

DATE SB0196 6/19/01  
SB 196

SENATE BILL NO. 196

INTRODUCED BY WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE "GUS BARBER ANTISECRECY ACT"; PROHIBITING ~~A COURT FROM ENTERING A JUDGMENT OR ORDER AND ALLOWING DISCLOSURE OF THAT PART OF A WRITTEN JUDGMENT OR WRITTEN FINAL SETTLEMENT~~ THAT CONCEALS A PUBLIC HAZARD ~~OR CONCEALS INFORMATION OR MATERIALS THAT WOULD BE USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES FROM INJURY THAT MAY RESULT FROM THE PUBLIC HAZARD~~; PROVIDING CERTAIN EXCEPTIONS; PROHIBITING AGREEMENTS OR CONTRACTS THAT CONCEAL INFORMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Concealment of public hazards prohibited -- concealment of information related to settlement or resolution of civil suits prohibited.** (1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means ~~an instrumentality, including but not limited to any A~~ device, instrument, ~~procedure,~~ or MANUFACTURED product, or a condition of a device, instrument, ~~procedure,~~ or MANUFACTURED product, that ENDANGERS PUBLIC SAFETY OR HEALTH AND has caused or is likely to cause injury, as defined in 27-1-106.

(3) Except as provided in this section, a court may not enter ~~an order or~~ A FINAL ORDER OR judgment that has the purpose or effect of concealing a public hazard ~~or any information that is relevant to the protection of THAT ENDANGERS public health or safety.~~

(4) Any portion of ~~a court order or judgment or of a written agreement or contract~~ A FINAL ORDER OR JUDGMENT ENTERED OR WRITTEN FINAL SETTLEMENT AGREEMENT entered into pursuant to civil litigation that has the purpose or effect of concealing a public hazard ~~or any information that is relevant to the protection of THAT ENDANGERS public health or safety~~ is contrary to public policy, is void, and may not be enforced. **NOTHING IN THIS SECTION PRECLUDES KEEPING THE MONETARY AMOUNT OF A SETTLEMENT CONFIDENTIAL.** [Blazer]

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section. [MTLA]

(6) This section does not apply to:

(a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected

1 pursuant to Title 30, chapter 14, part 4;

2 (b) other information that is confidential under state or federal law; or

3 (c) a health care provider, as defined in 27-6-103:

4 ~~(i) developing or using professionally monitored experimental or investigational procedures; or~~

5 ~~(ii) providing care and treatment to patients in accordance with the applicable professional standards~~  
6 ~~of care.~~

7 (7) Any affected person, including but not limited to a representative of the news media, has standing  
8 to contest a court order or judgment or an agreement or contract FINAL ORDER OR JUDGMENT OR WRITTEN  
9 FINAL SETTLEMENT AGREEMENT OF A CIVIL CLAIM that violates this section. ~~A person may contest a court~~  
10 ~~order or judgment or an agreement or contract that violates this section~~ by motion in the court IN WHICH THE  
11 CASE WAS FILED OR IN A COURT OF COMPETENT JURISDICTION IF A CASE HAS NOT BEEN FILED, that  
12 entered the order or judgment or by bringing a declaratory judgment action pursuant to Title 27, chapter 8.

13 (8) ~~Upon motion and good cause shown by a party attempting to prevent disclosure of information or~~  
14 ~~materials that have not previously been disclosed, including but not limited to alleged trade secrets, the~~ THE  
15 court shall examine the disputed information or materials in camera. If the court finds that the information or  
16 materials or portions of the information or materials consist of information concerning a public hazard ~~or~~  
17 ~~information that may be useful to members of the public in protecting themselves from injury that may result from~~  
18 ~~a public hazard~~, the court shall allow disclosure of the information or materials. If allowing disclosure, the court  
19 shall allow disclosure of only that portion of the information or materials necessary or useful to the public  
20 concerning the public hazard.

21 (9) THIS SECTION HAS NO APPLICABILITY TO A PROTECTIVE ORDER ISSUED UNDER RULE  
22 26(C) OF THE MONTANA RULES OF CIVIL PROCEDURE, OR TO ANY MATERIALS PRODUCED  
23 THEREUNDER. [Alke] ANY MATERIALS USED AS EXHIBITS MAY BE PUBLICLY DISCLOSED PURSUANT  
24 TO THE PROVISIONS OF SUBSECTIONS (7) AND (8). [MTLA]

25 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an  
26 integral part of Title 2, chapter 6, part 1, and the provisions of Title 2, chapter 6, part 1, apply to [section 1].

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28 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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30 NEW SECTION. SECTION 4. APPLICABILITY. [THIS ACT] APPLIES TO CAUSES OF ACTION  
31 FILED AFTER [THE EFFECTIVE DATE]. [Blazer]

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