



HOUSE BILL No. 5351

February 17, 1994, Introduced by Rep Rivers and referred to the Committee on House Oversight and Ethics

A bill to prohibit the concealment of certain facts in a civil action and to prohibit certain orders and agreements arising out of litigation

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, 1995, in which the
5 pleadings, affidavits, and other proofs show that there is a gen-
6 uine issue of material fact as to whether a device, instrument,
7 person, procedure, or product is any of the following

8 (a) The cause of a personal injury

9 (b) Likely to cause personal injury

10 (c) The cause of the pollution, impairment, or destruction
11 of air, water, or other natural resource

1 (d) Likely to cause the pollution, impairment, or
2 destruction of air, water, or other natural resource

3 Sec 3 Except as provided in this act, the court shall not
4 enter an order that prohibits disclosure of either of the
5 following

6 (a) Information concerning a question or issue described in
7 section 2

8 (b) Information concerning the identity of a defendant or
9 the terms of a settlement agreement relating to a question or
10 issue described in section 2

11 Sec 4 Except as provided in this act, any portion of an
12 agreement to settle a claim or lawsuit that prohibits disclosure
13 of information described in section 3 is void

14 Sec 5 Except as otherwise provided in section 6, the
15 court may enter an order prohibiting disclosure of information
16 covered by this act only if the information constitutes 1 or more
17 of the following

18 (a) Information of a personal nature, the public disclosure
19 of which would invade individual privacy

20 (b) A trade secret, the public disclosure of which would
21 substantially impair the competitive position of a party who in
22 good faith disclosed the information in the course of a civil
23 action

24 (c) Information subject to a privilege recognized by statute
25 or court rule

26 Sec 6 (1) A party to a civil action may file a written
27 motion for an order to prohibit disclosure of information subject

1 to this act Upon the filing of such a motion, the court shall
2 do the following

3 (a) Provide any interested person the opportunity to be
4 heard concerning the granting of the motion

5 (b) Examine the information in camera

6 (2) The court may grant a motion described in subsection (1)
7 only if the moving party identifies the specific interest to be
8 protected, and establishes each of the following by clear and
9 convincing evidence

10 (a) A substantial probability that an order prohibiting dis-
11 closure of the information will protect the specific interest
12 asserted

13 (b) That a less restrictive means of protecting the asserted
14 specific interest, including an order prohibiting disclosure of
15 only a portion of the information, will not provide adequate and
16 effective protection

17 (c) That the damage caused to the specific interest asserted
18 by disclosure would outweigh the public interest in disclosure

19 Sec 7 If the court grants a motion to prohibit disclosure
20 of information pursuant to section 6, the court shall enter on
21 the public record each of the following

22 (a) A description of the information that does not reveal
23 the protected information

24 (b) The court's findings as to each of the factors set forth
25 in section 6(2)

26 Sec 8 Any person may file a motion to set aside an order
27 prohibiting disclosure of information subject to this act or may

1 file an objection to entry of a proposed order Upon the filing
2 of a motion to set aside the order, the court shall give notice
3 to the parties to the action and treat the motion in the same
4 manner as a motion to prohibit disclosure If the court denies a
5 motion to set aside or enters an order prohibiting disclosure
6 after objection is filed, the moving or objecting person may file
7 an application for leave to appeal in the same manner as a party
8 to the action

9 Sec 9 In an action or proceeding challenging an order
10 prohibiting disclosure of information subject to this act, a
11 person involved in the gathering or preparation of information
12 for broadcast, cablecast, or publication shall not be required to
13 disclose the identity of an informant, any unpublished informa-
14 tion obtained from an informant, or any unpublished matter or
15 documentation, in whatever manner recorded, relating to a commu-
16 nication with an informant

17 Sec 10 This act does not limit or preclude any right
18 available under the freedom of information act, Act No 442 of
19 the Public Acts of 1976, being sections 15 231 to 15 246 of the
20 Michigan Compiled Laws