
SENATE BILL 5054

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline and Harper

Read first time 01/12/11. 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 hazards.

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 ~~(7) ((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, 2011.

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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