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HOUSE BILL 2881

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State of Washington                      52nd Legislature                      1992 Regular Session

By Representatives J. Kohl, Winsley, Appelwick, Valle, G. Cole, Jones, Rasmussen, Jacobsen, Prentice and Wineberry

Read first time 01/31/92. Referred to Committee on Judiciary.

1            AN ACT Relating to full disclosure of civil court proceedings  
2 relating to illegal activity; adding new sections to chapter 4.24 RCW;  
3 adding a new section to chapter 4.16 RCW; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 4.24 RCW  
6 to read as follows:

7            (1) As used in this section, "illegal activity" means:

8            (a) Any activity that, in the court's opinion, would present a  
9 likelihood of charges being filed by prosecutorial or disciplinary  
10 authorities, were they to be aware of the activity, against a party  
11 named in a motion, order, judgment, agreement, or contract before the  
12 court; or

13            (b) Any activity that, in the court's opinion, is relevant and  
14 materially related to an ongoing law enforcement, prosecutorial, or

1 disciplinary investigation of a party named in a motion, order,  
2 judgment, agreement, or contract before the court.

3 (2) Except as provided in this section, no court shall enter an  
4 order or judgment which has the purpose or effect of concealing illegal  
5 activity or any relevant information or material concerning illegal  
6 activity, nor shall the court enter an order or judgment that has the  
7 purpose or effect of concealing any information or material that is  
8 relevant to the investigation and potential prosecution or disciplining  
9 of an individual or individuals for the commission of illegal activity.

10 (3) Any portion of an agreement or contract that has the purpose or  
11 effect of concealing an illegal activity, relevant information or  
12 material concerning illegal activity, or information or material that  
13 is relevant to the investigation and potential prosecution or  
14 disciplining of an individual or individuals for the commission of  
15 illegal activity, is void, contrary to public policy, and may not be  
16 enforced. A party to the agreement or contract may bring a declaratory  
17 action pursuant to this section to determine whether an agreement or  
18 contract conceals illegal activity and is void.

19 (4)(a) In any declaratory or other civil action, a party may bring  
20 a motion for a temporary order restraining disclosure to law  
21 enforcement or prosecutorial authorities or to third parties  
22 information or material about the party making the motion which is  
23 known to another party or which is sought from the party making the  
24 motion by another party. Upon good cause shown the court shall examine  
25 in camera the information or material sought to be protected. The  
26 court may in the court's discretion issue a temporary order restraining  
27 a party or parties from disseminating the protected information or  
28 material. The temporary order shall terminate upon the entry of a  
29 final order or judgment or a dismissal of the action.

1 (b) In any final order or judgment entered in any declaratory or  
2 other civil action, if the court finds that all or portions of the  
3 information or material sought to be protected is relevant to the  
4 investigation and potential prosecution or disciplining of an  
5 individual or individuals for the commission of illegal activity, the  
6 court shall require disclosure of the information or material to the  
7 proper prosecutorial or disciplinary authorities. If the court finds  
8 that all or a portion of the information or material sought to be  
9 protected is not relevant to the investigation and potential  
10 prosecution or disciplining of an individual or individuals for the  
11 commission of illegal activity, the court shall require the information  
12 to be sealed and may include in the final order or judgment provisions  
13 restraining any or all parties from disclosing the information which is  
14 protected.

15 (5)(a) Any third party, including but not limited to  
16 representatives of news media, has standing to contest a motion, order,  
17 judgment, agreement, or contract that allegedly conceals illegal  
18 activity. The third party may challenge the motion by intervention  
19 during the court action or the third party may bring a declaratory  
20 action pursuant to this section to determine whether the agreement,  
21 contract, order, or judgment conceals illegal activity.

22 (b) The third party must (i) establish the existence of illegal  
23 activity; (ii) establish that the illegal activity was a subject within  
24 the agreement, contract, order, or judgment; and (iii) establish a  
25 basis for a reasonable belief by the third party that the agreement,  
26 contract, order, or judgment concealed the illegal activity in  
27 violation of this section or section 2 of this act.

28 (c) If the court finds that the third party has met the  
29 requirements of (b) of this subsection, the court shall order the  
30 defendant to produce the information or material for an in camera

1 review by the court. The court shall determine whether the information  
2 or material protected under the agreement, contract, order, or judgment  
3 conceals information relevant to the investigation and potential  
4 prosecution or disciplining of an individual or individuals for the  
5 commission of illegal activity in violation of this section or section  
6 2 of this act. Upon review, the court shall issue an order regarding  
7 dissemination of the information or material in accordance with  
8 subsection (4)(b) of this section.

9 (d) The court may award reasonable attorneys' fees and actual costs  
10 to the prevailing party in an action under this subsection (5).

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW  
12 to read as follows:

13 Any person who violates an order either publishing or sealing  
14 information or material issued under this section or section 2 of this  
15 act, is in contempt of court. The court shall award attorneys' fees  
16 and costs incurred in enforcing the order plus actual damages against  
17 the party who violated the order.

18 NEW SECTION. **Sec. 3.** This act shall apply to all agreements,  
19 contracts, orders, and judgments entered on or after the effective date  
20 of this act.

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 4.16 RCW  
22 to read as follows:

23 An action for declaratory relief or other civil action brought  
24 pursuant to section 1 or 2 of this act to determine whether an  
25 agreement, contract, order, or judgment conceals illegal activity in  
26 violation of section 1 or 2 of this act must be brought within three  
27 years of entry of the order or judgment or three years from the date

1 the parties entered into the agreement or contract.