

CERTIFICATION OF ENROLLMENT

**ENGROSSED SENATE BILL 5362**

53rd Legislature  
1993 Regular Session

Passed by the Senate March 10, 1993  
YEAS 25 NAYS 22

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**President of the Senate**

Passed by the House March 29, 1993  
YEAS 61 NAYS 35

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**Speaker of the  
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5362** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

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Governor of the State of Washington

**Secretary of State  
State of Washington**

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ENGROSSED SENATE BILL 5362

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Passed Legislature - 1993 Regular Session

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, "public hazard" means an  
9 instrumentality, including but not limited to any device, instrument,  
10 procedure, product, or a condition of a device, instrument, procedure,  
11 or product, that:

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

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

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

1 (2) Except as provided in this section, no court shall enter an  
2 order or judgment which has the purpose or effect of concealing a  
3 public hazard or any relevant information or material concerning a  
4 public hazard, nor shall the court enter an order or judgment that has  
5 the purpose or effect of concealing any information or material that is  
6 relevant to the public's knowledge or understanding of a public hazard.

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

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

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

36 (5)(a) Any third party, including but not limited to  
37 representatives of news media, has standing to contest a motion, order,  
38 judgment, agreement, or contract that allegedly conceals a public  
39 hazard. The third party may challenge the motion by intervention

1 during the court action or the third party may bring a declaratory  
2 action pursuant to this section to determine whether the agreement,  
3 contract, order, or judgment conceals a public hazard.

4 (b) The third party must (i) establish the existence of a public  
5 hazard; (ii) establish that the public hazard was a subject within the  
6 agreement, contract, order, or judgment; and (iii) establish a basis  
7 for a reasonable belief by the third party that the agreement,  
8 contract, order, or judgment concealed the public hazard in violation  
9 of sections 1 through 3 of this act.

10 (c) If the court finds that the third party has met the  
11 requirements of (b) of this subsection, the court shall order the  
12 defendant to produce the information or material for an in camera  
13 review by the court. The court shall determine whether the information  
14 or material protected under the agreement, contract, order, or judgment  
15 conceals a public hazard in violation of sections 1 through 3 of this  
16 act. Upon review, the court shall issue an order regarding  
17 dissemination of the information or material in accordance with  
18 subsection (4)(b) of this section.

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

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

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

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

30 Any party who attempts to condition an agreement or contract upon  
31 another party's agreement to conceal an instrumentality that the party  
32 knows or reasonably should have known is a public hazard or any party  
33 who enters into an agreement or contract that conceals an  
34 instrumentality that the party knows or reasonably should have known is  
35 a public hazard shall be in violation of the consumer protection act,  
36 chapter 19.86 RCW. If the party is engaged in the business of  
37 insurance then the party shall also be in violation of RCW 48.30.010.

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

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

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

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

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