

SENATE BILL 709

D3

6lr2688
CF 6lr2419

By: **Senators Ramirez, Gladden, Lee, and Muse**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Concealment of Public Hazards**
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; defining certain terms; and generally
14 relating to the concealment of public hazards.

15 BY repealing and reenacting, without amendments,
16 Article – Commercial Law
17 Section 11–1201(e) and 11–1205
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2015 Supplement)

20 BY adding to
21 Article – Courts and Judicial Proceedings
22 Section 6–412
23 Annotated Code of Maryland
24 (2013 Replacement Volume and 2015 Supplement)

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

27 **Article – Commercial Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-1201.

2 (e) "Trade secret" means information, including a formula, pattern, compilation,
3 program, device, method, technique, or process, that:

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

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

9 11-1205.

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

15 **Article – Courts and Judicial Proceedings**

16 **6-412.**

17 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
18 **INDICATED.**

19 (2) **"PUBLIC HAZARD" MEANS ANY DEVICE, INSTRUMENT, PERSON,**
20 **PROCEDURE, OR PRODUCT, OR A CONDITION OF A DEVICE, AN INSTRUMENT, A**
21 **PERSON, A PROCEDURE, OR A PRODUCT THAT HAS CAUSED OR HAS THE POTENTIAL**
22 **TO CAUSE INJURY.**

23 (3) **"TRADE SECRET" HAS THE MEANING STATED IN § 11-1201 OF THE**
24 **COMMERCIAL LAW ARTICLE.**

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

30 (C) **ANY PROVISION OF AN AGREEMENT OR A CONTRACT THAT CONCEALS A**
31 **PUBLIC HAZARD, INFORMATION CONCERNING A PUBLIC HAZARD, OR INFORMATION**
32 **THAT MAY BE USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES**

1 FROM INJURY THAT MAY RESULT FROM A PUBLIC HAZARD IS CONTRARY TO PUBLIC
2 POLICY AND UNENFORCEABLE.

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

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

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2016.