
ENGROSSED SUBSTITUTE SENATE BILL 6484

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith and Nelson; by request of Governor Lowry)

Read first time 02/04/94.

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

1 NEW SECTION. **Sec. 2.** DEFINITIONS. As used in sections 2 through
2 6 of this act:

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

7 (2) "Confidentiality provision" means any terms contained in a
8 court order or private agreement settling, concluding, or terminating
9 a public hazard claim, whether those terms are integrated in the order
10 or private agreement or written separately, that limit the possession,
11 disclosure, or dissemination of information about an alleged public
12 hazard.

13 NEW SECTION. **Sec. 3.** RIGHT TO KNOW. Members of the public have
14 a right to protect themselves against public hazards. In controversies
15 involving public hazard claims no confidentiality provision may be
16 ordered or enforced that conceals information necessary for the public
17 to understand the nature, source, and extent of the risk alleged from
18 the public hazard, except as provided in section 5 of this act.

19 NEW SECTION. **Sec. 4.** PROTECTION OF BUSINESS INFORMATION. Trade
20 secrets as defined in RCW 19.108.010, confidential research,
21 development, proprietary, financial, or commercial information
22 concerning products or business methods, or personal information, are
23 exempt from restrictions on concealment contained in section 3 of this
24 act unless prohibiting concealment of that information is necessary to
25 enable the public to understand the nature, source, and extent of the
26 risk from an alleged public hazard.

27 NEW SECTION. **Sec. 5.** WHEN CONFIDENTIALITY PROVISIONS AUTHORIZED.

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

31 (2) In cases involving public hazard claims, that by summary
32 judgment or judgment after trial the court determines that no public
33 hazard exists or that a public hazard exists but that the risk to the
34 public is de minimis, confidentiality provisions may be ordered by the
35 court as to matters the court deems appropriate.

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

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

21 (5) In cases involving public hazard claims, the court shall make
22 every reasonable effort to insure that business and personal
23 information under section 4 of this act is protected from disclosure,
24 unless such information is necessary to enable the public to protect
25 itself from the hazard.

26 If sufficient information is released for the public to understand
27 the public hazard, no further information related to trade secrets as
28 defined in RCW 19.108.010, confidential research, development,
29 proprietary, financial, or commercial information concerning products
30 or business methods, or personal information shall be released.

31 The court shall insure that information released is not
32 unnecessarily duplicative, technical, or cumulative.

33 (6) Confidentiality provisions in private agreements entered into
34 as part of the resolution of public hazard claims that are not adopted
35 consistent with the provisions of this section are voidable by the
36 court.

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

1 NEW SECTION. **Sec. 6.** THIRD PARTY CLAIMS--FEES--DAMAGES. In cases
2 of third party actions challenging confidentiality provisions in orders
3 or agreements, the court has discretion to award to the prevailing
4 party costs and reasonable attorneys' fees, and such other terms as the
5 court deems just.

6 NEW SECTION. **Sec. 7.** APPLICATION. This act applies to all
7 confidentiality provisions entered or executed with respect to public
8 hazard claims on or after July 1, 1993. Nothing in this act shall
9 affect any judgment or private agreement entered into under chapter 17,
10 Laws of 1993.

11 NEW SECTION. **Sec. 8.** CAPTIONS. Captions as used in this act
12 constitute no part of the law.

13 NEW SECTION. **Sec. 9.** CODIFICATION. Sections 2 through 6 of this
14 act are each added to chapter 4.24 RCW.

15 NEW SECTION. **Sec. 10.** REPEALERS. The following acts or parts of
16 acts are each repealed:

- 17 (1) RCW 4.24.600 and 1993 c 17 s 1;
- 18 (2) RCW 4.24.610 and 1993 c 17 s 2;
- 19 (3) RCW 4.24.620 and 1993 c 17 s 3;
- 20 (4) 1993 c 17 s 4 (uncodified); and
- 21 (5) 1993 c 17 s 5.

22 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and shall take
25 effect immediately.

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