

By: Senator(s) Williamson

To: Judiciary, Division A

## SENATE BILL NO. 2336

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 SECTIONS 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.** The Legislature finds and declares all of the  
10 following:

11 (a) Secrecy agreements that prohibit disclosure to the  
12 public or public safety agencies of information relating to  
13 defective products, financial fraud, unfair insurance claims  
14 practices or environmental hazards are injurious to the health,  
15 safety and economic well-being of all citizens of the State of  
16 Mississippi.

17 (b) Secrecy agreements can have tragic consequences. A  
18 widely known example of the disastrous consequences of secrecy  
19 agreements is the tragedy resulting from dangerous defects in  
20 Firestone tires, which have reportedly caused more than one  
21 hundred fifty (150) deaths and more than five hundred (500)  
22 injuries worldwide. For many years, Bridgestone/Firestone, Inc.  
23 knew about these dangerous defects, but kept the information out  
24 of the public eye by secretly settling many lawsuits brought as a  
25 result of crashes related to defective tires. During that time,  
26 the public continued to drive on Firestone tires, unaware of the  
27 mortal danger to their families and themselves. As a result of  
28 these hidden, dangerous defects, on August 9, 2000,  
29 Bridgestone/Firestone, Inc. and Ford Motor Company jointly

30 announced that Firestone would recall over fourteen million  
31 (14,000,000) tires. In the absence of a secrecy agreement,  
32 information about this dangerous product could have been disclosed  
33 publicly, which could have saved lives and avoided injuries.  
34 However, the companies demanded secrecy as the price of  
35 compensation for victims, resulting in many deaths and injuries  
36 that could have been avoided absent demands for secrecy  
37 agreements.

38 (c) Secrecy agreements can allow companies to shield  
39 information that shows a practice of treating consumers unfairly  
40 and can permit those companies to continue illegal practices  
41 without accountability. The circumstances that allowed secrecy  
42 regarding the claims of victims of the Northridge earthquake and  
43 the contaminated drinking water connected with the story of Erin  
44 Brockovich also highlight the need for openness.

45 (d) Secrecy agreements allow companies to shield  
46 life-threatening dangers and harmful practices from public view,  
47 thereby severely jeopardizing public welfare and safety. It is  
48 against the public interest to allow secrecy agreements about  
49 defective products, financial fraud, unfair insurance claims  
50 practices or environmental hazards to remain confidential except  
51 in very limited circumstances upon careful judicial oversight and  
52 review.

53 **SECTION 2.** (1) It is the intent of the Legislature to  
54 better protect Mississippians from injuries, deaths, financial  
55 loss caused by defective products, financial fraud, unfair  
56 insurance claims practices or environmental hazards by also  
57 creating a presumption against secrecy for settlement agreements  
58 and confidentiality agreements not filed with the court and  
59 information acquired through discovery.

60 (2) Notwithstanding any other provision of law, in an action  
61 based upon injury, wrongful death, financial loss allegedly caused  
62 by a defective product, financial fraud, unfair insurance claims

63 practices or environmental hazard, information concerning the  
64 defective product, financial fraud, unfair insurance claims  
65 practices or environmental hazard contained in settlement  
66 agreements and confidentiality agreements not filed with the  
67 court, and information acquired through discovery concerning the  
68 defective product, financial fraud, unfair insurance claims  
69 practices or environmental hazard, shall be presumed to be public  
70 information and may not be kept confidential pursuant to agreement  
71 of the parties. This information may be kept confidential for a  
72 period that the court deems appropriate only pursuant to a court  
73 order based upon a finding that either:

74 (a) The information is a trade secret or otherwise  
75 privileged under existing law.

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

78 (ii) The overriding interest supports keeping the  
79 information confidential.

80 (iii) A substantial probability exists that the  
81 overriding interest will be prejudiced if the information is not  
82 kept confidential.

83 (iv) The proposed confidentiality is narrowly  
84 tailored.

85 (v) No less restrictive means exist to achieve the  
86 overriding interest.

