
HOUSE BILL 2769

State of Washington

53rd Legislature

1994 Regular Session

By Representative Appelwick

Read first time 01/24/94. Referred to Committee on Judiciary.

1 AN ACT Relating to public hazard claims; adding a new section to
2 chapter 4.24 RCW; creating new sections; repealing RCW 4.24.600,
3 4.24.610, 4.24.620, and 4.16.380; and repealing 1993 c 17 s 4
4 (uncodified).

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

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

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

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

5 As used in this section:

6 (1)(a) "Public hazard claim" means a civil claim or action in tort
7 for damages for personal injury, wrongful death, or property damage
8 caused by a defective product or hazardous or toxic substances, which
9 presents a risk of similar injury to other members of the public. For
10 purposes of this chapter a public hazard claim is commenced either by
11 filing a complaint with the court against, or by any other notice to,
12 the alleged tortfeasor.

13 (b) "Confidentiality provision" means any terms which limit the
14 possession, disclosure, or dissemination of information about an
15 alleged public hazard claim. It includes the terms of a court order or
16 private agreement which terminates a public hazard claim, whether those
17 terms are integrated in the order or private agreement or whether
18 written separately.

19 (2) Members of the public have a right to protect themselves
20 against public hazards. In controversies involving public hazard
21 claims, no confidentiality provision shall be ordered or enforced which
22 conceals information necessary for the public to understand the nature,
23 source, and extent of the risk alleged from the public hazard, except
24 as provided in subsection (4) of this section.

25 (3) Trade secrets as defined in RCW 19.108.010, confidential
26 research, development, proprietary, financial, or commercial
27 information concerning products or business methods, or personal
28 information, are exempt from restrictions on concealment contained in
29 subsection (2) of this section unless prohibiting concealment of that
30 information is necessary to enable the public to understand the nature,
31 source, and extent of the risk from an alleged public hazard.

32 (4)(a) In cases involving public hazard claims, confidentiality
33 provisions may be ordered by the court as part of temporary orders as
34 to any matters the court deems appropriate.

35 (b) In cases involving public hazard claims, which by summary
36 judgment or judgment after trial, the court determines that no public
37 hazard exists or that a public hazard exists but that the risk to the

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

3 (c) In cases involving public hazard claims, which by summary
4 judgment or judgment after trial, the court determines that a public
5 hazard exists that is more than a de minimus risk to the public,
6 confidentiality provisions may be ordered by the court only as to any
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 which the court has found to exist.

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

25 (e) Any confidentiality provisions ordered in cases involving
26 allegations of public hazards which are not adopted consistent with the
27 provisions of this section are void.

28 (f) Any confidentiality provisions in private agreements entered
29 into as part of the resolution of public hazard claims which are not
30 adopted consistent with the provisions of this section are voidable by
31 the court.

32 (g) Any confidentiality provisions related to public hazard claims
33 which are determined void are severable from the remainder of the order
34 or agreement notwithstanding any provision to the contrary; the
35 remainder of the order or agreement shall remain in force.

36 (h) Nothing prevents the court from denying the request for
37 confidentiality provisions under other law.

38 (5) In cases of third party actions challenging confidentiality
39 provisions in orders or agreements, the court has discretion to award

1 to the prevailing party actual damage, costs, reasonable attorneys'
2 fees, and such other terms as the court deems just.

3 NEW SECTION. **Sec. 3.** This act shall be liberally construed.

4 NEW SECTION. **Sec. 4.** This act applies to all confidentiality
5 provisions entered or executed with respect to public hazard claims on
6 or after July 1, 1993.

7 NEW SECTION. **Sec. 5.** The following acts or parts of acts are each
8 repealed:

- 9 (1) RCW 4.24.600 and 1993 c 17 s 1;
10 (2) RCW 4.24.610 and 1993 c 17 s 2;
11 (3) RCW 4.24.620 and 1993 c 17 s 3;
12 (4) RCW 4.16.380 and 1993 c 17 s 5; and
13 (5) 1993 c 17 s 4 (uncodified).

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