
SENATE BILL 6196

State of Washington

53rd Legislature

1994 Regular Session

By Senator A. Smith

Read first time 01/17/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to public hazards; adding new sections to chapter
2 4.24 RCW; creating new sections; repealing RCW 4.24.600, 4.24.610, and
3 4.24.620; repealing 1993 c 17 s 4 (uncodified); repealing 1993 c 17 s
4 5; and declaring an emergency.

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

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

1 of the scope intended in the enactment of chapter 17, Laws of 1993, and
2 as a refinement of the procedures for protecting the public interests
3 covered by this act.

4 NEW SECTION. **Sec. 2.** DEFINITIONS. As used in sections 2 through
5 7 of this act:

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

10 (2) "Confidentiality provision" means a term that limits the
11 possession, disclosure, or dissemination of information about an
12 alleged public hazard claim. It includes the terms of a court order or
13 private agreement that terminates a public hazard claim, whether those
14 terms are integrated in the order or private agreement or whether
15 written separately.

16 NEW SECTION. **Sec. 3.** COMMENCING CLAIM. For purposes of sections
17 4 through 7 of this act a public hazard claim is commenced either by
18 filing a complaint with the court against or by any other notice to the
19 alleged tortfeasor.

20 NEW SECTION. **Sec. 4.** RIGHT TO KNOW. Members of the public have
21 a right to protect themselves against public hazards. In controversies
22 involving public hazard claims no confidentiality provision may be
23 ordered or enforced that conceals information necessary for the public
24 to understand the nature, source, and extent of the risk alleged from
25 the public hazard, except as provided in section 6 of this act.

26 NEW SECTION. **Sec. 5.** PROTECTION OF BUSINESS INFORMATION. Trade
27 secrets as defined in RCW 19.108.010, confidential research,
28 development, proprietary, financial, or commercial information
29 concerning products or business methods, or personal information, are
30 exempt from restrictions on concealment contained in section 4 of this
31 act unless prohibiting concealment of that information is necessary to
32 enable the public to understand the nature, source, and extent of the
33 risk from an alleged public hazard.

1 NEW SECTION. **Sec. 6.** WHEN CONFIDENTIALITY PROVISIONS AUTHORIZED.

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

5 (2) In cases involving public hazard claims, that by summary
6 judgment or judgment after trial the court determines that no public
7 hazard exists or that a public hazard exists but that the risk to the
8 public is de minimis, confidentiality provisions may be ordered by the
9 court as to matters the court deems appropriate.

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

17 (4) In cases involving public hazard claims that are resolved by
18 agreement, whether prior to filing the case or after filing but before
19 judgment, and in cases involving public hazard claims that are filed by
20 third parties as declaratory actions challenging confidentiality
21 provisions in the agreement, confidentiality provisions may be ordered
22 by the court only as to information the court finds, based upon the
23 evidence, not necessary for a lay member of the public to understand
24 the nature, source, and extent of the risk from the alleged public
25 hazard. If the court finds, based upon the evidence that the risk from
26 the alleged public hazard, if proven, would be de minimis,
27 confidentiality provisions may be ordered for matters the court deems
28 appropriate. The parties each have an affirmative duty to come forward
29 with evidence of the public hazard alleged. The court shall not enter
30 a finding or judgment that the public hazard alleged does or does not
31 exist.

32 (5) Confidentiality provisions ordered in cases involving
33 allegations of public hazards that are not adopted consistent with the
34 provisions of this section are void.

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) Confidentiality provisions related to public hazard claims that
2 are determined void are severable from the remainder of the order or
3 agreement notwithstanding any provision to the contrary; the remainder
4 of the order or agreement shall remain in force.

5 (8) Nothing prevents the court from denying the request for
6 confidentiality provisions under other law.

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

12 NEW SECTION. **Sec. 8.** CONSTRUCTION. This act shall be liberally
13 construed.

14 NEW SECTION. **Sec. 9.** APPLICATION. This act applies to all
15 confidentiality provisions entered or executed with respect to public
16 hazard claims on or after July 1, 1993. All rights or causes of action
17 accrued or proceedings undertaken under chapter 17, Laws of 1993, are
18 extinguished and voided and considered to have never existed.

19 NEW SECTION. **Sec. 10.** CAPTIONS. Captions as used in this act
20 constitute no part of the law.

21 NEW SECTION. **Sec. 11.** CODIFICATION. Sections 2 through 6 of this
22 act are each added to chapter 4.24 RCW.

23 NEW SECTION. **Sec. 12.** REPEALERS. The following acts or parts of
24 acts are each repealed:

- 25 (1) RCW 4.24.600 and 1993 c 17 s 1;
26 (2) RCW 4.24.610 and 1993 c 17 s 2;
27 (3) RCW 4.24.620 and 1993 c 17 s 3;
28 (4) 1993 c 17 s 4 (uncodified); and
29 (5) 1993 c 17 s 5.

30 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
31 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 immediately.

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