

# SENATE BILL No. 1183

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,"  
by amending sections 2445 and 2591 (MCL 600.2445 and 600.2591),  
section 2591 as added by 1986 PA 178, and by adding section 2446.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2445. (1) Costs on appeal to the circuit court, the court  
2 of appeals, or to the supreme court ~~shall~~**MAY** be awarded in the  
3 discretion of the court.

4       (2) The appellant may be awarded the costs on appeal if ~~he~~**THE**  
5 **APPELLANT** improves ~~his~~**THE APPELLANT'S** position on appeal.

6       (3) The appellee may be awarded damages for the delay and  
7 vexation caused by the appeal, to be assessed in the discretion of  
8 the court, in addition to costs on appeal, if the appellant does

1 not improve ~~his~~ **THE APPELLANT'S** position on appeal.

2 (4) Costs in the court below may be awarded to the party who  
3 ultimately prevails in the case.

4 (5) ANY COSTS AWARDED UNDER THIS SECTION MUST NOT BE  
5 DUPLICATIVE OF ATTORNEY FEES AWARDED UNDER SECTION 2446.

6 SEC. 2446. (1) IN AN APPEAL TO THE CIRCUIT COURT, THE COURT OF  
7 APPEALS, OR THE SUPREME COURT, THE COURT SHALL, ON ITS OWN  
8 INITIATIVE OR ON THE MOTION OF ANY PARTY, ASSESS ATTORNEY FEES  
9 AGAINST A PARTY IF IT DETERMINES THAT THE APPEAL OR PROCEEDINGS IN  
10 THE APPEAL BY THE PARTY WERE VEXATIOUS.

11 (2) FOR PURPOSES OF THIS SECTION:

12 (A) AN APPEAL IS VEXATIOUS IF THE APPEAL WAS TAKEN FOR  
13 PURPOSES OF HINDRANCE OR DELAY OR WITHOUT ANY REASONABLE BASIS FOR  
14 BELIEF THAT THERE WAS A MERITORIOUS ISSUE TO BE DETERMINED ON  
15 APPEAL.

16 (B) PROCEEDINGS IN AN APPEAL THAT ARE VEXATIOUS ARE THE FILING  
17 OF A PLEADING, MOTION, ARGUMENT, BRIEF, DOCUMENT, OR RECORD IN THE  
18 APPEAL THAT WAS GROSSLY LACKING IN THE REQUIREMENTS OF PROPRIETY,  
19 VIOLATED COURT RULES, OR GROSSLY DISREGARDED THE REQUIREMENTS OF A  
20 FAIR PRESENTATION OF THE ISSUES TO THE COURT.

21 (3) ATTORNEY FEES ASSESSED UNDER THIS SECTION MUST BE THE  
22 ACTUAL ATTORNEY FEES INCURRED BY THE OPPOSING PARTY BECAUSE OF THE  
23 VEXATIOUS APPEAL OR PROCEEDINGS AND MUST NOT EXCEED A REASONABLE  
24 AMOUNT.

25 Sec. 2591. (1) ~~Upon~~ **ON THE** motion of any party, if a court  
26 finds that a civil action or defense to a civil action was  
27 frivolous, the court that conducts the civil action shall award to

1 the prevailing party the costs and fees incurred by ~~that~~ **THE**  
 2 **PREVAILING** party in connection with the civil action by assessing  
 3 the costs and fees against the nonprevailing party and ~~their~~ **THE**  
 4 **NONPREVAILING PARTY'S** attorney.

5 (2) The amount of costs and fees awarded under this section  
 6 ~~shall~~ **MUST** include all reasonable costs actually incurred by the  
 7 prevailing party and any costs allowed by law or by court rule,  
 8 including court costs and reasonable attorney fees.

9 (3) As used in this section:

10 (a) "Frivolous" means that at least 1 of the following  
 11 conditions is met:

12 (i) The party's primary purpose in initiating the action or  
 13 asserting the defense was to harass, embarrass, or injure the  
 14 prevailing party.

15 (ii) The party had no reasonable basis to believe that the  
 16 facts underlying ~~that~~ **THE** party's legal position were in fact true.

17 (iii) The party's legal position was devoid of arguable legal  
 18 merit.

19 (b) "Prevailing party" means ~~a~~ **EITHER OF THE FOLLOWING, AS**  
 20 **APPLICABLE:**

21 (i) **IN AN ACTION IN WHICH A SINGLE CAUSE OF ACTION IS ALLEGED,**  
 22 **THE** party who wins on the entire record.

23 (ii) **IN AN ACTION INVOLVING SEVERAL ISSUES OR COUNTS THAT**  
 24 **STATE DIFFERENT CAUSES OF ACTION OR DIFFERENT DEFENSES, THE PARTY**  
 25 **PREVAILING ON EACH ISSUE OR COUNT AS TO THAT ISSUE OR COUNT.**

26 Enacting section 1. This amendatory act takes effect 90 days  
 27 after the date it is enacted into law.