

SUBSTITUTE FOR  
HOUSE BILL NO. 5036

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9947) by adding section 2977.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           SEC. 2977. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ON MOTION  
2   OF A DEFENDANT, A COURT SHALL DISMISS A CIVIL ACTION AGAINST THE  
3   DEFENDANT IF EITHER OF THE FOLLOWING APPLIES:

4           (A) THE ACTION IS BASED ON THE DEFENDANT'S EXERCISE OF THE  
5   RIGHT TO PETITION UNDER THE UNITED STATES CONSTITUTION OR THE  
6   CONSTITUTION OF THIS STATE AND THE COMMUNICATION WAS AIMED AT  
7   PROCURING A GOVERNMENTAL OR ELECTORAL ACTION, RESULT, OR OUTCOME.

8           (B) THE ACTION IS BASED ON THE DEFENDANT'S EXERCISE OF THE  
9   RIGHT OF FREE SPEECH UNDER THE UNITED STATES CONSTITUTION OR THE

1 CONSTITUTION OF THIS STATE.

2 (2) AN ACTION SHALL NOT BE DISMISSED UNDER THIS SECTION IF THE  
3 PLAINTIFF PRESENTS PRIMA FACIE EVIDENCE THAT THE ACTION WAS NOT  
4 INITIATED WITH THE PURPOSE OF HARASSING OR INTIMIDATING THE  
5 DEFENDANT OR OTHERWISE HINDERING THE DEFENDANT'S EXERCISE OF THE  
6 RIGHT TO PETITION OR THE RIGHT OF FREE SPEECH AND 1 OR BOTH OF THE  
7 FOLLOWING APPLY:

8 (A) THE DEFENDANT MADE THE COMMUNICATION THAT GAVE RISE TO THE  
9 ACTION WITH KNOWLEDGE THAT IT WAS FALSE OR WITH RECKLESS DISREGARD  
10 FOR WHETHER IT WAS FALSE AND THE COMMUNICATION WAS FALSE.

11 (B) THE COMMUNICATION THAT GAVE RISE TO THE ACTION INCLUDED  
12 INFORMATION THAT THE DEFENDANT WAS PROHIBITED BY LAW FROM  
13 DISSEMINATING.

14 (3) ON THE FILING OF A MOTION UNDER SUBSECTION (1), THE COURT  
15 SHALL STAY ALL DISCOVERY PROCEEDINGS IN THE ACTION UNTIL AN ORDER  
16 DISPOSING OF THE MOTION IS ENTERED. ON A MOTION BY A PARTY OR ON  
17 THE COURT'S OWN MOTION AND ON A SHOWING OF GOOD CAUSE, THE COURT  
18 MAY ALLOW SPECIFIED DISCOVERY.

19 (4) THE COURT SHALL AWARD ALL OF THE FOLLOWING TO A MOVING  
20 DEFENDANT IN AN ACTION THAT IS DISMISSED UNDER THIS SECTION:

21 (A) THREE TIMES THE AMOUNT OF DAMAGES SUSTAINED BY THE  
22 DEFENDANT AS A RESULT OF THE ACTION.

23 (B) COURT COSTS OF THE ACTION.

24 (C) REASONABLE ATTORNEY FEES AND OTHER EXPENSES INCURRED IN  
25 DEFENDING AGAINST THE ACTION.

26 (D) IF THE AMOUNTS AWARDED UNDER SUBDIVISIONS (A) TO (C) TOTAL  
27 LESS THAN \$5,000.00, THE DIFFERENCE BETWEEN THE TOTAL AND

1 \$5,000.00.

2 (E) ADDITIONAL SANCTIONS AGAINST THE PLAINTIFF AND THE  
3 ATTORNEY OR LAW FIRM REPRESENTING THE PLAINTIFF AS THE COURT  
4 DETERMINES ARE SUFFICIENT TO DETER THE PLAINTIFF AND THE ATTORNEY  
5 OR LAW FIRM FROM FILING SIMILAR ACTIONS DESCRIBED IN SUBSECTION  
6 (1).

