

HOUSE BILL 1611

D3

8lr1889

By: **Delegates Morales, Anderson, Dumais, J. Lewis, A. Miller, Moon, Proctor, Sanchez, Sydnor, Waldstreicher, and M. Washington**

Introduced and read first time: February 9, 2018

Assigned to: Judiciary and Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Concealment of Public Hazard and Sexual Harassment**
3 **(Sunshine in Litigation Act)**

4 FOR the purpose of prohibiting a court from entering certain orders or judgments relating
5 to the concealment of public hazards under certain circumstances; providing that
6 certain confidentiality provisions are against public policy and unenforceable under
7 certain circumstances; authorizing certain persons to contest an order, a judgment,
8 an agreement, or a contract under certain circumstances; authorizing certain
9 persons to file an action for declaratory judgment under certain circumstances;
10 requiring a court to review certain information in camera under certain
11 circumstances; requiring a court to allow the disclosure of certain confidential
12 information under certain circumstances; clarifying that a trade secret is protected
13 information under certain circumstances; prohibiting a court from entering an order
14 or a judgment that conceals sexual harassment except under certain circumstances;
15 authorizing a court to enter an order or a judgment that conceals sexual harassment
16 under certain circumstances; defining certain terms; and generally relating to the
17 concealment of public hazards and sexual harassment.

18 BY repealing and reenacting, without amendments,
19 Article – Commercial Law
20 Section 11–1201(e) and 11–1205
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2017 Supplement)

23 BY adding to
24 Article – Courts and Judicial Proceedings
25 Section 6–412 and 6–413
26 Annotated Code of Maryland
27 (2013 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Commercial Law**

4 11–1201.

5 (e) “Trade secret” means information, including a formula, pattern, compilation,
6 program, device, method, technique, or process, that:

7 (1) Derives independent economic value, actual or potential, from not being
8 generally known to, and not being readily ascertainable by proper means by, other persons
9 who can obtain economic value from its disclosure or use; and

10 (2) Is the subject of efforts that are reasonable under the circumstances to
11 maintain its secrecy.

12 11–1205.

13 In an action under this subtitle, a court shall preserve the secrecy of an alleged trade
14 secret by reasonable means, which may include granting protective orders in connection
15 with discovery proceedings, holding in-camera hearings, sealing the records of the action,
16 and ordering any person involved in the litigation not to disclose an alleged trade secret
17 without prior court approval.

18 **Article – Courts and Judicial Proceedings**

19 **6–412.**

20 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (2) “PUBLIC HAZARD” MEANS ANY DEVICE, INSTRUMENT, PERSON,
23 PROCEDURE, OR PRODUCT, OR A CONDITION OF A DEVICE, AN INSTRUMENT, A
24 PERSON, A PROCEDURE, OR A PRODUCT THAT HAS CAUSED OR HAS THE POTENTIAL
25 TO CAUSE INJURY.

26 (3) “TRADE SECRET” HAS THE MEANING STATED IN § 11–1201 OF THE
27 COMMERCIAL LAW ARTICLE.

28 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY NOT
29 ENTER AN ORDER OR A JUDGMENT THAT CONCEALS A PUBLIC HAZARD,
30 INFORMATION CONCERNING A PUBLIC HAZARD, OR INFORMATION THAT MAY BE
31 USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES FROM INJURY
32 THAT MAY RESULT FROM A PUBLIC HAZARD.

1 (C) ANY PROVISION OF AN AGREEMENT OR A CONTRACT THAT CONCEALS A
2 PUBLIC HAZARD, INFORMATION CONCERNING A PUBLIC HAZARD, OR INFORMATION
3 THAT MAY BE USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES
4 FROM INJURY THAT MAY RESULT FROM A PUBLIC HAZARD IS CONTRARY TO PUBLIC
5 POLICY AND UNENFORCEABLE.

