
ENGROSSED SUBSTITUTE HOUSE BILL 1320

State of Washington

52nd Legislature

1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives R. Meyers, Dellwo, R. King, Inslee, Riley, Ludwig, Ebersole, Leonard, Wineberry and Wang).

Read first time March 6, 1991.

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.

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

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

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

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

29 (b) In any final order or judgment entered in any declaratory or
30 other civil action, if the court finds that all or portions of the

1 information or material sought to be protected is relevant to the
2 public's knowledge or understanding of a public hazard, the court shall
3 require disclosure of the information or material. If the court finds
4 that all or a portion of the information or material sought to be
5 protected is not relevant to the public's knowledge or understanding of
6 the public hazard, the court shall require the information to be sealed
7 and may include in the final order or judgment provisions restraining
8 any or all parties from disclosing the information which is protected.

9 (5)(a) Any third party, including but not limited to
10 representatives of news media, has standing to contest a motion, order,
11 judgment, agreement, or contract that allegedly conceals a public
12 hazard. The third party may challenge the motion by intervention
13 during the court action or the third party may bring a declaratory
14 action pursuant to this section to determine whether the agreement,
15 contract, order, or judgment conceals a public hazard.

16 (b) The third party must (i) establish the existence of a public
17 hazard; (ii) establish that the public hazard was a subject within the
18 agreement, contract, order, or judgment; and (iii) establish a basis
19 for a reasonable belief by the third party that the agreement,
20 contract, order, or judgment concealed the public hazard in violation
21 of sections 1 through 3 of this act.

22 (c) If the court finds that the third party has met the
23 requirements of (b) of this subsection, the court shall order the
24 defendant to produce the information or material for an in camera
25 review by the court. The court shall determine whether the information
26 or material protected under the agreement, contract, order, or judgment
27 conceals a public hazard in violation of sections 1 through 3 of this
28 act. Upon review, the court shall issue an order regarding
29 dissemination of the information or material in accordance with
30 subsection (4)(b) of this section.

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

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

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

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

12 Any party who attempts to condition an agreement or contract upon
13 another party's agreement to conceal an instrumentality that the party
14 knows or reasonably should have known is a public hazard or any party
15 who enters into an agreement or contract that conceals an
16 instrumentality that the party knows or reasonably should have known is
17 a public hazard shall be in violation of the consumer protection act,
18 chapter 19.86 RCW. If the party is an insurance company then the
19 insurance company shall also be in violation of RCW 48.30.010.

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

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

25 An action for declaratory relief or other civil action brought
26 pursuant to sections 1 through 3 of this act to determine whether an

1 agreement, contract, order, or judgment conceals a public hazard in
2 violation of sections 1 through 3 of this act must be brought within
3 three years of entry of the order or judgment or three years from the
4 date the parties entered into the agreement or contract.

5 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect July 1, 1991.