87 (3) Unless the information is a trade secret or otherwise  
88 privileged under existing law, in an action based upon injury,  
89 wrongful death, financial loss allegedly caused by a defective  
90 product, financial fraud, unfair insurance claims practice or  
91 environmental hazard, any portion of an agreement or contract that  
92 restricts a party from disclosing information relating to the  
93 defective product, financial fraud, unfair insurance claims  
94 practice or environmental hazard to a governmental agency with  
95 enforcement authority over the defective product, financial fraud,

96 unfair insurance claims practice or environmental hazard is void,  
97 contrary to public policy, and may not be enforced.

98 (4) In order to implement this section, the court may  
99 require the requesting party to provide an identifying log or  
100 other document.

101 (5) As used in this section:

102 (a) "Defective product" means a product that may be  
103 defective because of a defect in manufacturing or design or a  
104 failure to adequately warn the consumer of a hazard involved in  
105 the foreseeable use of the product, where the defect may result in  
106 personal injury to one or more persons.

107 (b) "Financial fraud" means any fraudulent insurance  
108 practice or any fraudulent plan or scheme to sell a publicly  
109 offered investment product without full disclosure of the risks  
110 associated with the purchase of the product, where the plan or  
111 scheme may cause or has caused financial loss.

112 (c) "Environmental hazard" means a release or  
113 threatened release of a hazardous substance that poses a threat to  
114 public health or safety involving present or future danger of  
115 death, bodily injury or health disability to human beings exposed  
116 to a hazardous substance release or threatened release.

117 (d) An attorney shall not sell or offer for sale any  
118 information obtained through discovery to any member of The  
119 Mississippi Bar or to any other person in violation of the  
120 prohibitions on attorney solicitation, fee splitting or financial  
121 arrangements among lawyers or nonlawyers. Violation of this  
122 paragraph shall be a basis for professional discipline by The  
123 Mississippi Bar. This section does not alter or mitigate any  
124 existing rule or provision that may also be applicable to the  
125 conduct.

126 **SECTION 3.** Section 75-26-5, Mississippi Code of 1972, is  
127 amended as follows:

128           75-26-5. (1) Except as provided in Sections 1 and 2 of  
129 Senate Bill No. 2336, 2004 Regular Session, actual or threatened  
130 misappropriation may be enjoined. Upon application to the court,  
131 an injunction shall be terminated when the trade secret has ceased  
132 to exist, but the injunction may be continued for an additional  
133 reasonable period of time in order to eliminate commercial  
134 advantage that otherwise would be derived from the  
135 misappropriation.

136           (2) In exceptional circumstances, an injunction may  
137 condition future use upon payment of a reasonable royalty for no  
138 longer than the period of time for which use could have been  
139 prohibited. Exceptional circumstances include, but are not  
140 limited to, a material and prejudicial change of position prior to  
141 acquiring knowledge or reason to know of misappropriation that  
142 renders a prohibitive injunction inequitable.

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

145           **SECTION 4.** Section 75-26-11, Mississippi Code of 1972, is  
146 amended as follows:

147           75-26-11. Except as provided in Sections 1 and 2 of Senate  
148 Bill No. 2336, 2004 Regular Session, in an action under this  
149 chapter, a court shall preserve the secrecy of an alleged trade  
150 secret by reasonable means, which may include granting protective  
151 orders in connection with discovery proceedings, holding in-camera  
152 hearings, sealing the records of the action and ordering any  
153 person involved in the litigation not to disclose an alleged trade  
154 secret without prior court approval.

155           **SECTION 5.** Section 75-26-15, Mississippi Code of 1972, is  
156 amended as follows:

157           75-26-15. (1) Except as provided in subsection (2), this  
158 chapter displaces conflicting tort, restitutionary and other law  
159 of this state providing civil remedies for misappropriation of a  
160 trade secret.

161           (2) This chapter does not affect:  
162                 (a) Contractual remedies, whether or not based upon  
163 misappropriation of a trade secret;  
164                 (b) Other civil remedies that are not based upon  
165 misappropriation of a trade secret; \* \* \*  
166                 (c) Criminal remedies, whether or not based upon  
167 misappropriation of a trade secret; or  
168                 (d) The provisions of Sections 1 and 2 of Senate Bill  
169 No. 2336, 2004 Regular Session.  
170           **SECTION 6.** This act shall take effect and be in force from  
171 and after July 1, 2004.