

SENATE BILL 528

D3
SB 709/16 – JPR

71r0609

By: **Senators Kelley, Benson, Lee, Manno, Mathias, Muse, Ramirez, Robinson, Smith, and Zucker**

Introduced and read first time: February 1, 2017

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 2016 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 2016 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Commercial Law

11–1201.

(e) “Trade secret” means 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.

11–1205.

In an action under this subtitle, a court shall 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.

Article – Courts and Judicial Proceedings

6–412.

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

(2) “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.

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

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY NOT ENTER 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.

(C) ANY PROVISION OF AN AGREEMENT OR A CONTRACT THAT CONCEALS A PUBLIC HAZARD, INFORMATION CONCERNING A PUBLIC HAZARD, OR INFORMATION

1 THAT MAY BE USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES
2 FROM INJURY THAT MAY RESULT FROM A PUBLIC HAZARD IS CONTRARY TO PUBLIC
3 POLICY AND UNENFORCEABLE.

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

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

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

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2017.