

As Engrossed: 3/13/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Pagan**

A Bill

SENATE BILL 698

For An Act To Be Entitled

"THE SUNSHINE IN LITIGATION ACT OF 1991"

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11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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13 *SECTION 1. Purpose - Legislative Findings - Construction. The General*
14 *Assembly finds and declares that in civil actions concerning injury resulting*
15 *from public hazards such as environmental dangers and defective products, it*
16 *is a common practice for parties to agree to settlements conditioned on the*
17 *destruction, return, or sealing from public view of information concerning*
18 *such public hazards that is obtained through judicial process. These*
19 *agreements, and court orders effectuating them, have the harmful consequence*
20 *of concealing from the public critical information about public hazards. As a*
21 *result, citizens and officers of the State of Arkansas and its political*
22 *subdivisions have difficulty taking appropriate protective measures; news*
23 *media face barriers to reporting and analyzing the news; and injured citizens*
24 *are unable to obtain evidence allowing them to seek redress in the courts of*
25 *justice for their injuries.*

26 *Therefore the General Assembly finds that such secrecy agreements should*
27 *be declared against public policy and of no effect, subject to due protections*
28 *for trade secrets and personal privacy; and this act shall be liberally*
29 *construed to accomplish that end.*

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31 *SECTION 2. Title. This act may be cited as the "Sunshine in the Courts*
32 *Act."*

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34 *SECTION 3. Definition. As used in this act, "public hazard" means an*
35 *instrumentality, including but not limited to any substance, device, product,*

1 procedure, or a condition of a substance, device, product, or procedure, which
2 has caused or is likely to cause injury.

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4 SECTION 4. *Agreements Concealing Public Hazards Void.* Any portion of
5 an agreement or contract that has the purpose or effect of concealing a public
6 hazard, any information concerning a public hazard, or any information that
7 may be useful to members of the public in protecting themselves from injury
8 that may result from the public hazard, is void, contrary to public policy and
9 may not be enforced.

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11 SECTION 5. *Trade Secrets.* Trade secrets, as defined in Arkansas Code §
12 4-75-601(4), that are not pertinent to public hazards shall be protected
13 pursuant to §§ 4-75-601 to 4-75-607.

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15 SECTION 6. *Personal Privacy.* This act shall not be construed to
16 require the disclosure of private facts, concerning a natural person, that are
17 not pertinent to public hazards.

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19 SECTION 7. *Standing -- Declaratory Judgment Actions.* Any interested
20 person, including but not limited to representatives of news media, has
21 standing to contest an order, judgment, agreement or contract that allegedly
22 violates this act. A person may contest an order, judgment, agreement, or
23 contract that allegedly violates this chapter by motion in the court that
24 entered the order or judgment, or by bringing a declaratory judgment action
25 pursuant to Arkansas Code Title 16, Chapter III in the circuit court in the
26 county in which any party to the contract resides, or in the Circuit Court for
27 Pulaski County.

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29 SECTION 8. *Procedure for Consideration of Trade Secret and Privacy*
30 *Claims.* (a) Upon motion and good cause shown by a party seeking to prevent
31 disclosure of information that has not previously been disclosed, including
32 but not limited to alleged trade secrets or information infringing on personal
33 privacy, the court shall examine the disputed information in camera.

34 (b) If the court finds that the information or portions thereof consist
35 of information concerning a public hazard or information that may be useful to
36 the public in protecting against injury that may result from a public hazard,

1 the court shall order disclosure of all such information that may be useful to
2 the public.

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4 SECTION 9. All provisions of this act of a general and permanent nature
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
6 Revision Commission shall incorporate the same in the Code.

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8 SECTION 10. If any provision of this act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 act are declared to be severable.

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14 SECTION 11. All laws and parts of laws in conflict with this act are
15 hereby repealed.

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17 SECTION 12. EMERGENCY. It is hereby found and determined by the
18 General Assembly that it is essential that the public have access to
19 information about public hazards that is brought to light in connection with
20 the judicial process. Therefore, an emergency is hereby declared to exist and
21 this act being necessary for the immediate preservation of the public peace,
22 health and safety shall be in full force and effect from and after its passage
23 and approval.

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25 /s/Pagan

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