
SUBSTITUTE SENATE BILL 6484

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith and Nelson; by request of Governor Lowry)

Read first time 02/04/94.

1 AN ACT Relating to disclosure of information in civil court
2 proceedings; adding new sections to chapter 4.24 RCW; creating new
3 sections; repealing RCW 4.24.600, 4.24.610, and 4.24.620; repealing
4 1993 c 17 s 4 (uncodified); repealing 1993 c 17 s 5; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that public
8 health and safety is promoted if individuals and businesses, as
9 consumers, have knowledge that enables them to make informed choices
10 about risks associated with products they may use and exposure to toxic
11 substances. The legislature finds as a matter of public policy that
12 the public has a right to information necessary to help protect members
13 of the public from harm caused by public hazards such as defective
14 products or toxic substances. The legislature also recognizes that
15 reservation of trade secrets, confidential research, development,
16 proprietary, commercial, or financial information concerning products
17 or business methods, protects businesses and prevents unfair
18 competition. The legislature intends to minimize intrusion into

1 confidential information while providing information necessary for
2 public protection.

3 NEW SECTION. **Sec. 2.** DEFINITIONS. As used in sections 2 through
4 6 of this act:

5 (1) "Public hazard claim" means a civil action for damages for
6 personal injury, wrongful death, or property damage caused by a
7 defective product or hazardous or toxic substances, that presents a
8 risk of similar injury to other members of the public.

9 (2) "Confidentiality provision" means any terms contained in a
10 court order or private agreement settling, concluding, or terminating
11 a public hazard claim, whether those terms are integrated in the order
12 or private agreement or written separately, that limit the possession,
13 disclosure, or dissemination of information about an alleged public
14 hazard.

15 NEW SECTION. **Sec. 3.** RIGHT TO KNOW. Members of the public have
16 a right to protect themselves against public hazards. In controversies
17 involving public hazard claims no confidentiality provision may be
18 ordered or enforced that conceals information necessary for the public
19 to understand the nature, source, and extent of the risk alleged from
20 the public hazard, except as provided in section 5 of this act.

21 NEW SECTION. **Sec. 4.** PROTECTION OF BUSINESS INFORMATION. Trade
22 secrets as defined in RCW 19.108.010, confidential research,
23 development, proprietary, financial, or commercial information
24 concerning products or business methods, or personal information, are
25 exempt from restrictions on concealment contained in section 3 of this
26 act unless prohibiting concealment of that information is necessary to
27 enable the public to understand the nature, source, and extent of the
28 risk from an alleged public hazard.

29 NEW SECTION. **Sec. 5.** WHEN CONFIDENTIALITY PROVISIONS AUTHORIZED.

30 (1) In cases involving public hazard claims, confidentiality provisions
31 may be ordered by the court as part of temporary orders as to matters
32 the court deems appropriate.

33 (2) In cases involving public hazard claims, that by summary
34 judgment or judgment after trial the court determines that no public
35 hazard exists or that a public hazard exists but that the risk to the

1 public is de minimis, confidentiality provisions may be ordered by the
2 court as to matters the court deems appropriate.

3 (3) In cases involving public hazard claims, that by summary
4 judgment or judgment after trial the court determines that a public
5 hazard exists that is more than a de minimis risk to the public,
6 confidentiality provisions may be ordered by the court only as to
7 information the court finds not necessary for a lay member of the
8 public to understand the nature, source, and extent of the risk from
9 the public hazard that the court has found to exist.

10 (4) In cases involving public hazard claims that are resolved by
11 agreement after filing the case but before judgment, and in cases
12 involving public hazard claims that are filed by third parties as
13 declaratory actions challenging confidentiality provisions in the
14 agreement, confidentiality provisions may be ordered by the court only
15 as to information the court finds, based upon the evidence, not
16 necessary for a lay member of the public to understand the nature,
17 source, and extent of the risk from the alleged public hazard. If the
18 court finds, based upon the evidence that the risk from the alleged
19 public hazard, if proven, would be de minimis, confidentiality
20 provisions may be ordered for matters the court deems appropriate. The
21 parties each have an affirmative duty to come forward with evidence of
22 the public hazard alleged.

23 (5) In cases involving public hazard claims, the court shall make
24 every reasonable effort to insure that business and personal
25 information under section 4 of this act is protected from disclosure,
26 unless such information is necessary to enable the public to protect
27 itself from the hazard.

28 If sufficient information is released for the public to understand
29 the public hazard, no further information related to trade secrets as
30 defined in RCW 19.108.010, confidential research, development,
31 proprietary, financial, or commercial information concerning products
32 or business methods, or personal information shall be released.

33 The court shall insure that information released is not
34 unnecessarily duplicative, technical, or cumulative.

35 (6) Confidentiality provisions in private agreements entered into
36 as part of the resolution of public hazard claims that are not adopted
37 consistent with the provisions of this section are voidable by the
38 court.

1 (7) Nothing prevents the court from denying the request for
2 confidentiality provisions under other law.

3 NEW SECTION. **Sec. 6.** THIRD PARTY CLAIMS--FEES--DAMAGES. In cases
4 of third party actions challenging confidentiality provisions in orders
5 or agreements, the court has discretion to award to the prevailing
6 party costs and reasonable attorneys' fees, and such other terms as the
7 court deems just.

8 NEW SECTION. **Sec. 7.** APPLICATION. This act applies to all
9 confidentiality provisions entered or executed with respect to public
10 hazard claims on or after July 1, 1993. Nothing in this act shall
11 affect any judgment or private agreement entered into under chapter 17,
12 Laws of 1993.

13 NEW SECTION. **Sec. 8.** CAPTIONS. Captions as used in this act
14 constitute no part of the law.

15 NEW SECTION. **Sec. 9.** CODIFICATION. Sections 2 through 6 of this
16 act are each added to chapter 4.24 RCW.

17 NEW SECTION. **Sec. 10.** REPEALERS. The following acts or parts of
18 acts are each repealed:

- 19 (1) RCW 4.24.600 and 1993 c 17 s 1;
20 (2) RCW 4.24.610 and 1993 c 17 s 2;
21 (3) RCW 4.24.620 and 1993 c 17 s 3;
22 (4) 1993 c 17 s 4 (uncodified); and
23 (5) 1993 c 17 s 5.

24 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and shall take
27 effect immediately.

--- END ---