7 (5) A DEFENDANT IN AN ACTION THAT IS DISMISSED UNDER THIS  
8 SECTION MAY BRING A SEPARATE ACTION, CROSS-CLAIM, OR COUNTERCLAIM  
9 TO RECOVER ANY ITEM DESCRIBED IN SUBSECTION (4). HOWEVER, THE  
10 DEFENDANT IS NOT ENTITLED TO A DOUBLE RECOVERY OF THE SAME ITEM.

11 (6) THIS SECTION DOES NOT ABROGATE OR LESSEN ANY OTHER  
12 DEFENSE, REMEDY, IMMUNITY, OR PRIVILEGE AVAILABLE UNDER LAW.

13 (7) AS USED IN THIS SECTION:

14 (A) "COMMUNICATION" INCLUDES MAKING OR SUBMITTING A STATEMENT  
15 IN ANY FORM, INCLUDING AN ORAL OR WRITTEN STATEMENT AND A STATEMENT  
16 IN ELECTRONIC FORM.

17 (B) "EXERCISE OF THE RIGHT OF FREE SPEECH" MEANS A  
18 COMMUNICATION MADE IN A PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM  
19 IN CONNECTION WITH AN ISSUE OF PUBLIC INTEREST.

20 (C) "EXERCISE OF THE RIGHT TO PETITION" MEANS ANY OF THE  
21 FOLLOWING:

22 (i) COMMUNICATION WITH A LEGISLATIVE, EXECUTIVE, OR JUDICIAL  
23 BODY OR IN ANOTHER GOVERNMENTAL PROCEEDING.

24 (ii) COMMUNICATION IN CONNECTION WITH AN ISSUE UNDER  
25 CONSIDERATION OR REVIEW BY A LEGISLATIVE, EXECUTIVE, OR JUDICIAL  
26 BODY OR IN ANOTHER GOVERNMENTAL PROCEEDING.

27 (iii) COMMUNICATION THAT IS REASONABLY LIKELY TO ENCOURAGE

1 CONSIDERATION OR REVIEW OF AN ISSUE BY A LEGISLATIVE, EXECUTIVE, OR  
2 JUDICIAL BODY OR IN ANOTHER GOVERNMENTAL PROCEEDING.

3 (iv) COMMUNICATION REASONABLY LIKELY TO ENLIST PUBLIC  
4 PARTICIPATION IN AN EFFORT TO EFFECT CONSIDERATION OF AN ISSUE BY A  
5 LEGISLATIVE, EXECUTIVE, OR JUDICIAL BODY OR IN ANOTHER GOVERNMENTAL  
6 PROCEEDING.

7 (v) ANY OTHER COMMUNICATION THAT FALLS WITHIN THE  
8 CONSTITUTIONAL PROTECTION OF THE RIGHT TO PETITION GOVERNMENT.

9 (D) "ISSUE OF PUBLIC INTEREST" INCLUDES AN ISSUE RELATED TO  
10 HEALTH OR SAFETY; ENVIRONMENTAL, ECONOMIC, OR COMMUNITY WELL-BEING;  
11 THE GOVERNMENT; A PUBLIC FIGURE; OR A GOOD, PRODUCT, OR SERVICE IN  
12 THE MARKETPLACE. ISSUE OF PUBLIC INTEREST DOES NOT INCLUDE A  
13 PRIVATE INTEREST, SUCH AS COMMUNICATION DIRECTED PRIMARILY TOWARD  
14 PROTECTING THE SPEAKER'S BUSINESS INTERESTS RATHER THAN TOWARD  
15 COMMENTING ON OR SHARING INFORMATION ABOUT A MATTER OF PUBLIC  
16 SIGNIFICANCE.

17 (E) "PUBLIC FORUM" INCLUDES A WEBSITE ON THE INTERNET.