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ENGROSSED SENATE BILL 5886

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State of Washington

61st Legislature

2009 Regular Session

By Senator Kline

Read first time 02/05/09. Referred to Committee on Judiciary.

1 AN ACT Relating to legal proceedings involving public hazards;  
2 amending RCW 4.24.611 and 4.24.601; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that an informed  
5 public is better able to protect itself against risk of loss from  
6 public hazards and that, to have an informed public: (1) Access to  
7 reasonable information regarding public hazards is required; and (2)  
8 courts should not be used to shield information necessary to protect  
9 the safety of the public. The legislature further finds that the  
10 marketplace works most efficiently when competition is based on  
11 consumers being able to make fully informed choices about items placed  
12 in the stream of commerce. Therefore, the legislature intends there to  
13 be a presumption against the sealing of court documents relative to  
14 public hazards as defined in this act.

15 **Sec. 2.** RCW 4.24.611 and 1994 c 42 s 2 are each amended to read as  
16 follows:

17 As used in RCW 4.24.601 and this section:

1 (1)(a) "Product liability/hazardous substance claim" means a claim  
2 for damages for personal injury, wrongful death, or property damage  
3 caused by a ~~((product or hazardous or toxic substances, that is an  
4 alleged hazard to the public and that presents an alleged risk of  
5 similar injury to other members of the public))~~ public hazard.

6 (b) "Confidentiality provision" means any terms in a court order or  
7 a private agreement settling, concluding, or terminating a product  
8 liability/hazardous substance claim, that limit the possession,  
9 disclosure, or dissemination of information about ~~((an alleged hazard  
10 to the public))~~ a public hazard, whether those terms are integrated in  
11 the order or private agreement or written separately.

12 (c) "Members of the public" includes any individual, group of  
13 individuals, partnership, corporation, or association.

14 (d) "Public hazard" means a condition of a product that has caused,  
15 or can be reasonably expected to cause death or serious bodily harm or  
16 other serious harm to a person unaware of the condition.

17 (2) Except as provided in subsection (4) of this section, members  
18 of the public have a right to information necessary for a lay member of  
19 the public to understand the nature, source, and extent of the risk  
20 from alleged hazards to the public.

21 (3) Except as provided in subsection (4) of this section, members  
22 of the public have a right to the protection of trade secrets as  
23 defined in RCW 19.108.010, other confidential research, development, or  
24 commercial information concerning products or business methods.

25 (4)(a) Nothing in this chapter shall limit the issuance of any  
26 protective or discovery orders during the course of litigation pursuant  
27 to court rules. At the conclusion of the litigation, the court shall  
28 review all discovery or protective orders issued during litigation for  
29 compliance with this section.

30 (b) Confidentiality provisions may be entered into or ordered or  
31 enforced by the court only if the court finds, based on the evidence,  
32 that the confidentiality provision ~~((is in the public interest))~~ does  
33 not conceal the existence of a public hazard. In determining ~~((the  
34 public interest))~~ whether to allow a confidentiality provision to be  
35 entered, the court shall balance the right of the public to information  
36 regarding the alleged risk to the public from the product or substance  
37 as provided in subsection (2) of this section against the right of the

1 public to protect the confidentiality of information as provided in  
2 subsection (3) of this section.

3 (c) No agreement between parties involving the final resolution of  
4 a case in litigation involving a public hazard may require a party to  
5 agree to withhold or remain silent on information regarding a public  
6 hazard as a condition of achieving a settlement of the litigation.

7 (5)(a) Any confidentiality provisions that are not adopted  
8 consistent with the provisions of this section are voidable by the  
9 court.

10 (b) Any confidentiality provisions that are determined to be void  
11 are severable from the remainder of the order or agreement  
12 notwithstanding any provision to the contrary and the remainder of the  
13 order or agreement shall remain in force.

14 (c) Nothing in RCW 4.24.601 and this section prevents the court  
15 from denying the request for confidentiality provisions under other law  
16 nor limits the scope of discovery pursuant to applicable court rules.

17 (6) In cases of third party actions challenging confidentiality  
18 provisions in orders or agreements, the court has discretion to award  
19 to the prevailing party actual damages, costs, reasonable attorneys'  
20 fees, and such other terms as the court deems just.

21 ~~((The following acts or parts of acts are each repealed on May~~  
22 ~~1, 1994:~~

23 ~~(a) RCW 4.24.600 and 1993 c 17 § 1;~~

24 ~~(b) RCW 4.24.610 and 1993 c 17 § 2;~~

25 ~~(c) RCW 4.24.620 and 1993 c 17 § 3;~~

26 ~~(d) RCW 4.16.380 and 1993 c 17 § 5; and~~

27 ~~(e) 1993 c 17 § 4 (uncodified).))~~ Except for monetary damage claims  
28 reduced to final judgment by a superior court, this section applies to  
29 all causes of action that exist on or after July 1, 2009.

30 **Sec. 3.** RCW 4.24.601 and 1994 c 42 s 1 are each amended to read as  
31 follows:

32 The legislature finds that public health and safety is promoted  
33 when the public has knowledge that enables members of the public to  
34 make informed choices about risks to their health and safety.  
35 Therefore, the legislature declares as a matter of public policy that  
36 the public has a right to information necessary to protect members of  
37 the public from harm caused by ~~((alleged hazards to the))~~ a public

1 hazard. The legislature also recognizes that protection of trade  
2 secrets, other confidential research, development, or commercial  
3 information concerning products or business methods promotes business  
4 activity and prevents unfair competition. Therefore, the legislature  
5 declares it a matter of public policy that the confidentiality of such  
6 information be protected and its unnecessary disclosure be prevented.

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