

**SENATE BILL REPORT**

**ESHB 1320**

**AS OF FEBRUARY 21, 1992**

**Brief Description:** Requiring full disclosure of civil court proceedings relating to public hazards.

**SPONSORS:** House Committee on Judiciary (originally sponsored by Representatives R. Meyers, Dellwo, R. King, Inslee, Riley, Ludwig, Ebersole, Leonard, Wineberry and Wang).

**HOUSE COMMITTEE ON JUDICIARY**

**SENATE COMMITTEE ON LAW & JUSTICE**

**Staff:** Jack Brummel (786-7428)

**Hearing Dates:** April 2, 1991; February 24, 1992

**BACKGROUND:**

During civil litigation, the court has the power to issue protective orders preventing the dissemination of certain information either to the other party or to the public. Such orders commonly protect trade secrets, research, and other commercial information. Parties may also enter into settlement agreements restricting release of such information or information about the cause of injury to an aggrieved party. These practices, including the practice of sealing court records, have been criticized in certain instances as being used to avoid public debate about safety or health hazards, and denying information to individuals attempting to make informed decisions about the risks associated with particular goods, practices or procedures.

**SUMMARY:**

Courts may not issue protective orders or judgments with the purpose or effect of concealing a public hazard or information about a public hazard, or any information useful in protection from a public hazard. Agreements or contracts with the same purpose or effect are void and unenforceable.

A public hazard is an instrumentality that presents potential repetition of harm or involves a single incident affecting many people. The term does not include acts or procedures by licensed professionals acting within the scope of their licenses.

A party to an agreement or contract may bring a declaratory action to determine whether an agreement or contract conceals a public hazard and is void. A party may request the court to conceal information temporarily pending a final order or judgment.

Any third party, including but not limited to the news media, has standing to contest an order, judgment, agreement, or contract that allegedly conceals a public hazard. Third parties may challenge motions to seal information by intervening or by bringing a declaratory action to determine whether the order, judgment, agreement, or contract conceals a public hazard. The court may award reasonable attorneys' fees and costs to the prevailing party in a third-party action.

Persons who violate an order either publishing or sealing information are in contempt of court. The court must award attorneys' fees and costs incurred in enforcing the order plus actual damages.

An agreement to conceal a public hazard constitutes a violation of the Consumer Protection Act. If the party in violation is an insurance company, the company will also be in violation of the Unfair Practices Act governing insurance companies.

The statute of limitations to bring declaratory or civil actions is three years from the execution of or entry of the agreement, contract, order, or judgment.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**Effective Date:** The bill contains an emergency clause and takes effect July 1, 1991.