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INCREASE ALLOWABLE COSTS IN CIVIL ACTIONS

House Bill 5044 (Substitute H-1) First Analysis (6-2-98)

Sponsor: Rep. Kirk Profit
Committee: Judiciary

THE APPARENT PROBLEM:

Currently, in civil actions or special proceedings in the circuit court, such as proceedings to collect bad debts (whether heard as an original action or an appeal), the Revised Judicature Act sets the following amounts to be allowed as "costs in addition to other costs" -- generally interpreted as referring to costs ordered by the court to be paid to the prevailing party's attorney -- unless the court otherwise directs: \$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). 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" (i.e. statutory attorney fees) in all civil actions or special proceedings in the circuit or district courts as follows: (a) for the trial of the action or proceeding, increase from the current \$30 to \$200, and (b) in actions in which a default or *cognovit* judgment was entered, increase from the current \$15 to \$100. The current \$20 fee for the proceedings before trial or for motions that result in dismissal or judgment would not be changed.

MCL 600.2441

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would implement long overdue increases in additional statutory costs allowed to the prevailing party in civil actions that traditionally have been

interpreted as going toward attorney costs. Currently, the law allows as costs in addition to other costs in civil cases \$15 in default and \$30 for cases that go to trial, figures that have not been changed since the Revised Judicature Act took effect in 1963. Inflation alone over the past 35 years has made these additional allowable costs woefully out-of-date. The bill would increase these 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 these often relatively small suits to recover their losses to debtors.

Against:

Increasing the statutory attorney fees that prevailing creditors could be awarded in cases involving default judgments against debtors would place an additional financial burden on defendants who may already be experiencing considerable financial difficulties. Poor people are at a disadvantage in these cases, since they are unlikely to be able to afford representation by an attorney while their creditors are more likely to be able to afford attorneys.

Response:

While the amounts involved in many "collections" lawsuits are relatively small, they can be important losses to the people who are left holding bad debts. Since it can cost between \$50 and \$100 to even pursue a lawsuit to recover a relatively small amount -- say, \$200 -- the bill could benefit small businesspeople, and by extension entire neighborhoods that benefit from the presence of such businesses, in economically depressed areas.

Against:

The bill would address the issue of statutory attorney fees in the circuit and district courts, but would not affect the attorney fees allowed in the state's existing municipal courts, which are governed by the Home Rule City Act. For parity's sake, perhaps a similar fee

increase should be allowed in municipal courts as well.

POSITIONS:

The Michigan Creditors Bar Association supports the bill. (6-1-98)

A representative of the Michigan Association of Collections Agencies indicated support for the bill. (5-27-98)

Analyst: S. Ekstrom

■ 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.