIS** state, or
 8 any official of ~~the~~ **THIS** state or of an agency or department of ~~the~~
 9 **THIS** state acting in his or her official capacity. ~~, but~~ **STATE** does
 10 not include an institution of higher education established pursuant
 11 ~~to~~ **UNDER** article ~~8~~ **VIII** of the state constitution of 1963; the
 12 department of labor ~~as administrator of~~ **LICENSING AND REGULATORY**
 13 **AFFAIRS OR ANY OF ITS AGENCIES IN ADMINISTERING** the worker's
 14 disability compensation act of 1969, ~~Act No. 317 of the Public Acts~~
 15 ~~of 1969, being sections 418.101 to 418.941 of the Michigan Compiled~~
 16 ~~Laws, 1969 PA 317, MCL 418.101 TO 418.941,~~ the Michigan employment
 17 security act, ~~Act No. 1 of the Public Acts of Extra Session of~~
 18 ~~1936, being sections 421.1 to 421.72 of the Michigan Compiled Laws,~~
 19 ~~and Act No. 176 of the Public Acts of 1939, being sections 423.1 to~~
 20 ~~423.30 of the Michigan Compiled Laws, 1936 (EX SESS) PA 1, MCL~~
 21 **421.1 TO 421.75, OR 1939 PA 176, MCL 423.1 TO 423.30;** or the
 22 department of corrections.

23 Sec. 2421c. (1) ~~The~~ **ON STIPULATION OF THE PARTIES OR MOTION**
 24 **UNDER SUBSECTION (4), A** court that conducts a civil action brought
 25 by or against ~~the~~ **THIS** state as a party, except for a civil
 26 infraction action, shall award to a prevailing party, other than
 27 ~~the~~ **THIS** state, the costs and fees incurred by that party in

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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 ~~the-THIS~~ state ~~to-IN~~ the civil action was frivolous. To find that ~~the-THIS~~ state's position was frivolous, the court ~~shall-MUST~~ determine that at least 1 of the following conditions has been met:

(a) ~~The-THIS~~ state's primary purpose in initiating the action

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

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

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

6 **(4)** ~~(2)~~ If the parties to an action do not agree on the
7 awarding of costs and fees under sections 2421a to 2421f, ~~a motion~~
8 ~~may be brought regarding the awarding of~~ **THE PREVAILING PARTY MAY**
9 **MOVE THE COURT TO AWARD** costs and fees. ~~and the amount thereof. The~~
10 **MOVING** party ~~seeking an award of costs and fees under sections~~
11 ~~2421a to 2421f shall~~ **MUST** establish all of the following:

12 (a) ~~That~~ **IF SUBSECTION (3) APPLIES, THAT** the position of the
13 **THIS** state was frivolous.

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

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

23 **(5)** ~~(3)~~ The court may reduce the amount of the costs and fees
24 to be awarded **UNDER THIS SECTION**, or deny an award, to the extent
25 that the party seeking the award engaged in conduct ~~which~~ **THAT**
26 unduly and unreasonably protracted the ~~civil~~ action.

27 **(6)** ~~(4)~~ Subject to subsection ~~(5)~~, ~~(7)~~, the amount of costs

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

11 **(7)** ~~(5)~~ The **COURT SHALL ONLY AWARD** costs and fees awarded
 12 under this section ~~shall only be awarded to the extent and amount~~
 13 ~~that the~~ **THIS** state caused the prevailing party to incur those
 14 costs and fees.

15 **(8)** ~~(6)~~ This section does not apply to an agency or department
 16 in 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 **(9)** ~~(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 ~~7~~ **OR** a civil action in which a consent
3 agreement is entered into. ~~7~~ ~~or to a civil action based in tort.~~

4 **SEC. 2979. (1) IN A TRESPASS, UNJUST ENRICHMENT, OR ANY OTHER**
5 **ACTION ARISING FROM OR RELATING TO AN EASEMENT HELD BY A MICHIGAN**
6 **ELECTRIC COOPERATIVE AND BROUGHT AGAINST THE HOLDING MICHIGAN**
7 **ELECTRIC COOPERATIVE, THERE IS A REBUTTABLE PRESUMPTION THAT THERE**
8 **IS NO UNREASONABLE OR MATERIAL INCREASE IN THE BURDEN ON THE**
9 **PROPERTY SUBJECTED TO THE EASEMENT IF THE MICHIGAN ELECTRIC**
10 **COOPERATIVE CAN SHOW 1 OF THE FOLLOWING:**

11 (A) THAT THE NEW OR ADDITIONAL FACILITY WAS INSTALLED ABOVE
12 THE ELECTRIC SPACE, AS DEFINED BY THE MICHIGAN ELECTRIC
13 COOPERATIVE.