6 (D) A PERSON THAT IS SUBSTANTIALLY AFFECTED BY A PUBLIC HAZARD,
7 INCLUDING A REPRESENTATIVE OF THE NEWS MEDIA:

8 (1) HAS STANDING TO CONTEST AN ORDER, A JUDGMENT, AN
9 AGREEMENT, OR A CONTRACT THAT VIOLATES THIS SECTION; AND

10 (2) MAY CONTEST AN ORDER, A JUDGMENT, AN AGREEMENT, OR A
11 CONTRACT THAT VIOLATES THIS SECTION IN THE COURT THAT ENTERED THE ORDER
12 OR JUDGMENT OR BRING AN ACTION FOR DECLARATORY JUDGMENT UNDER § 3-401
13 OF THIS ARTICLE.

14 (E) (1) ON MOTION BY A PERSON SEEKING TO PROTECT DISPUTED
15 INFORMATION IN AN ACTION UNDER THIS SECTION, THE COURT SHALL REVIEW THE
16 DISPUTED INFORMATION IN CAMERA.

17 (2) AFTER REVIEW, IF THE COURT DETERMINES THAT THE
18 CONTESTED INFORMATION OR PARTS OF THE CONTESTED INFORMATION CONCERN
19 A PUBLIC HAZARD OR MAY BE USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING
20 THEMSELVES FROM INJURY THAT MAY RESULT FROM A PUBLIC HAZARD, THE COURT
21 SHALL AUTHORIZE DISCLOSURE ONLY OF THAT INFORMATION DIRECTLY RELATED
22 TO THE PUBLIC HAZARD.

23 (3) A TRADE SECRET THAT IS NOT A PUBLIC HAZARD SHALL BE
24 PROTECTED AS PROVIDED UNDER § 11-1205 OF THE COMMERCIAL LAW ARTICLE.

25 6-413.

26 (A) IN THIS SECTION, "SEXUAL HARASSMENT" MEANS ANY UNWELCOME
27 SEXUAL ADVANCE OR REQUEST FOR SEXUAL FAVORS OR OTHER UNWELCOME
28 VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE IF:

29 (1) SUBMISSION TO OR REJECTION OF THE CONDUCT BY AN
30 INDIVIDUAL IS, EITHER EXPLICITLY OR IMPLICITLY:

31 (I) MADE A TERM OR CONDITION OF THE INDIVIDUAL'S
32 EMPLOYMENT, THE EVALUATION OF THE INDIVIDUAL'S ACADEMIC WORK, OR THE

1 INDIVIDUAL'S PARTICIPATION IN ANY ASPECT OF A PROGRAM OR AN ACTIVITY; OR

2 (ii) USED AS THE BASIS FOR EMPLOYMENT-, ACADEMICS-, OR
3 PROGRAM OR ACTIVITY PARTICIPATION-RELATED DECISIONS AFFECTING THE
4 INDIVIDUAL; OR

5 (2) THE CONDUCT IS SUFFICIENTLY SEVERE OR PERVASIVE THAT IT
6 CREATES AN INTIMIDATING, HOSTILE, HUMILIATING, DEMEANING, OR SEXUALLY
7 OFFENSIVE WORKING, ACADEMIC, RESIDENTIAL, OR SOCIAL ENVIRONMENT AND
8 HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH THE WORK
9 OR ACADEMIC PERFORMANCE OF AN INDIVIDUAL.

10 (B) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A COURT
11 MAY NOT ENTER AN ORDER OR A JUDGMENT THAT CONCEALS SEXUAL HARASSMENT.

12 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, ANY
13 PROVISION OF AN AGREEMENT OR A CONTRACT THAT CONCEALS SEXUAL
14 HARASSMENT OR INFORMATION CONCERNING SEXUAL HARASSMENT IS CONTRARY
15 TO PUBLIC POLICY AND UNENFORCEABLE.

16 (D) ON MOTION OF THE PARTY ALLEGING SEXUAL HARASSMENT, A COURT
17 MAY ENTER AN ORDER OR A JUDGMENT THAT CONCEALS SEXUAL HARASSMENT IF
18 THE COURT FINDS THAT THE MOTION WAS NOT MADE AS THE RESULT OF DECEPTION
19 BY, THREAT BY, OR UNDUE INFLUENCE OF THE OPPOSING PARTY.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2018.