

# Senate Study Bill 189

## Conference Committee Text

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1 1 Section 1. NEW SECTION. 624B.1 TITLE &endash; DEFINITION.  
1 2 1. This chapter shall be known as the "Sunshine in Liti-  
1 3 gation Act."  
1 4 2. For the purposes of this chapter, unless the context  
1 5 otherwise requires, "court records" means any of the  
1 6 following:  
1 7 a. All documents of any nature filed in connection with  
1 8 any matter before any civil court, except any of the  
1 9 following:  
1 10 (1) Documents filed with a court in camera, only for the  
1 11 purpose of obtaining a ruling on the discoverability of such  
1 12 documents.  
1 13 (2) Documents in court files to which access is otherwise  
1 14 restricted by law.  
1 15 b. Settlement agreements, not filed of record, that seek  
1 16 to restrict disclosure of information concerning matters that  
1 17 have a probable adverse effect upon the general public health  
1 18 or safety, the administration of public office, or the  
1 19 operation of government.  
1 20 c. Discovery, not filed of record, concerning matters that  
1 21 have a probable adverse effect upon the general health or  
1 22 safety, the administration of public office, or the operation  
1 23 of government, except discovery not filed of record in cases  
1 24 originally initiated to preserve bona fide trade secrets or  
1 25 other intangible property rights.  
1 26 Sec. 2. NEW SECTION. 624B.2 SEALING RECORDS.  
1 27 A court order or opinion issued in the adjudication of a  
1 28 case shall not be sealed. Other court records are presumed to  
1 29 be open to the general public but may be sealed only upon a  
1 30 showing pursuant to the procedures of this chapter and all of  
1 31 the following:  
1 32 1. A specific, serious, and substantial interest which  
1 33 clearly outweighs the presumption of openness and any probable  
1 34 adverse effect that sealing will have upon the general public  
1 35 health or safety.  
2 1 2. No less restrictive means that sealing the records will  
2 2 adequately and effectively protect the specific interest as-  
2 3 serted.  
2 4 Sec. 3. NEW SECTION. 624B.3 COERCION.  
2 5 A person shall not offer an inducement to a party to a  
2 6 civil action designed to influence that party in regard to the  
2 7 sealing of any court record. Violation of this section is  
2 8 punishable as a contempt of court.  
2 9 Sec. 4. NEW SECTION. 624B.4 NOTICE.  
2 10 Court records may be sealed only upon a party's written  
2 11 motion, which shall be open to public inspection. The movant  
2 12 shall post a public notice in the manner that notices for  
2 13 meetings of county governmental bodies are required to be  
2 14 posted. The notice shall contain the content of the motion,  
2 15 identify the case in which the motion has been filed, and  
2 16 state that a hearing will be held in open court on the motion  
2 17 and that any person may intervene and be heard concerning the  
2 18 motion. The notice shall also contain the date and time of  
2 19 the hearing and a brief but specific description of the nature  
2 20 of the case, the court records sought to be sealed, and the  
2 21 identity of the movant. A verified copy of the notice shall

2 22 be filed by the movant with the clerk of the supreme court.

2 23 Sec. 5. NEW SECTION. 624B.5 HEARING.

2 24 A hearing shall be held in open court on a motion to seal  
2 25 court records as soon as practicable but not less than  
2 26 fourteen days after notice is posted pursuant to section  
2 27 624B.4 Nonparties may intervene as a matter of right for the  
2 28 limited purpose of participating in the proceedings which will  
2 29 determine whether court records are sealed. The court may  
2 30 inspect records in camera.

2 31 Sec. 6. NEW SECTION. 624B.6 TEMPORARY SEALING ORDER.

2 32 A temporary sealing order may issue upon motion and notice  
2 33 to any parties who have answered in the case, upon a showing  
2 34 of compelling need from specific facts shown by affidavit or  
2 35 by verified petition that immediate and irreparable injury  
3 1 will result to a specific interest of the movant before notice  
3 2 can be posted and a hearing held. A temporary sealing order  
3 3 shall set forth the time for the hearing required by section  
3 4 624B.5 and shall direct the movant to give the notice required  
3 5 by section 624B.4. The court may modify or withdraw any  
3 6 temporary order upon motion by any party or intervenor,  
3 7 following notice to all parties and a hearing conducted as  
3 8 soon as practicable. Issuance of a temporary order shall not  
3 9 reduce the burden of proof of the party seeking to seal court  
3 10 records.

3 11 Sec. 7. NEW SECTION. 624B.7 ORDER ON MOTION TO SEAL  
3 12 COURT RECORDS.

3 13 A motion relating to sealing or opening court records shall  
3 14 be decided by written order, open to public inspection, which  
3 15 shall state the style and number of the case, the specific  
3 16 reasons for finding and concluding whether the showing re-  
3 17 quired by section 624B.2 has been made, the specific court  
3 18 records or portions of court records which are to be sealed,  
3 19 and the period of time the records are to be sealed. The  
3 20 order shall not be included in any judgment or other order but  
3 21 shall be a separate document in the case. However, failure to  
3 22 comply with this requirement shall not affect the  
3 23 appealability of the order.

3 24 Sec. 8. NEW SECTION. 624B.8 CONTINUING JURISDICTION.

3 25 Any person may intervene as a matter of right at any time  
3 26 before or after judgment to seal or open court records. A  
3 27 court that issues an order sealing court records retains  
3 28 continuing jurisdiction to enforce, alter, or vacate that  
3 29 order. An order sealing or opening court records shall be  
3 30 reconsidered on motion of any party or intervenor, who had  
3 31 actual notice of the hearing preceding issuance of the order,  
3 32 without first showing changed circumstances materially af-  
3 33 fecting the order. The circumstances need not be related to  
3 34 the case in which the order was issued. However, the burden  
3 35 of making the showing required by section 624B.2 shall be on  
4 1 the party seeking to seal records.

4 2 Sec. 9. NEW SECTION. 624B.9 APPEAL.

4 3 An order or a portion of an order, relating to sealing or  
4 4 opening court records, shall be deemed to be severed from the  
4 5 case and a final judgment which may be appealed by any party  
4 6 or intervenor who participated in the hearing preceding is-  
4 7 suance of such order. The appellate court may abate the  
4 8 appeal and order the trial court to direct that further public  
4 9 notice be given, to hold further hearings, or to make addi-  
4 10 tional findings.

4 11 Sec. 10. NEW SECTION. 624B.10 APPLICABILITY DATE.

4 12 Access to documents in court files not defined as court  
4 13 records by this chapter remains governed by existing law.  
4 14 This chapter does not apply to any court records sealed in an  
4 15 action in which a final judgment has been entered before July  
4 16 1, 1996. This chapter applies to cases pending on July 1,  
4 17 1996, only with regard to court records filed or exchanged on  
4 18 or after July 1, 1996, and any motion filed on or after July

4 19 1, 1996, to alter or vacate an order restricting access to  
4 20 court records issued before July 1, 1996.

4 21

EXPLANATION

4 22 This bill provides a presumption that all court records in  
4 23 civil actions are open to the public unless access is re-  
4 24 stricted by operation of other law. The bill also provides a  
4 25 mechanism for hearings on motions to seal court records and  
4 26 for appeal of orders relating to the sealing of court records.  
4 27 The bill applies to cases pending on and after July 1, 1996.

4 28 LSB 2226SC 76

4 29 mk/jw/5