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INCREASE ALLOWABLE COSTS IN CIVIL ACTIONS

House Bill 4618 as enrolled
Public Act 226 of 1999
Second Analysis (1-5-00)

Sponsor: Rep. Rick Johnson
House Committee: Family and Civil Law
Senate Committee: Judiciary

THE APPARENT PROBLEM:

The Revised Judicature Act provides for certain amounts to be "allowed as costs in addition to other costs unless the court directs otherwise" in all civil actions or special proceedings in the circuit court. (Elsewhere in statute, districts courts and municipal courts are allowed to assess the same costs as circuit courts.) These amounts, generally interpreted as costs to be paid to the prevailing party's attorney by the losing party, include: \$20 for the proceedings before trial or for motions that result in dismissal or judgment; \$30 for the trial of the action or proceeding; and \$15 in all actions where judgment is taken by default or upon *cognovit* (that is, upon the defendant's confession). These amounts have been in law at least since the Revised Judicature Act took effect in 1963 (and possibly long before that). After 36 or more years, legislation has been introduced to increase these allowable statutory costs in civil cases.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to increase "allowable costs" in all civil actions or special proceedings in the circuit courts as follows:

-- for the trial of the action or proceeding, from the current \$30 to \$150; and

-- in actions in which a default or consent judgment is entered, from the current \$15 to \$75.

The bill would leave the allowable costs of \$15 for actions in which a "cognovit" judgment is entered but would delete that term and use instead a "confession of judgment."

The bill would take effect April 1, 2000.

MCL 600.2441

BACKGROUND INFORMATION:

A similar bill, House Bill 5044, passed the House during the 1997-98 legislative session.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency notes that the bill's fiscal impact on state and local government is indeterminate, since it is dependent on the number of cases in which the state or a local government is involved and the whether the state or local unit is the prevailing or losing party. (Floor Analysis dated 11-4-99)

ARGUMENTS:

For:

The bill would implement long overdue increases in additional statutory costs to be awarded to the prevailing party in civil actions; these costs have traditionally been understood as going toward attorney costs. Currently, the law allows as costs in addition to other costs in civil cases \$15 for default judgments and \$30 for cases that go to trial, figures that have not been changed since the Revised Judicature Act took effect in 1963. Inflation since then has made these additional allowable costs woefully out-of-date. The bill would increase the additional allowable costs in civil cases to more reasonably reflect the effect of inflation over the years, and thereby perhaps increase the likelihood that people would file relatively small suits to recover their losses to debtors. Collection attorneys have testified that these payments are commonly passed along to their plaintiff clients, lowering the cost of legal actions to recover moneys owed them.

Against:

Some people are concerned that the increase in the allowable costs associated with consent judgments will discourage people from entering into them; it will be a disincentive to reach agreement. In the past, furthermore, concerns have been raised about the

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impact of the awarding of costs on losing parties who may already be in serious financial difficulty, particularly in the case of default judgments. Some people might not be able to afford representation to respond to demands for payment or to contest legal actions.

Response:

The losing party could avoid the expense of paying additional allowable costs for a consent judgment by responding to early attempts to collect, according to lawyers for creditors. The prevailing party would have to file a lawsuit -- other attempts to collect having been to no avail -- before a consent judgement could be entered. The awarding of costs thus would be justified.

Remember, that the prevailing parties, in addition to being owed money, must go to the trouble of hiring a lawyer and initiating legal proceedings. These are costs they should not have to bear to get a debt paid. It should also be noted that judges have discretion and can decide on a case-by-case basis that the costs should not be awarded.

For:

The bill would delete the references in Section 2441 to "cognovit" judgments on the grounds the term is archaic and little used. The term "confession of judgment" would replace it.

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.