

HOUSE BILL No. 4472

March 8, 2005, Introduced by Reps. Baxter, Kahn, Robertson, Gosselin, Hildenbrand, Nitz, Vander Veen, Stahl, Hummel, Sheen, Wenke, Emmons and Marleau 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 brought
 2 by or against the state as a party, except for a civil infraction
 3 action, shall award to a prevailing party other than the state the
 4 costs and fees incurred by that party in connection with the civil
 5 action, if the court finds that the position of the state to the
 6 civil action was frivolous **OR IF THE STATE WAS THE ONLY APPELLANT**
 7 **IN AN APPEAL OF THE ACTION.** To find that the state's position was
 8 frivolous, the court ~~shall~~ **MUST** determine that at least 1 of the
 9 following ~~conditions has been met~~ **APPLIES:**

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

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

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

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

13 (a) That the position of the state was frivolous **OR THAT THE**
14 **STATE WAS THE ONLY APPELLANT IN AN APPEAL OF THE ACTION.**

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

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

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

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

1 (4) Subject to subsection (5), the amount of costs and fees
2 awarded under this section shall include those reasonable costs
3 actually incurred by the party and any costs allowed by law or by
4 court rule. Subject to subsection (5), the amount of fees awarded
5 under this section shall be based upon the prevailing market rate
6 for the kind and quality of the services furnished, except that an
7 attorney fee shall not be awarded at a rate of more than \$75.00 per
8 hour unless the court determines that special circumstances existed
9 justifying a higher rate or an applicable law or court rule
10 provides for the payment of a higher 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 in
15 establishing a rate; in approving, disapproving, or withdrawing
16 approval of a form; nor in its role of hearing or adjudicating a
17 case. Unless an agency had discretion to proceed, this section does
18 not apply to an agency or department acting ex rel on the
19 information and at the instigation of a nonagency or
20 nondepartmental person who has a private interest in the matter nor
21 to an agency or department required by law to commence a case upon
22 the action or request of another nonagency or nondepartmental
23 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 to
26 other nonprevailing parties ~~so as to make its liability~~ **THAT MAKING**
27 **THE AGENCY OR DEPARTMENT LIABLE** for costs and fees under this

1 section **WOULD BE** unreasonable, unjust, or unfair.