

HOUSE BILL No. 5036

June 3, 2009, Introduced by Reps. Ebli, Melton, LeBlanc and Valentine 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 2977.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2977. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ON MOTION
2 OF A DEFENDANT, A COURT SHALL DISMISS A CIVIL ACTION AGAINST THE
3 DEFENDANT IF BOTH OF THE FOLLOWING APPLY:

4 (A) THE ACTION IS BASED ON THE INDIVIDUAL'S COMMUNICATION WITH
5 A GOVERNMENTAL UNIT, A PUBLIC OFFICIAL, OR ANOTHER PERSON IN
6 FURTHERANCE OF THE INDIVIDUAL'S CONSTITUTIONAL RIGHT TO PETITION,
7 INCLUDING SEEKING RELIEF, INFLUENCING ACTION, INFORMING, OR
8 OTHERWISE PARTICIPATING IN THE PROCESS OF GOVERNMENT, AND THE
9 COMMUNICATION WAS AIMED AT PROCURING A GOVERNMENTAL OR ELECTORAL

1 ACTION, RESULT, OR OUTCOME.

2 (B) THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT
3 THE ACTION WAS INITIATED WITH THE PRIMARY PURPOSE OF HARASSING OR
4 INTIMIDATING THE INDIVIDUAL OR OTHERWISE HINDERING THE INDIVIDUAL'S
5 PARTICIPATION IN THE PROCESS OF GOVERNMENT.

6 (2) AN ACTION SHALL NOT BE DISMISSED UNDER THIS SECTION IF
7 EITHER OF THE FOLLOWING APPLIES:

8 (A) THE INDIVIDUAL MADE THE COMMUNICATION THAT GAVE RISE TO
9 THE ACTION WITH KNOWLEDGE THAT IT WAS FALSE OR WITH RECKLESS
10 DISREGARD FOR WHETHER THE COMMUNICATION WAS FALSE.

11 (B) THE COMMUNICATION THAT GAVE RISE TO THE ACTION INCLUDED
12 INFORMATION THAT THE INDIVIDUAL WAS PROHIBITED BY LAW FROM
13 DISSEMINATING.

14 (3) THE COURT SHALL AWARD ALL OF THE FOLLOWING TO A MOVING
15 DEFENDANT IN AN ACTION THAT IS DISMISSED UNDER THIS SECTION:

16 (A) THREE TIMES THE AMOUNT OF DAMAGES SUSTAINED BY THE
17 DEFENDANT AS A RESULT OF THE ACTION.

18 (B) COURT COSTS OF THE ACTION.

19 (C) REASONABLE ATTORNEY FEES AND OTHER EXPENSES INCURRED IN
20 DEFENDING AGAINST THE ACTION.

21 (D) IF THE AMOUNTS AWARDED UNDER SUBDIVISIONS (A) TO (C) TOTAL
22 LESS THAN \$5,000.00, THE DIFFERENCE BETWEEN THE TOTAL AND
23 \$5,000.00.

24 (E) ADDITIONAL SANCTIONS AGAINST THE PLAINTIFF AND THE
25 ATTORNEY OR LAW FIRM REPRESENTING THE PLAINTIFF AS THE COURT
26 DETERMINES ARE SUFFICIENT TO DETER THE PLAINTIFF AND THE ATTORNEY
27 OR LAW FIRM FROM FILING SIMILAR ACTIONS DESCRIBED IN SUBSECTION

1 (1).

2 (4) A DEFENDANT IN AN ACTION THAT IS DISMISSED UNDER THIS
3 SECTION MAY BRING A SEPARATE ACTION, CROSS-CLAIM, OR COUNTERCLAIM
4 TO RECOVER ANY ITEM DESCRIBED IN SUBSECTION (3). HOWEVER, THE
5 DEFENDANT IS NOT ENTITLED TO A DOUBLE RECOVERY OF THE SAME ITEM.

6 (5) AS USED IN THIS SECTION:

7 (A) "COMMUNICATION" MEANS AN ORAL STATEMENT, WRITING,
8 ELECTRONIC TRANSMISSION, PHOTOGRAPH, DEPICTION, PEACEFUL
9 DEMONSTRATION, OR OTHER EXPRESSION.

10 (B) "GOVERNMENTAL UNIT" MEANS THIS STATE, A MUNICIPALITY, A
11 POLITICAL SUBDIVISION OR AGENCY OF THIS STATE, THE FEDERAL
12 GOVERNMENT, OR A PUBLIC AUTHORITY, BOARD, OR COMMISSION.

13 (C) "PERSON" MEANS AN INDIVIDUAL, A CORPORATION, A
14 PARTNERSHIP, A LIMITED LIABILITY COMPANY, AN ASSOCIATION, AN
15 ORGANIZATION, 2 OR MORE PERSONS WHO HAVE A JOINT OR COMMON
16 INTEREST, OR ANOTHER LEGAL ENTITY.

17 (D) "PUBLIC OFFICIAL" MEANS A PERSON WHO IS ELECTED OR
18 APPOINTED TO ANY OF THE FOLLOWING:

19 (i) AN OFFICE ESTABLISHED BY THE STATE CONSTITUTION OF 1963.

20 (ii) A PUBLIC OFFICE OF A CITY, VILLAGE, TOWNSHIP, OR COUNTY IN
21 THIS STATE.

22 (iii) A DEPARTMENT, BOARD, AGENCY, INSTITUTION, COMMISSION,
23 AUTHORITY, DIVISION, COUNCIL, COLLEGE, UNIVERSITY, SCHOOL DISTRICT,
24 INTERMEDIATE SCHOOL DISTRICT, SPECIAL DISTRICT, OR OTHER PUBLIC
25 ENTITY OF THIS STATE OR A CITY, VILLAGE, TOWNSHIP, OR COUNTY IN
26 THIS STATE.