

SENATE BILL NO. 311
INTRODUCED BY WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE "SUNSHINE IN LITIGATION ACT"; PROHIBITING A COURT FROM ENTERING A JUDGMENT OR ORDER THAT CONCEALS A PUBLIC HAZARD OR CONCEALS INFORMATION THAT WOULD BE USEFUL TO MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES FROM INJURY THAT MAY RESULT FROM THE PUBLIC HAZARD; PROVIDING CERTAIN EXCEPTIONS; AND PROHIBITING AGREEMENTS OR CONTRACTS THAT CONCEAL INFORMATION."

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

NEW SECTION. Section 1. Sunshine in litigation -- 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 "Sunshine in Litigation Act".

(2) As used in this section, "public hazard" means an instrumentality, including but not limited to any device, instrument, procedure, product, or a condition of a device, instrument, procedure, or product, that has caused and 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 judgment that has the purpose or effect of concealing a public hazard or any information concerning a public hazard.

(4) Any portion of a written agreement or contract entered into pursuant to civil litigation that has the purpose or effect of concealing a public hazard or any information concerning a public hazard is, contrary to public policy, void, and may not be enforced.

~~(5) Trade secrets, as defined in 30-14-402, that are not pertinent to public hazards must be protected pursuant to Title 30, chapter 14, part 4. This section does not apply to other information that is confidential under state or federal law.~~

(5) 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 PURSUANT TO TITLE 30, CHAPTER 14, PART 4;

(B) OTHER INFORMATION THAT IS CONFIDENTIAL UNDER STATE OR FEDERAL LAW; OR

(C) HEALTH CARE PROVIDERS;

(I) DEVELOPING OR USING PROFESSIONALLY MONITORED EXPERIMENTAL OR INVESTIGATIONAL PROCEDURES; OR

(II) PROVIDING CARE AND TREATMENT TO PATIENTS IN ACCORDANCE WITH THE APPLICABLE PROFESSIONAL STANDARDS OF CARE.

(6) Any affected person, including but not limited to representatives of news media, has standing to contest an order, judgment, agreement, or contract that violates this section. A person may contest an order, judgment, agreement, or contract that violates this section by motion in the court that entered the order or judgment or by bringing a declaratory judgment action pursuant to Title 27, chapter 8.

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

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