

SENATE BILL No. 1182

November 8, 2018, Introduced by Senator SHIRKEY and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2443.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2443. (1) EXCEPT AS OTHERWISE PROVIDED BY LAW OR AGREED
2 TO BY THE PARTIES, IN A CIVIL ACTION, THE COURT SHALL AWARD THE
3 PREVAILING PARTY ATTORNEY FEES AS CALCULATED UNDER THIS SECTION.

4 (2) IF A MONEY JUDGMENT IS ENTERED FOR A PARTY IN A CIVIL
5 ACTION, THE COURT SHALL AWARD ATTORNEY FEES TO THE PARTY BASED ON
6 THE AMOUNT OF THE JUDGMENT, INCLUDING ANY PREJUDGMENT INTEREST
7 AWARDED, AS FOLLOWS:

8 (A) IF THE ACTION WAS CONTESTED AND A TRIAL WAS HELD:

9 (i) IF THE AMOUNT IS \$25,000.00 OR LESS, 20% OF THE AMOUNT.

1 (ii) IF THE AMOUNT IS MORE THAN \$25,000.00, \$5,000.00 PLUS 10%
2 OF THE AMOUNT THAT EXCEEDS \$25,000.00.

3 (B) IF THE ACTION WAS CONTESTED BUT A TRIAL WAS NOT HELD:

4 (i) IF THE AMOUNT IS \$25,000.00 OR LESS, 18% OF THE AMOUNT.

5 (ii) IF THE AMOUNT IS \$100,000.00 OR LESS BUT MORE THAN
6 \$25,000.00, \$4,500.00 PLUS 8% OF THE AMOUNT THAT EXCEEDS
7 \$25,000.00.

8 (iii) IF THE AMOUNT IS \$500,000.00 OR LESS BUT MORE THAN
9 \$100,000.00, \$10,500.00 PLUS 6% OF THE AMOUNT THAT EXCEEDS
10 \$100,000.00.

11 (iv) IF THE AMOUNT IS MORE THAN \$500,000.00, \$34,500.00 PLUS
12 2% OF THE AMOUNT THAT EXCEEDS \$500,000.00.

13 (C) IF THE ACTION WAS NOT CONTESTED:

14 (i) IF THE AMOUNT IS \$25,000.00 OR LESS, 10% OF THE AMOUNT.

15 (ii) IF THE AMOUNT IS \$100,000.00 OR LESS BUT MORE THAN
16 \$25,000.00, \$2,500.00 PLUS 3% OF THE AMOUNT THAT EXCEEDS
17 \$25,000.00.

18 (iii) IF THE AMOUNT IS \$500,000.00 OR LESS BUT MORE THAN
19 \$100,000.00, \$4,750.00 PLUS 2% OF THE AMOUNT THAT EXCEEDS
20 \$100,000.00.

21 (iv) IF THE AMOUNT IS MORE THAN \$500,000.00, \$12,750.00 PLUS
22 1% OF THE AMOUNT THAT EXCEEDS \$500,000.00.

23 (3) IF A MONEY JUDGMENT IS NOT ENTERED FOR THE PREVAILING
24 PARTY IN A CIVIL ACTION, THE COURT SHALL AWARD THE PREVAILING PARTY
25 30% OF THE PREVAILING PARTY'S REASONABLE ACTUAL ATTORNEY FEES THAT
26 WERE NECESSARILY INCURRED IF A TRIAL WAS HELD OR 20% OF THE
27 PREVAILING PARTY'S ACTUAL ATTORNEY FEES THAT WERE NECESSARILY

1 INCURRED IF A TRIAL WAS NOT HELD. THE ACTUAL FEES MUST INCLUDE FEES
2 FOR LEGAL WORK CUSTOMARILY PERFORMED BY AN ATTORNEY BUT THAT WAS
3 DELEGATED TO AND PERFORMED BY AN INVESTIGATOR, PARALEGAL, OR LAW
4 CLERK.

5 (4) ON ENTRY OF JUDGMENT BY DEFAULT, A PLAINTIFF IS ENTITLED
6 TO AN ATTORNEY FEE AWARD CALCULATED UNDER SUBSECTION (2) OR THE
7 PLAINTIFF'S REASONABLE ACTUAL ATTORNEY FEES THAT WERE NECESSARILY
8 INCURRED, WHICHEVER IS LESS. THE ACTUAL FEES MUST INCLUDE FEES FOR
9 LEGAL WORK CUSTOMARILY PERFORMED BY AN ATTORNEY BUT THAT WAS
10 DELEGATED TO AND PERFORMED BY AN INVESTIGATOR, PARALEGAL, OR LAW
11 CLERK.

