

SB 5886 - S AMD 190

By Senators Kline, Hargrove

ADOPTED 03/11/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that an informed
4 public is better able to protect itself against risk of loss from
5 public hazards and that, to have an informed public: (1) Access to
6 reasonable information regarding public hazards is required; and (2)
7 courts should not be used to shield information necessary to protect
8 the safety of the public. The legislature further finds that the
9 marketplace works most efficiently when competition is based on
10 consumers being able to make fully informed choices about items placed
11 in the stream of commerce. Therefore, the legislature intends there to
12 be a presumption against the sealing of court documents relative to
13 public hazards as defined in this act.

14 **Sec. 2.** RCW 4.24.611 and 1994 c 42 s 2 are each amended to read as
15 follows:

16 As used in RCW 4.24.601 and this section:

17 (1)(a) "Product liability/hazardous substance claim" means a claim
18 for damages for personal injury, wrongful death, or property damage
19 caused by a (~~(product or hazardous or toxic substances, that is an~~
20 ~~alleged hazard to the public and that presents an alleged risk of~~
21 ~~similar injury to other members of the public)) public hazard.~~

22 (b) "Confidentiality provision" means any terms in a court order or
23 a private agreement settling, concluding, or terminating a product
24 liability/hazardous substance claim, that limit the possession,
25 disclosure, or dissemination of information about (~~(an alleged hazard~~
26 ~~to the public)) a public hazard, whether those terms are integrated in
27 the order or private agreement or written separately.~~

28 (c) "Members of the public" includes any individual, group of
29 individuals, partnership, corporation, or association.

1 (d) "Public hazard" means a condition of a product that has caused,
2 or can be reasonably expected to cause death or serious bodily harm or
3 other serious harm to a person unaware of the condition.

4 (2) Except as provided in subsection (4) of this section, members
5 of the public have a right to information necessary for a lay member of
6 the public to understand the nature, source, and extent of the risk
7 from alleged hazards to the public.

8 (3) Except as provided in subsection (4) of this section, members
9 of the public have a right to the protection of trade secrets as
10 defined in RCW 19.108.010, other confidential research, development, or
11 commercial information concerning products or business methods.

12 (4)(a) Nothing in this chapter shall limit the issuance of any
13 protective or discovery orders during the course of litigation pursuant
14 to court rules. At the conclusion of the litigation, the court shall
15 review all discovery or protective orders issued during litigation for
16 compliance with this section.

17 (b) Confidentiality provisions may be entered into or ordered or
18 enforced by the court only if the court finds, based on the evidence,
19 that the confidentiality provision (~~(is in the public interest)~~) does
20 not conceal the existence of a public hazard. In determining (~~the~~
21 ~~public interest~~) whether to allow a confidentiality provision to be
22 entered, the court shall balance the right of the public to information
23 regarding the alleged risk to the public from the product or substance
24 as provided in subsection (2) of this section against the right of the
25 public to protect the confidentiality of information as provided in
26 subsection (3) of this section.

27 (c) No agreement between parties involving the final resolution of
28 a case in litigation involving a public hazard may require a party to
29 agree to withhold or remain silent on information regarding a public
30 hazard as a condition of achieving a settlement of the litigation.

31 (5)(a) Any confidentiality provisions that are not adopted
32 consistent with the provisions of this section are voidable by the
33 court.

34 (b) Any confidentiality provisions that are determined to be void
35 are severable from the remainder of the order or agreement
36 notwithstanding any provision to the contrary and the remainder of the
37 order or agreement shall remain in force.

1 (c) Nothing in RCW 4.24.601 and this section prevents the court
2 from denying the request for confidentiality provisions under other law
3 nor limits the scope of discovery pursuant to applicable court rules.

4 (6) In cases of third party actions challenging confidentiality
5 provisions in orders or agreements, the court has discretion to award
6 to the prevailing party actual damages, costs, reasonable attorneys'
7 fees, and such other terms as the court deems just.

8 ~~(7) ((The following acts or parts of acts are each repealed on May~~
9 ~~1, 1994:~~

10 ~~(a) RCW 4.24.600 and 1993 c 17 § 1;~~

11 ~~(b) RCW 4.24.610 and 1993 c 17 § 2;~~

12 ~~(c) RCW 4.24.620 and 1993 c 17 § 3;~~

13 ~~(d) RCW 4.16.380 and 1993 c 17 § 5; and~~

14 ~~(e) 1993 c 17 § 4 (uncodified).))~~ Except for monetary damage claims
15 reduced to final judgment by a superior court, this section applies to
16 all causes of action that exist on or after July 1, 2009.

17 **Sec. 3.** RCW 4.24.601 and 1994 c 42 s 1 are each amended to read as
18 follows:

19 The legislature finds that public health and safety is promoted
20 when the public has knowledge that enables members of the public to
21 make informed choices about risks to their health and safety.
22 Therefore, the legislature declares as a matter of public policy that
23 the public has a right to information necessary to protect members of
24 the public from harm caused by ~~((alleged hazards to the))~~ a public
25 hazard. The legislature also recognizes that protection of trade
26 secrets, other confidential research, development, or commercial
27 information concerning products or business methods promotes business
28 activity and prevents unfair competition. Therefore, the legislature
29 declares it a matter of public policy that the confidentiality of such
30 information be protected and its unnecessary disclosure be prevented."

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1 On page 1, line 1 of the title, after "hazards;" strike the
2 remainder of the title and insert "amending RCW 4.24.611 and 4.24.601;
3 and creating a new section."

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