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SENATE BILL 5597

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State of Washington

53rd Legislature

1993 Regular Session

By Senators A. Smith, Spanel and Rinehart; by request of Attorney General

Read first time 02/04/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to documentary materials; amending RCW 19.86.110;  
2 and adding a new section to chapter 19.86 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 19.86.110 and 1990 c 199 s 1 are each amended to read  
5 as follows:

6 (1) Whenever the attorney general believes that any person (a) may  
7 be in possession, custody, or control of any original or copy of any  
8 book, record, report, memorandum, paper, communication, tabulation,  
9 map, chart, photograph, mechanical transcription, or other tangible  
10 document or recording, wherever situate, which he believes to be  
11 relevant to the subject matter of an investigation of a possible  
12 violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or  
13 19.86.060, or federal statutes dealing with the same or similar matters  
14 that the attorney general is authorized to enforce, or (b) may have  
15 knowledge of any information which the attorney general believes  
16 relevant to the subject matter of such an investigation, he may, prior  
17 to the institution of a civil proceeding thereon, execute in writing  
18 and cause to be served upon such a person, a civil investigative demand  
19 requiring such person to produce such documentary material and permit

1 inspection and copying, to answer in writing written interrogatories,  
2 to give oral testimony, or any combination of such demands pertaining  
3 to such documentary material or information: PROVIDED, That this  
4 section shall not be applicable to criminal prosecutions.

5 (2) Each such demand shall:

6 (a) State the statute and section or sections thereof, the alleged  
7 violation of which is under investigation, and the general subject  
8 matter of the investigation;

9 (b) If the demand is for the production of documentary material,  
10 describe the class or classes of documentary material to be produced  
11 thereunder with reasonable specificity so as fairly to indicate the  
12 material demanded;

13 (c) Prescribe a return date within which the documentary material  
14 is to be produced, the answers to written interrogatories are to be  
15 made, or a date, time, and place at which oral testimony is to be  
16 taken; and

17 (d) Identify the members of the attorney general's staff to whom  
18 such documentary material is to be made available for inspection and  
19 copying, to whom answers to written interrogatories are to be made, or  
20 who are to conduct the examination for oral testimony.

21 (3) No such demand shall:

22 (a) Contain any requirement which would be unreasonable or improper  
23 if contained in a subpoena duces tecum, a request for answers to  
24 written interrogatories, or a request for deposition upon oral  
25 examination issued by a court of this state; or

26 (b) Require the disclosure of any documentary material which would  
27 be privileged, or which for any other reason would not be required by  
28 a subpoena duces tecum issued by a court of this state.

29 (4) Service of any such demand may be made by:

30 (a) Delivering a duly executed copy thereof to the person to be  
31 served, or, if such person is not a natural person, to any officer or  
32 managing agent of the person to be served; or

33 (b) Delivering a duly executed copy thereof to the principal place  
34 of business in this state of the person to be served; or

35 (c) Mailing by registered or certified mail a duly executed copy  
36 thereof addressed to the person to be served at the principal place of  
37 business in this state, or, if said person has no place of business in  
38 this state, to his principal office or place of business.

1 (5)(a) Documentary material demanded pursuant to the provisions of  
2 this section shall be produced for inspection and copying during normal  
3 business hours at the principal office or place of business of the  
4 person served, or at such other times and places as may be agreed upon  
5 by the person served and the attorney general;

6 (b) Written interrogatories in a demand served under this section  
7 shall be answered in the same manner as provided in the civil rules for  
8 superior court;

9 (c) The oral testimony of any person obtained pursuant to a demand  
10 served under this section shall be taken in the same manner as provided  
11 in the civil rules for superior court for the taking of depositions.  
12 In the course of the deposition, the assistant attorney general  
13 conducting the examination may exclude from the place where the  
14 examination is held all persons other than the person being examined,  
15 the person's counsel, and the officer before whom the testimony is to  
16 be taken;

17 (d) Any person compelled to appear pursuant to a demand for oral  
18 testimony under this section may be accompanied by counsel;

19 (e) The oral testimony of any person obtained pursuant to a demand  
20 served under this section shall be taken in the county within which the  
21 person resides, is found, or transacts business, or in such other place  
22 as may be agreed upon between the person served and the attorney  
23 general.

