

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0550.01 Jane Ritter x4342

SENATE BILL 12-153

SENATE SPONSORSHIP

Morse,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF THE "SUNSHINE IN LITIGATION ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates a rebuttable presumption that information concerning a public hazard (information) must be disclosed in a court action. A party objecting to the disclosure can seek a protective order to limit disclosure if the court finds, by clear and convincing evidence, that certain factors have been met, including that the information is not relevant to the public hazard and is not useful to members of the public in protecting themselves from injury resulting from the public hazard.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 HEREBY DECLARES THAT THE PURPOSE OF ENACTING THIS PART 12 IS TO
2 ENSURE THAT, IN ANY CIVIL OR ADMINISTRATIVE ACTION IN ANY STATE OR
3 FEDERAL COURT OR TRIBUNAL IN THIS STATE, INFORMATION CONCERNING
4 PUBLIC HAZARDS IS NOT CONCEALED.

5 **25-5-1203. Definitions.** AS USED IN THIS PART 12, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

7 (1) "PUBLIC HAZARD" MEANS ANY DEVICE, INSTRUMENT, OR
8 PRODUCT, OR ANY CONDITION OF A DEVICE, INSTRUMENT, OR PRODUCT
9 THAT HAS CAUSED INJURY TO A PERSON OR HIS OR HER PROPERTY AND
10 MAY FORESEEABLY CAUSE INJURY TO ONE OR MORE OTHER PERSONS IN
11 THE FUTURE.

12 **25-5-1204. Public disclosure - rebuttable presumption -**
13 **protective orders.** (1) PRODUCTION OF INFORMATION CONCERNING A
14 PUBLIC HAZARD IN ANOTHER ACTION IN ANY OTHER COURT OR
15 JURISDICTION, WHETHER VOLUNTARILY OR BY ORDER OF COURT, OR
16 PURSUANT TO ANY AGREEMENT BETWEEN THE PARTIES TO THAT ACTION,
17 CREATES A REBUTTABLE PRESUMPTION THAT THE INFORMATION SHALL
18 NOT BE CONCEALED. NOTWITHSTANDING ANY STATUTE OR COURT RULE TO
19 THE CONTRARY, A COURT SHALL NOT ENTER AN ORDER OR JUDGMENT
20 THAT HAS THE PURPOSE OR EFFECT OF CONCEALING A PUBLIC HAZARD OR
21 ANY INFORMATION CONCERNING A PUBLIC HAZARD UNLESS:

22 (a) THE PARTY TO THE ACTION WHO OBJECTS TO DISCLOSURE OF
23 THE INFORMATION:

24 (I) FILES A MOTION FOR A PROTECTIVE ORDER TO LIMIT
25 DISCLOSURE OF THE INFORMATION TO THE PARTIES TO THE CASE,
26 INCLUDING A LIST OF THE DOCUMENTS AND THINGS SOUGHT TO BE
27 PROTECTED, WITHIN THE TIME OTHERWISE PROVIDED BY LAW FOR

1 DISCLOSURE OF THE INFORMATION; AND

2 (II) PRODUCES THE DOCUMENTS OR THINGS SOUGHT TO BE
3 PROTECTED TO THE COURT AND OPPOSING PARTY FOR IN CAMERA REVIEW
4 AND INSPECTION NOT LATER THAN SEVEN DAYS BEFORE THE HEARING; AND

5 (b) AFTER A HEARING INVOLVING ALL THE PARTIES, THE COURT
6 FINDS, BY CLEAR AND CONVINCING EVIDENCE, THE FOLLOWING:

7 (I) THAT THE INFORMATION IS NOT RELEVANT TO THE PUBLIC
8 HAZARD OR IS NOT REASONABLY CALCULATED TO LEAD TO THE
9 DISCOVERY OF EVIDENCE CONCERNING THE PUBLIC HAZARD;

10 (II) THAT THE INFORMATION IS NOT USEFUL TO MEMBERS OF THE
11 PUBLIC IN PROTECTING THEMSELVES FROM INJURY THAT MIGHT RESULT
12 FROM THE PUBLIC HAZARD;

13 (III) THAT A SPECIFIC, SERIOUS, AND SUBSTANTIAL ECONOMIC
14 INTEREST HAS BEEN DEMONSTRATED THAT CLEARLY OUTWEIGHS ANY
15 POSSIBLE ADVERSE EFFECT THAT NONDISCLOSURE OF THE INFORMATION
16 TO PERSONS OTHER THAN THE PARTIES TO THE ACTION WILL HAVE UPON
17 THE GENERAL PUBLIC HEALTH, WELFARE, OR SAFETY; AND

18 (IV) THAT NO LESS RESTRICTIVE MEANS OTHER THAN
19 NONDISCLOSURE OF THE INFORMATION WILL ADEQUATELY AND
20 EFFECTIVELY PROTECT THE SPECIFIC ECONOMIC INTEREST ASSERTED.

21 (2) NOTHING IN THIS SECTION RELIEVES THE PARTY SEEKING
22 NONPUBLIC DISCLOSURE FROM ANY DUTIES ARISING UNDER OTHER
23 PROVISIONS OF LAW, COURT RULES REGARDING DISCOVERY, OR OTHER
24 COURT RULES.

