

2 **SB 5362** - S AMD - 000083
3 By Senators A. Smith and Hargrove

4 ADOPTED 3/10/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
8 to read as follows:

9 (1) As used in this section, "public hazard" means an
10 instrumentality, including but not limited to any device, instrument,
11 procedure, product, or a condition of a device, instrument, procedure,
12 or product, that:

13 (a) Presents a real and substantial potential for repetition of the
14 harm inflicted; or

15 (b) Involves a single incident which affected or was likely to
16 affect many people.

17 As used in this section, the term "procedure" does not include acts
18 or procedures by licensed professionals acting within the scope of
19 their licenses.

20 (2) Except as provided in this section, no court shall enter an
21 order or judgment which has the purpose or effect of concealing a
22 public hazard or any relevant information or material concerning a
23 public hazard, nor shall the court enter an order or judgment that has
24 the purpose or effect of concealing any information or material that is
25 relevant to the public's knowledge or understanding of a public hazard.

26 (3) Any portion of an agreement or contract that has the purpose or
27 effect of concealing a public hazard, relevant information or material
28 concerning a public hazard, or information or material that is relevant
29 to the public's knowledge or understanding of a public hazard, is void,
30 contrary to public policy, and may not be enforced. A party to the
31 agreement or contract may bring a declaratory action pursuant to this
32 section to determine whether an agreement or contract conceals a public
33 hazard and is void.

34 (4)(a) In any declaratory or other civil action, a party may bring
35 a motion for a temporary order restraining disclosure to the public or
36 to third parties information or material about the party making the

1 motion which is known to another party or which is sought from the
2 party making the motion by another party. Upon good cause shown the
3 court shall examine in camera the information or material sought to be
4 protected. The court may in the court's discretion issue a temporary
5 order restraining a party or parties from disseminating the protected
6 information or material to the public or third parties. The temporary
7 order shall terminate upon the entry of a final order or judgment or a
8 dismissal of the action.

9 (b) In any final order or judgment entered in any declaratory or
10 other civil action, if the court finds that all or portions of the
11 information or material sought to be protected is relevant to the
12 public's knowledge or understanding of a public hazard, the court shall
13 provide for disclosure of the information or material. If the court
14 finds that all or a portion of the information or material sought to be
15 protected is not relevant to the public's knowledge or understanding of
16 the public hazard, the court shall require the information to be sealed
17 and may include in the final order or judgment provisions restraining
18 any or all parties from disclosing the information which is protected.

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

26 (b) The third party must (i) establish the existence of a public
27 hazard; (ii) establish that the public hazard was a subject within the
28 agreement, contract, order, or judgment; and (iii) establish a basis
29 for a reasonable belief by the third party that the agreement,
30 contract, order, or judgment concealed the public hazard in violation
31 of sections 1 through 3 of this act.

32 (c) If the court finds that the third party has met the
33 requirements of (b) of this subsection, the court shall order the
34 defendant to produce the information or material for an in camera
35 review by the court. The court shall determine whether the information
36 or material protected under the agreement, contract, order, or judgment
37 conceals a public hazard in violation of sections 1 through 3 of this
38 act. Upon review, the court shall issue an order regarding

1 dissemination of the information or material in accordance with
2 subsection (4)(b) of this section.

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

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

7 Any person who violates an order either publishing or sealing
8 information or material issued under sections 1 through 3 of this act,
9 shall be in contempt of court. The court shall award attorneys' fees
10 and costs incurred in enforcing the order plus actual damages against
11 the party who violated the order.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW
13 to read as follows:

14 Any party who attempts to condition an agreement or contract upon
15 another party's agreement to conceal an instrumentality that the party
16 knows or reasonably should have known is a public hazard or any party
17 who enters into an agreement or contract that conceals an
18 instrumentality that the party knows or reasonably should have known is
19 a public hazard shall be in violation of the consumer protection act,
20 chapter 19.86 RCW. If the party is engaged in the business of
21 insurance then the party shall also be in violation of RCW 48.30.010.

22 NEW SECTION. **Sec. 4.** This act shall apply to all agreements,
23 contracts, orders, and judgments entered on or after the effective date
24 of this act.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 4.16 RCW
26 to read as follows:

27 An action for declaratory relief or other civil action brought
28 pursuant to sections 1 through 3 of this act to determine whether an
29 agreement, contract, order, or judgment conceals a public hazard in
30 violation of sections 1 through 3 of this act must be brought within
31 three years of entry of the order or judgment or three years from the
32 date the parties entered into the agreement or contract.

33 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take
2 effect July 1, 1993."

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6 On page 1, line 2 of the title, after "hazards;" strike the
7 remainder of the title and insert "adding new sections to chapter 4.24
8 RCW; adding a new section to chapter 4.16 RCW; creating a new section;
9 providing an effective date; and declaring an emergency."

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