

HOUSE BILL No. 5592

February 6, 2002, Introduced by Rep. Koetje and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9948) by adding section 2972.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2972. (1) A PERSON SHALL NOT BRING AN ACTION BASED ON
2 ANOTHER PERSON'S PUBLIC PARTICIPATION.

3 (2) A DEFENDANT IN AN ACTION BROUGHT IN VIOLATION OF SUBSEC-
4 TION (1) MAY FILE A MOTION WITH THE COURT IN WHICH THAT ACTION IS
5 PENDING TO DISMISS THAT ACTION WITH PREJUDICE.

6 (3) ALL OF THE FOLLOWING APPLY TO A MOTION FILED UNDER SUB-
7 SECTION (2):

8 (A) THE COURT SHALL SUSPEND DISCOVERY PENDING FINAL DISPOS-
9 TION OF THE MOTION, INCLUDING ANY APPEAL OF THE COURT'S RULING ON
10 THE MOTION. HOWEVER, ON MOTION AND AFTER A HEARING, THE COURT
11 MAY ENTER AN ORDER GRANTING SPECIFIED LIMITED DISCOVERY.

1 (B) A GOVERNMENTAL UNIT TO WHICH THE PUBLIC PARTICIPATION
2 UPON WHICH THE ACTION IS BASED WAS DIRECTED, OR THE ATTORNEY GEN-
3 ERAL, MAY INTERVENE IN BEHALF OF, DEFEND, OR OTHERWISE SUPPORT
4 THE DEFENDANT.

5 (C) THE PARTY RESPONDING TO THE MOTION HAS THE BURDEN OF
6 GOING FORWARD WITH THE EVIDENCE AND THE BURDEN OF PROOF.

7 (4) A COURT SHALL GRANT A MOTION BROUGHT UNDER SUBSECTION
8 (2) UNLESS THE PARTY RESPONDING TO THAT MOTION DEMONSTRATES BY
9 CLEAR AND CONVINCING EVIDENCE THAT THE ACTION IS NOT BASED ON THE
10 DEFENDANT'S PUBLIC PARTICIPATION.

11 (5) IF A COURT GRANTS A MOTION BROUGHT UNDER SUBSECTION (2)
12 AND DISMISSES WITH PREJUDICE AN ACTION BROUGHT IN VIOLATION OF
13 SUBSECTION (1), THE COURT SHALL AWARD ALL OF THE FOLLOWING TO THE
14 DEFENDANT:

15 (A) IF THE DEFENDANT DEMONSTRATES BY CLEAR AND CONVINCING
16 EVIDENCE THAT THE ACTION WAS BROUGHT TO HARASS THE DEFENDANT, TO
17 INHIBIT THE DEFENDANT'S PUBLIC PARTICIPATION, TO INTERFERE WITH
18 THE DEFENDANT'S CONSTITUTIONAL RIGHTS, OR TO OTHERWISE WRONGFULLY
19 INJURE THE DEFENDANT, ACTUAL DAMAGES.

20 (B) REASONABLE ATTORNEY FEES.

21 (C) COSTS.

22 (6) AS USED IN THIS SECTION:

23 (A) "ACTION" MEANS A CIVIL LAWSUIT, CAUSE OF ACTION, CLAIM,
24 CROSS-CLAIM, COUNTERCLAIM, OR OTHER JUDICIAL PROCEEDING. ACTION
25 DOES NOT INCLUDE A CIVIL LAWSUIT, CAUSE OF ACTION, CLAIM,
26 CROSS-CLAIM, COUNTERCLAIM, OR OTHER JUDICIAL PROCEEDING SEEKING
27 INJUNCTIVE RELIEF ONLY.

1 (B) "GOVERNMENTAL UNIT" MEANS THIS STATE, A POLITICAL
2 SUBDIVISION OF THIS STATE, OR AN AUTHORIZED REPRESENTATIVE OF
3 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

4 (C) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
5 ASSOCIATION, OR OTHER LEGAL ENTITY.

6 (D) "PUBLIC PARTICIPATION" MEANS SPEECH OR CONDUCT INTENDED,
7 IN WHOLE OR IN PART, TO INITIATE, OBTAIN, OR PROCURE AN ACT OR
8 RESPONSE BY A GOVERNMENTAL UNIT.