24 (6) If, after prior court approval, a civil investigative demand  
25 specifically prohibits disclosure of the existence or content of the  
26 demand, unless otherwise ordered by a superior court for good cause  
27 shown, it shall be a misdemeanor for any person if not a bank, trust  
28 company, mutual savings bank, credit union, or savings and loan  
29 association organized under the laws of the United States or of any one  
30 of the United States to disclose to any other person the existence or  
31 content of the demand, except for disclosure to counsel for the  
32 recipient of the demand or unless otherwise required by law.

33 (7) No documentary material, answers to written interrogatories, or  
34 transcripts of oral testimony produced pursuant to a demand, or copies  
35 thereof, shall, unless otherwise ordered by a superior court for good  
36 cause shown, be produced for inspection or copying by, nor shall the  
37 contents thereof be disclosed to, other than an authorized employee of  
38 the attorney general, without the consent of the person who produced  
39 such material, answered written interrogatories, or gave oral

1 testimony, except as otherwise provided in this section: PROVIDED,  
2 That((7)):

3 (a) Under such reasonable terms and conditions as the attorney  
4 general shall prescribe, the copies of such documentary material,  
5 answers to written interrogatories, or transcripts of oral testimony  
6 shall be available for inspection and copying by the person who  
7 produced such material, answered written interrogatories, or gave oral  
8 testimony, or any duly authorized representative of such person((-))

9 (b) The attorney general may provide copies of such documentary  
10 material, answers to written interrogatories, or transcripts of oral  
11 testimony to an official of this state, the federal government, or  
12 other state, who is charged with the enforcement of federal or state  
13 antitrust or consumer protection laws, if before the disclosure the  
14 receiving official agrees in writing that the information may not be  
15 disclosed to anyone other than that official or the official's  
16 authorized employees. The material provided under this subsection  
17 (7)(b) is subject to the confidentiality restrictions set forth in this  
18 section and may not be introduced as evidence in a criminal  
19 prosecution; and

20 (c) The attorney general or any assistant attorney general may use  
21 such copies of documentary material, answers to written  
22 interrogatories, or transcripts of oral testimony as he determines  
23 necessary in the enforcement of this chapter, including presentation  
24 before any court: PROVIDED, That any such material, answers to written  
25 interrogatories, or transcripts of oral testimony which contain trade  
26 secrets shall not be presented except with the approval of the court in  
27 which action is pending after adequate notice to the person furnishing  
28 such material, answers to written interrogatories, or oral testimony.

29 (8) At any time before the return date specified in the demand, or  
30 within twenty days after the demand has been served, whichever period  
31 is shorter, a petition to extend the return date for, or to modify or  
32 set aside a demand issued pursuant to subsection (1), stating good  
33 cause, may be filed in the superior court for Thurston county, or in  
34 such other county where the parties reside. A petition, by the person  
35 on whom the demand is served, stating good cause, to require the  
36 attorney general or any person to perform any duty imposed by the  
37 provisions of this section, and all other petitions in connection with  
38 a demand, may be filed in the superior court for Thurston county, or in  
39 the county where the parties reside. The court shall have jurisdiction

1 to impose such sanctions as are provided for in the civil rules for  
2 superior court with respect to discovery motions.

3 (9) Whenever any person fails to comply with any civil  
4 investigative demand for documentary material, answers to written  
5 interrogatories, or oral testimony duly served upon him under this  
6 section, or whenever satisfactory copying or reproduction of any such  
7 material cannot be done and such person refuses to surrender such  
8 material, the attorney general may file, in the trial court of general  
9 jurisdiction of the county in which such person resides, is found, or  
10 transacts business, and serve upon such person a petition for an order  
11 of such court for the enforcement of this section, except that if such  
12 person transacts business in more than one county such petition shall  
13 be filed in the county in which such person maintains his principal  
14 place of business, or in such other county as may be agreed upon by the  
15 parties to such petition. Whenever any petition is filed in the trial  
16 court of general jurisdiction of any county under this section, such  
17 court shall have jurisdiction to hear and determine the matter so  
18 presented and to enter such order or orders as may be required to carry  
19 into effect the provisions of this section, and may impose such  
20 sanctions as are provided for in the civil rules for superior court  
21 with respect to discovery motions.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.86 RCW  
23 to read as follows:

24 Whenever the attorney general receives documents or other material  
25 from:

26 (1) A federal agency, pursuant to its subpoena or Hart-Scott-Rodino  
27 authority; or

28 (2) Another state's attorney general, pursuant to that state's  
29 presuit investigative subpoena powers,

30 the documents or materials are subject to the same restrictions as and  
31 may be used for all the purposes set forth in RCW 19.86.110.

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