

Act No. 60
Public Acts of 2020
Approved by the Governor
March 10, 2020
Filed with the Secretary of State
March 10, 2020
EFFECTIVE DATE: March 10, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

**Introduced by Reps. Cole, Calley, Rendon, O'Malley, Green, Allor, Hauck, Inman, VanSingel,
Whiteford, Miller, Lower, Wendzel and Mueller**

ENROLLED HOUSE BILL No. 4266

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (MCL 600.101 to 600.9947) by adding section 2979.

The People of the State of Michigan enact:

Sec. 2979. (1) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, there is a rebuttable presumption that there is no unreasonable or material increase in the burden on the property subjected to the easement if the Michigan electric cooperative can show 1 of the following:

(a) That the new or additional facility was installed above the electric space, as provided in the National Electrical Safety Code in effect on the date of installation.

(b) That the new facility replaced a previously existing facility in the same or substantially similar location on the pole or poles.

(c) That the new or additional facility was installed within the electric space or within the communications space, as provided in the National Electrical Safety Code in effect on the date of the installation.

(d) That the new or additional facility was placed underground along the same or substantially similar location of existing underground electric facilities.

(2) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, the Michigan electric cooperative is not liable unless the plaintiff establishes that 1 of the following applies to the new or additional facility installed on an existing easement:

(a) The facility was installed outside the geographic bounds of the express or prescriptive easement granted or obtained.

(b) The facility's purpose and use are expressly and specifically prohibited by the terms of the easement.

(c) The facility unreasonably or materially increases the burden on the land.

(3) In a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative, evidence of revenue realized by the Michigan electric cooperative from services using the new or additional facility is inadmissible for purposes of proving damages. Any damages in a trespass, unjust enrichment, or any other action arising from or relating to an easement held by a Michigan electric cooperative and brought against the holding Michigan electric cooperative must be determined by actual diminution of value of the property subject to the easement and directly related to the installation of the additional facility. However, damages awarded must not exceed \$3.00 per linear foot.

(4) As used in this section:

(a) "Facility" means new or expanded broadband fiber infrastructure used, at least partially, for electric service purposes.

(b) "Michigan electric cooperative" includes entities engaged in the transmission or distribution of electric service and that are either of the following:

(i) An electric cooperative headquartered in this state organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, serving primarily members of the cooperative electric utility.

(ii) Another cooperative corporation headquartered in this state.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5266 of the 100th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

Compiler's note: House Bill No. 5266, referred to in enacting section 1, was filed with the Secretary of State March 10, 2020, and became 2020 PA 61, Imd. Eff. Mar. 10, 2020.