14 (B) THAT THE NEW FACILITY REPLACED A PREVIOUSLY EXISTING
15 FACILITY IN THE SAME OR SUBSTANTIALLY SIMILAR LOCATION ON THE POLE
16 OR POLES.

17 (C) THAT THE NEW OR ADDITIONAL FACILITY WAS INSTALLED WITHIN
18 THE ELECTRIC SPACE OR WITHIN THE COMMUNICATIONS SPACE, AS DEFINED
19 BY THE MICHIGAN ELECTRIC COOPERATIVE.

20 (D) THAT THE NEW OR ADDITIONAL FACILITY WAS PLACED UNDERGROUND
21 ALONG THE SAME OR SUBSTANTIALLY SIMILAR LOCATION OF EXISTING
22 UNDERGROUND ELECTRIC FACILITIES.

23 (2) IN A TRESPASS, UNJUST ENRICHMENT, OR ANY OTHER ACTION
24 ARISING FROM OR RELATING TO AN EASEMENT HELD BY A MICHIGAN ELECTRIC
25 COOPERATIVE AND BROUGHT AGAINST THE HOLDING MICHIGAN ELECTRIC
26 COOPERATIVE, THE MICHIGAN ELECTRIC COOPERATIVE IS NOT LIABLE UNLESS
27 THE PLAINTIFF ESTABLISHES THAT 1 OF THE FOLLOWING APPLIES TO THE

1 NEW OR ADDITIONAL FACILITY INSTALLED ON AN EXISTING EASEMENT:

2 (A) THE FACILITY WAS INSTALLED OUTSIDE THE GEOGRAPHIC BOUNDS
3 OF THE EXPRESS OR PRESCRIPTIVE EASEMENT GRANTED OR OBTAINED.

4 (B) THE FACILITY UNREASONABLY OR MATERIALLY INCREASES THE
5 BURDEN ON THE LAND.

6 (3) IN A TRESPASS, UNJUST ENRICHMENT, OR ANY OTHER ACTION
7 ARISING FROM OR RELATING TO AN EASEMENT HELD BY A MICHIGAN ELECTRIC
8 COOPERATIVE AND BROUGHT AGAINST THE HOLDING MICHIGAN ELECTRIC
9 COOPERATIVE, EVIDENCE OF REVENUE REALIZED BY THE MICHIGAN ELECTRIC
10 COOPERATIVE FROM SERVICES USING THE NEW OR ADDITIONAL FACILITY IS
11 INADMISSIBLE FOR PURPOSES OF PROVING DAMAGES. ANY DAMAGES IN A
12 TRESPASS, UNJUST ENRICHMENT, OR ANY OTHER ACTION ARISING FROM OR
13 RELATING TO AN EASEMENT HELD BY A MICHIGAN ELECTRIC COOPERATIVE AND
14 BROUGHT AGAINST THE HOLDING MICHIGAN ELECTRIC COOPERATIVE MUST BE
15 DETERMINED BY ACTUAL DIMINUTION OF VALUE OF THE PROPERTY SUBJECT TO
16 THE EASEMENT AND DIRECTLY RELATED TO THE INSTALLATION OF THE
17 ADDITIONAL FACILITY. HOWEVER, DAMAGES AWARDED MUST NOT EXCEED \$3.00
18 PER LINEAR FOOT.

19 (4) AS USED IN THIS SECTION:

20 (A) "FACILITY" MEANS NEW OR EXPANDED BROADBAND FIBER
21 INFRASTRUCTURE USED, AT LEAST PARTIALLY, FOR ELECTRIC SERVICE
22 PURPOSES.

23 (B) "MICHIGAN ELECTRIC COOPERATIVE" INCLUDES ENTITIES ENGAGED
24 IN THE TRANSMISSION OR DISTRIBUTION OF ELECTRIC SERVICE AND THAT
25 ARE EITHER OF THE FOLLOWING:

26 (i) AN ELECTRIC COOPERATIVE HEADQUARTERED IN THIS STATE
27 ORGANIZED AS A COOPERATIVE CORPORATION UNDER SECTIONS 98 TO 109 OF

1 1931 PA 327, MCL 450.98 TO 450.109, SERVING PRIMARILY MEMBERS OF
2 THE COOPERATIVE ELECTRIC UTILITY.

3 (ii) ANOTHER COOPERATIVE CORPORATION HEADQUARTERED IN THIS
4 STATE.

