

# HOUSE BILL No. 5644

March 9, 1992, Introduced by Reps. Perry Bullard, Dresch, Yokich, Gubow, Jondahl, Power, Joe Young, Jr., Byrum, Anthony, Pitoniak, Hertel, Baade, Saunders, Kosteva, Murphy, Clack, Gire, Berman and Wozniak and referred to the Committee on Judiciary.

A bill to prohibit the concealment of public hazards; to prohibit certain contracts and agreements arising out of litigation; and to provide for remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "sunshine in litigation act".

3       Sec. 2. This act applies to civil actions commenced in any  
4 court of this state on or after January 1, 1993, in which the  
5 pleadings, affidavits, and other proofs show that there is a gen-  
6 uine issue of material fact as to whether the case involves a  
7 public hazard.

8       Sec. 3. As used in this act, "public hazard" means a  
9 device, instrument, person, procedure, product, or other  
10 instrumentality that has caused personal injury and is likely to  
11 cause personal injury.

1       Sec. 4. Except as provided in this act, the court shall not  
2 enter an order that does either of the following:

3       (a) Prohibits disclosure of information concerning a public  
4 hazard.

5       (b) Prohibits disclosure of information that may be useful  
6 to members of the public in protecting themselves from injury  
7 that may result from a public hazard.

8       Sec. 5. Except as provided in this act, any portion of an  
9 agreement to settle a claim or lawsuit that prohibits disclosure  
10 of information concerning a public hazard, or of information that  
11 may be useful to members of the public in protecting themselves  
12 from injury that may result from a public hazard, is void.

13       Sec. 6. The court may enter an order prohibiting disclosure  
14 of information covered by this act only if the information con-  
15 stitutes 1 or more of the following:

16       (a) Information of a personal nature where public disclosure  
17 would invade individual privacy.

18       (b) Trade secrets where public disclosure would substan-  
19 tially impair the competitive position of the party disclosing  
20 the information.

21       (c) Information subject to a privilege recognized by statute  
22 or court rule.

23       Sec. 7. A party to the action may file a written motion for  
24 an order to prohibit disclosure of information subject to this  
25 act. Upon the filing of such a motion, the court shall do the  
26 following:

1 (a) Provide any interested person the opportunity to be  
2 heard concerning the granting of the motion.

3 (b) Examine the information in camera.

4 Sec. 8. The court may grant a motion to prohibit disclosure  
5 of information only if the motion identifies the specific inter-  
6 est to be protected and the moving party establishes, by clear  
7 and convincing evidence, each of the following:

8 (a) A substantial probability that granting the motion will  
9 protect the specific interest asserted.

10 (b) That there is no less restrictive means, including an  
11 order covering less information, to adequately and effectively  
12 protect the specific interest asserted.

13 (c) That the damage caused to the specific interest asserted  
14 by disclosure outweighs the public interest in disclosure.

15 Sec. 9. If the court grants a motion to prohibit disclosure  
16 of information, the court shall enter on the public record each  
17 of the following:

18 (a) A description of the information subject to the order.

19 (b) Its findings as to each of the factors set forth in  
20 section 8.

21 Sec. 10. Any person may file a motion to set aside an order  
22 prohibiting disclosure of information subject to this act, or may  
23 file an objection to entry of a proposed order. Upon the filing  
24 of a motion to set aside, the court shall give notice to the par-  
25 ties to the action and treat the motion in the same manner as a  
26 motion to prohibit disclosure. If the court denies a motion to  
27 set aside or enters an order prohibiting disclosure after

1 objection is filed, the moving or objecting person may file an  
2 application for leave to appeal in the same manner as a party to  
3 the action.

4       Sec. 11. In any action brought in reliance upon an order  
5 prohibiting disclosure of information subject to this act, a  
6 person involved in the gathering or preparation of news for  
7 broadcast, cablecast, or publication shall not be required to  
8 disclose the identity of an informant, any unpublished informa-  
9 tion obtained from an informant, or any unpublished matter or  
10 documentation, in whatever manner recorded, relating to a commu-  
11 nication with an informant.