12 (5) A COURT MAY VARY AN ATTORNEY FEE AWARD CALCULATED UNDER
13 THIS SECTION IF, ON CONSIDERATION OF ALL OF THE FACTORS LISTED IN
14 THIS SUBSECTION, THE COURT DETERMINES THAT A VARIATION IS
15 WARRANTED. IF THE COURT DECIDES TO VARY AN AWARD, THE COURT SHALL
16 STATE THE REASONS FOR THE VARIATION ON THE RECORD OR IN A WRITTEN
17 OPINION OR ORDER. THE FACTORS THAT THE COURT MAY CONSIDER UNDER
18 THIS SUBSECTION ARE THE FOLLOWING:

19 (A) THE COMPLEXITY OF THE LITIGATION.

20 (B) THE LENGTH OF TRIAL.

21 (C) THE REASONABLENESS OF THE HOURLY RATES AND THE NUMBER OF
22 HOURS EXPENDED.

23 (D) THE REASONABLENESS OF THE NUMBER OF ATTORNEYS USED.

24 (E) THE ATTORNEY'S EFFORTS TO MINIMIZE FEES.

25 (F) THE REASONABLENESS OF THE CLAIMS AND DEFENSES PURSUED BY
26 EACH SIDE.

27 (G) ANY VEXATIOUS OR BAD-FAITH CONDUCT.

1 (H) THE RELATIONSHIP BETWEEN THE AMOUNT OF WORK PERFORMED AND
2 THE SIGNIFICANCE OF THE MATTERS AT STAKE.

3 (I) THE EXTENT TO WHICH A GIVEN FEE AWARD MAY BE SO ONEROUS TO
4 THE NONPREVAILING PARTY THAT IT WOULD DETER SIMILARLY SITUATED
5 LITIGANTS FROM THE VOLUNTARY USE OF THE COURTS.

6 (J) THE EXTENT TO WHICH THE FEES INCURRED BY THE PREVAILING
7 PARTY SUGGEST THAT THEY WERE INFLUENCED BY CONSIDERATIONS APART
8 FROM THE LITIGATION OF THIS ACTION, SUCH AS A DESIRE TO DISCOURAGE
9 CLAIMS BY OTHERS AGAINST THE PREVAILING PARTY OR ITS INSURER.

10 (K) OTHER EQUITABLE FACTORS THAT THE COURT CONSIDERS RELEVANT.

11 (6) A MOTION FOR AN AWARD OF ATTORNEY FEES UNDER THIS SECTION
12 MUST BE FILED WITHIN 10 DAYS AFTER THE DATE THE JUDGMENT IS
13 ENTERED. FAILURE TO FILE THE MOTION WITHIN 10 DAYS, OR WITHIN ANY
14 ADDITIONAL TIME ALLOWED BY THE COURT, IS A WAIVER OF THE RIGHT TO
15 RECOVER ATTORNEY FEES UNDER THIS SECTION. A MOTION FOR ATTORNEY
16 FEES IN A DEFAULT CASE MUST SPECIFY THE AMOUNT OF THE ACTUAL FEES
17 INCURRED.

18 (7) IF DAMAGES IN AN ACTION ARE APPORTIONED AMONG THE PARTIES
19 UNDER SECTIONS 2925A TO 2925D, THE ATTORNEY FEES AWARDED TO A
20 PREVAILING PARTY UNDER THIS SECTION MUST ALSO BE APPORTIONED AMONG
21 THE PARTIES ACCORDING TO THEIR RESPECTIVE PRO RATA SHARES OF
22 LIABILITY.

23 (8) THE ALLOWANCE OF ATTORNEY FEES BY A COURT UNDER THIS
24 SECTION DOES NOT AFFECT THE OBLIGATION TO PAY OR THE RIGHT TO
25 COLLECT FEES BETWEEN AN ATTORNEY AND A CLIENT.

26 (9) THIS SECTION DOES NOT APPLY TO AN ACTION BROUGHT IN THE
27 SMALL CLAIMS DIVISION OF THE DISTRICT COURT, UNLESS THE ACTION IS

1 REMOVED FROM THE SMALL CLAIMS DIVISION.