

By: Representative Eads

To: Judiciary A

HOUSE BILL NO. 893

1 AN ACT TO PROVIDE THAT CERTAIN INFORMATION REGARDING A
 2 DEFECTIVE PRODUCT, FINANCIAL FRAUD, UNFAIR INSURANCE CLAIMS
 3 PRACTICES OR ENVIRONMENTAL HAZARD SHALL BE PRESUMED TO BE PUBLIC
 4 INFORMATION; TO ALLOW SUCH INFORMATION TO BE KEPT CONFIDENTIAL BY
 5 COURT ORDER; TO DEFINE CERTAIN TERMS; TO AMEND SECTION 75-26-5,
 6 75-26-11 AND 75-26-15, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
 7 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** (1) It is the intent of the Legislature to
 10 better protect Mississippians from injuries, deaths, or financial
 11 loss caused by defective products, financial fraud, unfair
 12 insurance claims practices or environmental hazards by also
 13 creating a presumption against secrecy for settlement agreements
 14 and confidentiality agreements not filed with the court and
 15 information acquired through discovery.

16 (2) Notwithstanding any other provision of law, in an action
 17 based upon injury, wrongful death, or financial loss allegedly
 18 caused by a defective product, financial fraud, unfair insurance
 19 claims practice or environmental hazard, information concerning
 20 the defective product, financial fraud, unfair insurance claims
 21 practice or environmental hazard contained in settlement
 22 agreements and confidentiality agreements not filed with the
 23 court, and information acquired through discovery concerning the
 24 defective product, financial fraud, unfair insurance claims
 25 practice or environmental hazard, shall be presumed to be public
 26 information and may not be kept confidential pursuant to agreement
 27 of the parties. This information may be kept confidential for a
 28 period that the court deems appropriate only pursuant to a court
 29 order based upon a finding that either:



30 (a) The information is a trade secret or otherwise
31 privileged under existing law.

32 (b) (i) An overriding interest exists that overcomes
33 the right of public access to the information.

34 (ii) The overriding interest supports keeping the
35 information confidential.

36 (iii) A substantial probability exists that the
37 overriding interest will be prejudiced if the information is not
38 kept confidential.

39 (iv) The proposed confidentiality is narrowly
40 tailored.

41 (v) No less restrictive means exist to achieve the
42 overriding interest.

43 (3) Unless the information is a trade secret or otherwise
44 privileged under existing law, in an action based upon injury,
45 wrongful death, or financial loss allegedly caused by a defective
46 product, financial fraud, unfair insurance claims practice or
47 environmental hazard, any portion of an agreement or contract that
48 restricts a party from disclosing information relating to the
49 defective product, financial fraud, unfair insurance claims
50 practice or environmental hazard to a governmental agency with
51 enforcement authority over the defective product, financial fraud,
52 unfair insurance claims practice or environmental hazard is void,
53 contrary to public policy, and may not be enforced.

54 (4) In order to implement this section, the court may
55 require the requesting party to provide an identifying log book or
56 other document.

57 (5) As used in this section:

58 (a) "Defective product" means a product that may be
59 defective because of a defect in manufacturing or design or a
60 failure to adequately warn the consumer of a hazard involved in
61 the foreseeable use of the product, where the defect may result in
62 personal injury to one or more persons.



63 (b) "Financial fraud" means any fraudulent insurance
64 practice or any fraudulent plan or scheme to sell a publicly
65 offered investment product without full disclosure of the risks
66 associated with the purchase of the product, where the plan or
67 scheme may cause or has caused financial loss.

68 (c) "Environmental hazard" means a release or
69 threatened release of a hazardous substance that poses a threat to
70 public health or safety involving present or future danger of
71 death, bodily injury or health disability to human beings exposed
72 to a hazardous substance release or threatened release.

73 (d) An attorney shall not sell or offer for sale any
74 information obtained through discovery to any member of the
75 Mississippi Bar or to any other person in violation of the
76 prohibitions on attorney solicitation, fee splitting, or financial
77 arrangements among lawyers or nonlawyers. Violation of this
78 paragraph shall be a basis for professional discipline by the
79 Mississippi Bar. This section does not alter or mitigate any
80 existing rule or provision that may also be applicable to the
81 conduct.

82 **SECTION 2.** Section 75-26-5, Mississippi Code of 1972, is
83 amended as follows:

84 75-26-5. (1) Except as provided in Section 1 of House Bill
85 No. _____, 2002 Regular Session, actual or threatened
86 misappropriation may be enjoined. Upon application to the court,
87 an injunction shall be terminated when the trade secret has ceased
88 to exist, but the injunction may be continued for an additional
89 reasonable period of time in order to eliminate commercial
90 advantage that otherwise would be derived from the
91 misappropriation.

92 (2) In exceptional circumstances, an injunction may
93 condition future use upon payment of a reasonable royalty for no
94 longer than the period of time for which use could have been
95 prohibited. Exceptional circumstances include, but are not



96 limited to, a material and prejudicial change of position prior to
97 acquiring knowledge or reason to know of misappropriation that
98 renders a prohibitive injunction inequitable.

99 (3) In appropriate circumstances, affirmative acts to
100 protect a trade secret may be compelled by court order.

101 **SECTION 3.** Section 75-26-11, Mississippi Code of 1972, is
102 amended as follows:

103 75-26-11. Except as provided in Section 1 of House
104 Bill No. _____, 2002 Regular Session, in an action under this
105 chapter, a court shall preserve the secrecy of an alleged trade
106 secret by reasonable means, which may include granting protective
107 orders in connection with discovery proceedings, holding in-camera
108 hearings, sealing the records of the action and ordering any
109 person involved in the litigation not to disclose an alleged trade
110 secret without prior court approval.

111 **SECTION 4.** Section 75-26-15, Mississippi Code of 1972, is
112 amended as follows:

113 75-26-15. (1) Except as provided in subsection (2), this
114 chapter displaces conflicting tort, restitutionary and other law
115 of this state providing civil remedies for misappropriation of a
116 trade secret.

117 (2) This chapter does not affect:

118 (a) Contractual remedies, whether or not based upon
119 misappropriation of a trade secret;

120 (b) Other civil remedies that are not based upon
121 misappropriation of a trade secret; or

122 (c) Criminal remedies, whether or not based upon
123 misappropriation of a trade secret.

124 (d) The provisions of Section 1 of House Bill No. _____,
125 2002 Regular Session.

126 **SECTION 5.** This act shall take effect and be in force from
127 and after July 1, 2002.

