



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bill 1182 (as introduced 11-8-18)  
Sponsor: Senator Mike Shirkey  
Committee: Judiciary

Date Completed: 12-3-18

### **CONTENT**

**The bill would amend the Revised Judicature Act to do the following:**

- **Specify the amount of attorney fees a court could award to the prevailing party in a civil action.**
- **Require actual attorney fees to include fees for legal work customarily performed by an attorney, but that was delegated to and performed by an investigator, paralegal, or law clerk.**
- **Allow a court to vary an attorney fee award if, on consideration certain factors, it determined that a variation was warranted, and require the court to state the reasons for the variation on the record or in a written opinion or order.**
- **Require a motion for an award of attorney fees to be filed within 10 days after the date a judgment was entered.**
- **Specify that the bill would not apply to an action brought in small claims court, unless the action was removed from the small claims court.**

Under the bill, except as otherwise provided by law or agreed to by the parties, in a civil action, a court would have to award the prevailing party attorney fees as calculated under the bill.

If a money judgment were entered for a party in a civil action, a court would have to award attorney fees to the party based on the amount of the judgment, including any prejudgment interest awarded, as following:

If the action were contested and a trial was held:

- If the amount were \$25,000 or less, 20% of that amount.
- If the amount were more than \$25,000, \$5,000 plus 10% of the amount that exceeded \$25,000.

If the action were contested but a trial was not held:

- If the amount were \$25,000 or less, 18% of that amount.
- If the amount were \$100,000 or less, but more than \$25,000, \$4,500 plus 8.0% of the amount that exceeded \$25,000.
- If the amount were \$500,000 or less, but more than \$100,000, \$10,500 plus 6.0% of the amount that exceeded \$100,000.
- If the amount were more than \$500,000, \$34,500 plus 2.0% of the amount that exceeded \$500,000.

If the action were not contested:

- If the amount were \$25,000 or less, 10% of that amount.
- If the amount were \$100,000 or less, but more than \$25,000, \$2,500 plus 3.0% of the amount that exceeded \$25,000.
- If the amount were \$500,000 or less, but more than \$100,000, \$4,750 plus 2.0% of the amount that exceeded \$100,000.
- If the amount were more than \$500,000, \$12,750 plus 1.0% of the amount that exceeded \$500,000.

If a money judgment were not entered for the prevailing party in a civil action, a court would have to award the prevailing party 30% of the party's reasonable actual attorney fees that were necessarily incurred if a trial were held, or 20% of the party's actual attorney fees that were necessarily incurred if a trial were not held. The actual attorney fees would have to include fees for legal work customarily performed by an attorney, but that was delegated to and performed by an investigator, paralegal, or law clerk.

On entry of a default judgment, a plaintiff would be entitled to an attorney fee award calculated as described above or the plaintiff's reasonable actual attorney fees that were necessarily incurred, whichever was less. The actual fee would have to include fees for legal work customarily performed by an attorney, but that was delegated to and performed by an investigator, paralegal, or law clerk.

A court could vary an attorney fee award if, on consideration of all of the factors listed below, it determined that a variation was warranted. If the court decided to vary an award, it would have to state the reasons for the variation on the record or in a written opinion or order. The court could consider the following factors:

- The complexity of the litigation.
- The length of trial.
- The reasonableness of the hourly rates and number of hours spent.
- The reasonableness of the number of attorney's used.
- The attorney's efforts to minimize fees.
- The reasonableness of the claims and defenses pursued by each side.
- Any vexatious or bad-faith conduct.
- The relationship between the amount of work performed and the significance of the matters at stake.
- The extent to which a given fee award could be so onerous to the nonprevailing party that it would deter similarly situated litigants from the voluntary use of the courts.
- The extent to which the fees incurred by the prevailing party suggest that they were influenced by considerations apart from the litigation of the action, such as a desire to encourage claims by others against the prevailing party or its insurer.
- Other equitable factors that the court considered relevant.

A motion for an award of attorney fees would have to be filed within 10 days after the date a judgment was entered. Failure to file the motion within 10 days, or within any additional time allowed by the court, would be a waiver of the right to recover attorney fees under the bill. A motion for attorney fees in a default case would have to specify the amount of the actual fees incurred.

If damages in an action were apportioned among the parties under Sections 2925a to d, the attorney fees awarded to a prevailing party under the bill also would have to be apportioned among the parties according to their respective pro rata shares of liability. (Section 2925a to d pertain to the right of contribution, determining pro rata shares of tortfeasors (a person

who commits a tort), enforcement of contribution, and covenants not to sue or enforce judgment, respectively.)

The allowance of attorney fees by a court would not affect the obligation to pay or the right to collect fees between an attorney and a client.

The bill would not apply to an action brought in small claims court, unless the action was removed from the small claims division.

Proposed MCL 600.2443

Legislative Analyst: Stephen Jackson

**FISCAL IMPACT**

The bill would have no fiscal impact on the State or local government. Any costs awarded by the court would be incurred by civil litigants.

Fiscal Analyst: Abbey Frazier

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.