5 Sec. 3212. ~~Every~~**A** notice of foreclosure by advertisement
6 ~~shall~~**MUST** include all of the following:

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

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

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

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

15 **(E) A DESCRIPTION OF THE PROPERTY BY GIVING ITS STREET**
16 **ADDRESS, IF ANY. THE VALIDITY OF THE NOTICE AND THE VALIDITY OF ANY**
17 **EVENTUAL SALE UNDER THIS CHAPTER ARE NOT AFFECTED BY THE FACT THAT**
18 **THE STREET ADDRESS IN THE NOTICE IS ERRONEOUS OR THAT THE STREET**
19 **ADDRESS IS OMITTED.**

20 **(F)** ~~(e)~~For a mortgage executed ~~on or after January 1, 1965,~~
21 **DECEMBER 31, 1964**, the length of the redemption period as
22 determined under section 3240.

23 **(G)** ~~(f)~~A statement that if the property is sold at a
24 foreclosure sale under this chapter, under section 3278 the
25 borrower will be held responsible to the person who buys the
26 property at the mortgage foreclosure sale or to the mortgage holder
27 for damaging the property during the redemption period.

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1 (H) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE ATTORNEY
2 FOR THE PARTY FORECLOSING THE MORTGAGE.

3 (I) A STATEMENT IN THE FOLLOWING FORM: "THIS FIRM IS A DEBT
4 COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION WE OBTAIN
5 WILL BE USED FOR THAT PURPOSE."

6 (J) FOR A RESIDENTIAL MORTGAGE, A STATEMENT IN THE FOLLOWING
7 FORM: "ATTENTION HOMEOWNER: ARE YOU A HOMEOWNER WHO IS HAVING
8 TROUBLE MAKING YOUR MORTGAGE PAYMENTS? THERE ARE A NUMBER OF
9 PROGRAMS FROM A VARIETY OF ORGANIZATIONS TO HELP YOU. THE MICHIGAN
10 STATE HOUSING DEVELOPMENT AUTHORITY, OR MSHDA, [MAY BE ABLE TO HELP YOU
11 IN] FINDING LOCAL RESOURCES.
12 INFORMATION IS AVAILABLE [] BY GOING TO
13 [THE MSHDA WEBSITE, WWW.MICHIGAN.GOV/MSHDA.
14
15

16] PLEASE CONTACT THE TELEPHONE NUMBER FOR THE ATTORNEY FOR
17 THE PARTY FORECLOSING THE MORTGAGE IF YOU ARE IN ACTIVE MILITARY
18 DUTY."

19 (K) A STATEMENT IN THE FOLLOWING FORM: "NOTICE OF FORECLOSURE
20 BY ADVERTISEMENT. NOTICE IS GIVEN UNDER SECTION 3212 OF THE REVISED
21 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.3212, THAT THE
22 FOLLOWING MORTGAGE WILL BE FORECLOSED BY A SALE OF THE MORTGAGED
23 PREMISES, OR SOME PART OF THEM, AT A PUBLIC AUCTION SALE TO THE
24 HIGHEST BIDDER FOR CASH OR CASHIER'S CHECK AT THE PLACE OF HOLDING
25 THE CIRCUIT COURT IN _____ COUNTY, AT (TIME), ON (DATE). THE
26 AUCTION SALE WILL CLOSE AT (TIME). THE SALE WILL BE MADE, BUT
27 WITHOUT COVENANT OR WARRANTY, EXPRESSED OR IMPLIED, REGARDING

1 TITLE, POSSESSION, OR ENCUMBRANCES, TO PAY THE REMAINING PRINCIPAL
2 SUM OF THE NOTE OR NOTES SECURED BY THE MORTGAGE, WITH INTEREST AND
3 LATE CHARGES ON THE REMAINING PRINCIPAL SUM, AS PROVIDED IN THE
4 NOTE OR NOTES, ADVANCES, UNDER THE TERMS OF THE MORTGAGE, INTEREST
5 ON THE ADVANCES, FEES, AND CHARGES AND EXPENSES OF THE ATTORNEY,
6 FOR THE TOTAL AMOUNT, AT THE TIME OF THE INITIAL PUBLICATION OF THE
7 NOTICE OF FORECLOSURE, REASONABLY ESTIMATED TO BE SET FORTH BELOW.
8 THE AMOUNT MAY BE GREATER ON THE DAY OF THE SALE. PLACING THE
9 HIGHEST BID AT THE SALE DOES NOT AUTOMATICALLY ENTITLE THE
10 PURCHASER TO FREE AND CLEAR OWNERSHIP OF THE PROPERTY. THE
11 PURCHASER IS ENCOURAGED TO INVESTIGATE THE EXISTENCE, PRIORITY, AND
12 SIZE OF ANY OTHER OUTSTANDING LIENS THAT MAY EXIST ON THIS PROPERTY
13 BY CONTACTING THE COUNTY REGISTER OF DEEDS OFFICE OR A TITLE
14 INSURANCE COMPANY, EITHER OF WHICH MAY CHARGE A FEE FOR THIS
15 INFORMATION.".

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. 101 of the 99th Legislature is enacted into
20 law.