

SB 5054 - S AMD 76

By Senator Kline

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 4.24.611 and 1994 c 42 s 2 are each amended to read
4 as follows:

5 As used in RCW 4.24.601 and this section:

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

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

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

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

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

27 (4)(a) Nothing in this chapter shall limit the issuance of any
28 protective or discovery orders during the course of litigation pursuant
29 to court rules.

1 (b) Confidentiality provisions may be entered into or ordered or
2 enforced by the court only if the court finds, based on the evidence,
3 that the confidentiality provision is in the public interest. In
4 determining the public interest, the court shall balance the right of
5 the public to information regarding the alleged risk to the public from
6 the product or substance as provided in subsection (2) of this section
7 against the right of the public to protect the confidentiality of
8 information as provided in subsection (3) of this section.

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

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

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

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

23 (7) ~~((The following acts or parts of acts are each repealed on May
24 1, 1994:~~

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

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

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

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

29 ~~(e) 1993 c 17 § 4 (uncodified))~~ Notwithstanding subsections (4)
30 and (6) of this section, if a plaintiff who is not a party to a
31 confidentiality provision initiates litigation against a defendant who
32 has previously entered into an agreement or been served with an order
33 containing a confidentiality provision involving a similar claim
34 arising from the use of the product, the defendant must disclose the
35 existence of the order or agreement containing the confidentiality
36 provision. The court in the new action shall determine how and whether
37 the order, agreement, or discovery in the previous action shall be
38 disclosed. If the defendant fails to disclose the existence of the

1 order or agreement containing the confidentiality provision as required
2 by this section, the court may award exemplary damages for that
3 nondisclosure."

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4 On page 1, line 1 of the title, after "hazards;" strike the
5 remainder of the title and insert "and amending RCW 4.24.611."

EFFECT: A confidentiality provision may be entered, ordered, or enforced if the court finds it is in the public's interest. If a nonparty to a confidentiality provision initiates an action against a defendant who previously had entered into, or was served with, such a provision involving a similar claim from use of the product, the defendant must disclose the existence of the confidentiality provision. The court may award exemplary damages for the failure to disclose a confidentiality provision when required to do so.

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