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SENATE BILL 5362

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State of Washington                      53rd Legislature                      1993 Regular Session

By Senators A. Smith, Niemi, Pelz, Spanel and Quigley

Read first time 01/25/93. Referred to Committee on Law & Justice.

1            AN ACT Relating to full disclosure of civil court proceedings  
2 relating to public hazards; adding new sections to chapter 4.24 RCW;  
3 adding a new section to chapter 4.16 RCW; creating a new section;  
4 providing an effective date; and declaring an emergency.

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

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

8            (1) As used in this section:

9            (a) "Public hazard" means a matter that has a probable adverse  
10 affect on the general public health or safety or the ability of any  
11 government agency to protect the public health or safety.

12            (b) "Discovery materials" means depositions, answers to  
13 interrogatories, documents or electronic data produced and physically  
14 exchanged in response to requests for production, and admissions under  
15 court rules.

16            (2) Except as provided in this section, no court shall enter an  
17 order or judgment which has the purpose or effect of concealing a  
18 public hazard or any relevant information or material concerning a  
19 public hazard, nor shall the court enter an order or judgment that has

1 the purpose or effect of concealing any information or material that is  
2 relevant to the public's knowledge or understanding of a public hazard.

3 (3) Any portion of an agreement or contract that has the purpose or  
4 effect of concealing a public hazard, relevant information or material  
5 concerning a public hazard, or information or material that is relevant  
6 to the public's knowledge or understanding of a public hazard, is void,  
7 contrary to public policy, and may not be enforced. A party to the  
8 agreement or contract may bring a declaratory action pursuant to this  
9 section to determine whether an agreement or contract conceals a public  
10 hazard and is void.

11 (4)(a) In any declaratory or other civil action, a party may bring  
12 a motion for a temporary order restraining disclosure to the public or  
13 to third parties information or material about the party making the  
14 motion which is known to another party or which is sought from the  
15 party making the motion by another party. Upon good cause shown the  
16 court shall examine in camera the information or material sought to be  
17 protected. The court may in the court's discretion issue a temporary  
18 order restraining a party or parties from disseminating the protected  
19 information or material to the public or third parties. The temporary  
20 order shall terminate upon the entry of a final order or judgment or a  
21 dismissal of the action.

22 (b) In any final order or judgment entered in any declaratory or  
23 other civil action, if the court finds that all or portions of the  
24 information or material sought to be protected is relevant to the  
25 public's knowledge or understanding of a public hazard, the court shall  
26 provide for disclosure of the information or material. If the court  
27 finds that all or a portion of the information or material sought to be  
28 protected is not relevant to the public's knowledge or understanding of  
29 the public hazard, the court shall require the information to be sealed  
30 and may include in the final order or judgment provisions restraining  
31 any or all parties from disclosing the information which is protected.

32 (5)(a) Notwithstanding a protective order or nondisclosure or  
33 confidentiality agreement, a person may move for access to discovery  
34 materials that contain matters related to a public hazard. The person  
35 may file the motion by intervention during the court action or may  
36 bring a declaratory action under this section to determine whether the  
37 agreement, contract, order, or judgment conceals a public hazard.

38 (b) A person seeking access shall file a motion seeking access in  
39 the court that heard the action in which the discovery took place. The

1 person seeking access shall serve a copy of the motion on every party  
2 to the action and on any nonparty that provided the discovery material.

3 (c) The court shall order the information or material be produced  
4 for an in camera review by the court. The court shall determine  
5 whether the information or material protected under the agreement,  
6 contract, order, or judgment conceals a public hazard in violation of  
7 sections 1 through 3 of this act. Upon review, the court shall issue  
8 an order regarding dissemination of the information or material in  
9 accordance with subsection (4)(b) of this section.

10 (d) The court shall grant access to discovery materials that relate  
11 to a public hazard, unless the court finds that:

12 (i) Disclosure of the materials would expose a person or party to  
13 undue annoyance, embarrassment, or oppression, or violate a recognized  
14 privilege or could not be avoided by a means less restrictive than  
15 denying access; and

16 (ii) The private harm resulting from disclosure would outweigh the  
17 adverse public import.

18 (e) If the motion for access is granted, and the discovery  
19 materials have not been filed with the court, the court upon motion  
20 shall direct production of the materials. The person seeking access  
21 shall pay necessary copying costs. In granting access, the court may  
22 impose conditions necessary to prevent annoyance, embarrassment,  
23 oppression, or violation of a recognized privilege.

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

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

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

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

35 Any party who attempts to condition an agreement or contract upon  
36 another party's agreement to conceal an instrumentality that the party  
37 knows or reasonably should have known is a public hazard or any party

1 who enters into an agreement or contract that conceals an  
2 instrumentality that the party knows or reasonably should have known is  
3 a public hazard shall be in violation of the consumer protection act,  
4 chapter 19.86 RCW. If the party is engaged in the business of  
5 insurance then the party shall also be in violation of RCW 48.30.010.

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

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

11 An action for declaratory relief or other civil action brought  
12 pursuant to sections 1 through 3 of this act to determine whether an  
13 agreement, contract, order, or judgment conceals a public hazard in  
14 violation of sections 1 through 3 of this act must be brought within  
15 three years of entry of the order or judgment or three years from the  
16 date the parties entered into the agreement or contract.

17 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and shall take  
20 effect July 1, 1993.

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