

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5362

Chapter 17, Laws of 1993

(partial veto)

53rd Legislature
1993 Regular Session

PUBLIC HAZARDS--FULL DISCLOSURE OF CIVIL COURT PROCEEDINGS
RELATING TO

EFFECTIVE DATE: 7/25/93

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

JOEL PRITCHARD

President of the Senate

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

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 12, 1993, with the
exception of section 6, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

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.

MARTY BROWN

Secretary

FILED

April 12, 1993 - 3:41 p.m.

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5362

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.***

16 *Sec. 6 was vetoed, see message at end of chapter.

 Passed the Senate March 10, 1993.

 Passed the House March 29, 1993.

 Approved by the Governor April 12, 1993, with the exception of
 certain items which were vetoed.

 Filed in Office of Secretary of State April 12, 1993.

 Note: Governor's explanation of partial veto is as follows:

 "I am returning herewith, without my approval as to section 6,
Engrossed Senate Bill No. 5362 entitled:

 "AN ACT Relating to full disclosure of civil court proceedings
relating to public hazards."

 Section 6 of Engrossed Senate No. 5362 is an emergency clause which
implements this bill on July 1, 1993. I do not believe that the early
effective date is appropriate in this case. The purpose of ESB 5362 is
to inform the public of the existence of public hazards, such as
products or instrumentalities which pose a danger of damage or injury
to the public, by establishing as the public policy of this state that
information regarding the existence of such hazards not be sealed by
court order nor concealed by private contract or agreement. It is not
the intent of this bill to disclose trade secrets or other proprietary
information protected under existing statutes, case law and court
rules. The existence of a public hazard will be determined by the
courts and only such information as the court determines to be
necessary to inform the public of the existence and nature of the
hazard will be subject to the disclosure requirements of the bill.

 With the exception of section 6, Engrossed Senate Bill No. 5362 is
approved."