

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 528

(Senator Kelley, *et al.*)

Judicial Proceedings

Courts - Concealment of Public Hazards (Sunshine in Litigation Act)

This bill prohibits a court from entering an order or a judgment that conceals a public hazard, information concerning a public hazard, or information that may be useful to members of the public in protecting themselves from injury that may result from a public hazard.

The bill also confers standing on persons substantially affected by a public hazard to contest an order, a judgment, an agreement, or a contract that violates the bill's provisions, or bring an action for declaratory judgment.

“Public hazard” means any device, instrument, person, procedure, or product or a condition of a device, an instrument, a person, a procedure, or a product that has caused or has the potential to cause injury.

Fiscal Summary

State Effect: The bill does not materially affect State expenditures, as discussed below.

Local Effect: Assuming that the bill does not generate a substantial increase in circuit court filings, the bill does not materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: Any provision of an agreement or a contract that conceals a public hazard, information concerning a public hazard, or information that may be useful to members of

the public in protecting themselves from injury that may result from a public hazard, is contrary to public policy and unenforceable.

A person that is substantially affected by a public hazard, including a representative of the news media, (1) has standing to contest an order, a judgment, an agreement, or a contract that violates the bill's provisions and (2) may contest an order, a judgment, an agreement, or a contract that violates the bill's provisions in the court that entered the order or judgment or bring an action for declaratory judgment under § 3-401 of the Courts and Judicial Proceedings Article.

On motion by a person seeking to protect disputed information in an action under the bill, the court must review the disputed action *in camera* (in chambers). If, after review, the court determines that the contested information or parts of the contested information concern a public hazard or may be useful to members of the public in protecting themselves from injury that may result from a public hazard, the court must authorize disclosure of only that information directly related to the public hazard.

A trade secret that is not a public hazard must be protected as specified under § 11-205 of the Commercial Law Article.

The bill incorporates the definition of "trade secret" under § 11-1201 of the Commercial Law Article.

Current Law: "Standing" typically refers to an individual's capacity to participate in a lawsuit. In order to demonstrate standing, an individual usually has to demonstrate that he/she experienced an adverse effect from the law or action in question, which will continue unless the court grants relief.

Section 11-1201 of the Commercial Law Article defines a "trade secret" as information, including a formula, pattern, compilation, program, device, method, technique, or process that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In an action under the Maryland Uniform Trade Secrets Act, a court must preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding *in-camera* hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Background: Sunshine in Litigation legislation became popular in the 1990s amidst increased concern over the use of protective orders or confidentiality agreements to limit access to information and documents produced during discovery in product liability actions. In response to confidential settlements reached by General Motors concerning faulty ignition switches, Sunshine in Litigation legislation was introduced in the U.S. Congress in April and May 2014. Similar legislation was introduced in 2015 and had been introduced during previous years, though none have passed.

Multiple states, including Florida, have Sunshine in Litigation laws.

State Fiscal Effect: Given the types of actions to which the bill is likely to apply, it is unlikely that the bill materially affects District Court caseloads.

In general, civil cases in which the amount claimed does not exceed \$30,000 – excluding interest, costs, and attorney’s fees – belong in District Court, and cases involving more than \$30,000 belong in circuit court.

Plaintiffs may elect to file cases involving between \$5,000 and \$30,000 in a circuit court. Cases involving up to \$5,000 *must* be filed in the District Court, and cases involving more than \$30,000 *must* be filed in circuit court. However, if the amount in controversy exceeds \$15,000, any party to the case has the right to demand a jury trial, in which case the matter is filed in or transferred to circuit court. Jury trials, civil and criminal, always take place in circuit court.

Local Fiscal Effect: Assuming that the bill does not generate a significant number of circuit court filings, the bill does not materially impact local finances.

The bill does not define “substantially affected.” However, this analysis assumes that individuals who do not have a significant personal or professional interest in a particular matter are unlikely to take the time or go through the expense of filing motions in court.

The Judiciary advises that the expanded standing granted under the bill is likely to have a fiscal and/or operational impact on the Judiciary. Any increase in filings impacts general court operations and could result in an increase in court time. Additionally, motions to review the challenges *in camera* could impact the amount of chamber time required of individual judges. However, the Judiciary is unable to project a precise impact at this time due to a potentially unlimited class of individuals with standing to bring challenges under the bill.

Additional Information

Prior Introductions: HB 1460 of 2016 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 709, received a hearing in the Senate Judicial Proceedings Committee but was subsequently withdrawn.

Cross File: HB 222 (Delegate Morales, *et al.* – Judiciary), the designated cross file, is not identical, although it is substantially similar.

Information Source(s): Judiciary (Administrative Office of the Courts); congress.gov; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510