



# HOUSE BILL No. 5520

January 18, 1996, Introduced by Reps. Pitoniak, Gubow, Scott, Baird, Cherry, Kaza, Anthony, Gire and DeMars and referred to the Committee on Judiciary and Civil Rights.

A bill to amend Act No. 236 of the Public Acts of 1961,  
entitled as amended  
"Revised judicature act of 1961,"  
as amended, being sections 600.101 to 600.9947 of the Michigan  
Compiled Laws, by adding section 2962.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 236 of the Public Acts of 1961, as  
2 amended, being sections 600.101 to 600.9947 of the Michigan  
3 Compiled Laws, is amended by adding section 2962 to read as  
4 follows:

5 SEC. 2962. (1) IN AN ACTION INVOLVING PUBLIC PETITION AND  
6 PARTICIPATION, IN WHICH THE TRUTH OR FALSITY OF A COMMUNICATION  
7 IS MATERIAL TO THE CAUSE OF ACTION AT ISSUE, DAMAGES SHALL ONLY  
8 BE RECOVERED IF THE PLAINTIFF, IN ADDITION TO ALL OTHER NECESSARY  
9 ELEMENTS, ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT ANY

1 COMMUNICATION THAT GIVES RISE TO THE ACTION WAS MADE WITH  
2 KNOWLEDGE OF ITS FALSITY OR WITH RECKLESS DISREGARD OF WHETHER IT  
3 WAS FALSE.

4 (2) A DEFENDANT IN AN ACTION INVOLVING PUBLIC PETITION AND  
5 PARTICIPATION MAY MAINTAIN AN ACTION, CLAIM, CROSS-CLAIM, OR  
6 COUNTERCLAIM TO RECOVER DAMAGES FROM A PERSON WHO COMMENCED OR  
7 CONTINUED THE ACTION AS FOLLOWS:

8 (A) COSTS AND ATTORNEY FEES MAY BE RECOVERED IF THE  
9 DEFENDANT DEMONSTRATES BY A PREPONDERANCE OF THE EVIDENCE THAT  
10 THE DEFENDANT'S INVOLVEMENT IN PUBLIC PETITION AND PARTICIPATION  
11 WAS A SUBSTANTIAL FACTOR IN CAUSING THE COMMENCEMENT OR CONTINUA-  
12 TION OF THE ACTION.

13 (B) EXEMPLARY DAMAGES MAY BE RECOVERED IN ADDITION TO THE  
14 REMEDIES PROVIDED IN SUBDIVISION (A), IF THE DEFENDANT DEMON-  
15 STRATES BY A PREPONDERANCE OF THE EVIDENCE THAT THE ACTION  
16 INVOLVING PUBLIC PETITION AND PARTICIPATION WAS COMMENCED OR CON-  
17 TINUED TO INTENTIONALLY, RECKLESSLY, OR WILLFULLY HARASS, INTIMI-  
18 DATE, PUNISH, OR OTHERWISE MALICIOUSLY INHIBIT THE FREE EXERCISE  
19 OF SPEECH, PETITION, OR ASSOCIATION RIGHTS.

20 (3) THE RIGHT TO BRING AN ACTION UNDER SUBSECTION (2) CAN BE  
21 WAIVED ONLY IF IT IS WAIVED SPECIFICALLY.

22 (4) NOTHING IN THIS SECTION DOES EITHER OF THE FOLLOWING:

23 (A) AFFECTS OR PRECLUDES THE RIGHT OF A PARTY TO A RECOVERY  
24 OTHERWISE AUTHORIZED BY COMMON LAW, STATUTE, OR RULE.

25 (B) LIMITS A CONSTITUTIONAL, STATUTORY, OR COMMON LAW PRO-  
26 TECTION OF A DEFENDANT TO AN ACTION INVOLVING PUBLIC PETITION AND  
27 PARTICIPATION.

(5) AS USED IN THIS SECTION:

(A) "ACTION INVOLVING PUBLIC PETITION AND PARTICIPATION"

MEANS AN ACTION, CLAIM, CROSS-CLAIM, OR COUNTERCLAIM FOR DAMAGES THAT IS BROUGHT BY A PUBLIC APPLICANT OR PERMITTEE, AND IS MATERIALLY RELATED TO EFFORTS OF THE DEFENDANT TO REPORT ON, COMMENT ON, RULE ON, CHALLENGE, OR OPPOSE THE APPLICATION OR PERMISSION.

(B) "COMMUNICATION" MEANS A STATEMENT, CLAIM, ALLEGATION IN A PROCEEDING, DECISION, PROTEST, WRITING, ARGUMENT, CONTENTION, OR OTHER EXPRESSION.

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

(D) "PUBLIC APPLICANT OR PERMITTEE" MEANS A PERSON WHO HAS APPLIED FOR OR OBTAINED A PERMIT, ZONING CHANGE, LEASE, LICENSE, CERTIFICATE, OR OTHER ENTITLEMENT FOR USE OR PERMISSION TO ACT FROM A GOVERNMENTAL UNIT, OR A PERSON WITH AN INTEREST, CONNECTION, OR AFFILIATION WITH THE PERSON THAT IS MATERIALLY RELATED TO THE APPLICATION OR PERMISSION.