25 **25-5-1205. Intervention to oppose motion to protect**
26 **documents and things.** NONPARTIES, INCLUDING BUT NOT LIMITED TO
27 REPRESENTATIVES OF THE NEWS MEDIA, MAY INTERVENE AS A MATTER OF

1 RIGHT FOR THE LIMITED PURPOSE OF OPPOSING A MOTION TO PROTECT
2 DOCUMENTS AND THINGS AND PARTICIPATING IN ANY HEARING THEREON,
3 UPON PAYMENT OF THE FEE REQUIRED FOR FILING A NONJURY COMPLAINT
4 TO THE CLERK OF THE COURT WHERE THE ACTION IS FILED.

5 **25-5-1206. Frivolous, groundless, or vexatious actions.** THE
6 FILING OF A MOTION FOR A PROTECTIVE ORDER PURSUANT TO THIS PART 12
7 IS SUBJECT TO PART 1 OF ARTICLE 17 OF TITLE 13, C.R.S., RELATING TO
8 FRIVOLOUS, GROUNDLESS, OR VEXATIOUS ACTIONS.

9 **25-5-1207. Void and voidable contracts.**

10 (1) NOTWITHSTANDING ANY STATUTE OR RULE TO THE CONTRARY, ANY
11 PORTION OF AN AGREEMENT, CONTRACT, OR UNDERSTANDING OF ANY
12 KIND, WHETHER EXPRESS OR IMPLIED, THAT HAS THE PURPOSE OR EFFECT
13 OF CONCEALING A PUBLIC HAZARD, OR ANY INFORMATION THAT MAY BE
14 USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES FROM
15 INJURY THAT MAY RESULT FROM A PUBLIC HAZARD, IS VOID AS BEING
16 CONTRARY TO PUBLIC POLICY AND MAY NOT BE ENFORCED. THE COURT IN
17 ITS DISCRETION MAY IMPOSE SANCTIONS ON ANY PARTY OR ATTORNEY
18 ENTERING SUCH AN AGREEMENT, CONTRACT, OR UNDERSTANDING,
19 INCLUDING DISMISSAL OF THE ACTION, ENTRY OF DEFAULT JUDGMENT,
20 PRECLUSION OF THE ADMISSION INTO EVIDENCE OF THE DOCUMENTS OR
21 THINGS SUBJECT TO THE VOID AGREEMENT, OR THE PRECLUSION OF THE
22 USE OF SUCH DOCUMENTS OR THINGS AS THE BASIS OF EXPERT OPINION OR
23 TESTIMONY IN THE ACTION.

24 (2) NOTWITHSTANDING ANY STATUTE OR ANY RULE TO THE
25 CONTRARY, AN AGREEMENT TO SETTLE A CLAIM RELATING TO A PUBLIC
26 HAZARD MAY NOT BE PREDICATED OR CONDITIONED UPON THE
27 NONDISCLOSURE OF INFORMATION SUBJECT TO THIS PART 12.

1 (3) NOTWITHSTANDING ANY STATUTE OR ANY RULE TO THE
2 CONTRARY, ANY PERSON WHO LEARNS OF AN AGREEMENT IN VIOLATION
3 OF THIS PART 12 MAY FILE AND SERVE UPON THE PARTIES TO THE ACTION
4 A SUGGESTION OF VIOLATION OF THIS PART 12 WITH THE COURT IN WHICH
5 THE ACTION IS FILED AND MAY INTERVENE AS A MATTER OF RIGHT FOR THE
6 LIMITED PURPOSE OF CONTESTING THE AGREEMENT AND PARTICIPATING IN
7 ANY HEARING THEREON, UPON PAYMENT OF THE FEE REQUIRED FOR FILING
8 A NONJURY COMPLAINT TO THE CLERK OF THE COURT WHERE THE ACTION
9 IS FILED. THE COURT SHALL SET THE MATTER FOR HEARING WITHIN
10 FOURTEEN DAYS AFTER SUCH FILING.

11 **25-5-1208. Settlements.** NOTHING IN THIS ARTICLE SHALL
12 PROHIBIT ORDERS OR AGREEMENTS FOR THE NONDISCLOSURE OF THE
13 MONETARY AMOUNT OF THE SETTLEMENT OF ANY ACTION RELATING TO A
14 PUBLIC HAZARD; HOWEVER, THE FACT OF SUCH SETTLEMENT IS SUBJECT TO
15 THE PROVISIONS OF THIS PART 12.

16 **25-5-1209. Severability.** IF ANY PROVISION OF THIS PART 12 OR
17 ITS APPLICATION TO ANY PERSONS OR CIRCUMSTANCES IS HELD INVALID,
18 THE INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS
19 OF THIS PART 12 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID
20 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
21 PART 12 ARE SEVERABLE.

22 **SECTION 2. Effective date - applicability.** This act takes effect
23 upon signature of the governor and applies to all actions pending and all
24 orders, judgments, agreements, contracts, or understandings of any kind
25 entered into or occurring on or after said date.

26 **SECTION 3. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.