

2 **ESSB 6484** - H AMD

3 By Representatives Appelwick and Padden

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
8 to read as follows:

9 The legislature finds that public health and safety is promoted
10 when the public has knowledge that enables members of the public to
11 make informed choices about risks to their health and safety.
12 Therefore, the legislature declares as a matter of public policy that
13 the public has a right to information necessary to protect members of
14 the public from harm caused by alleged hazards to the public. The
15 legislature also recognizes that protection of trade secrets, other
16 confidential research, development, or commercial information
17 concerning products or business methods promotes business activity and
18 prevents unfair competition. Therefore, the legislature declares it a
19 matter of public policy that the confidentiality of such information be
20 protected and its unnecessary disclosure be prevented.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW
22 to read as follows:

23 As used in section 1 of this act and this section:

24 (1)(a) "Product liability/hazardous substance claim" means a claim
25 for damages for personal injury, wrongful death, or property damage
26 caused by a product or hazardous or toxic substances, that is an
27 alleged hazard to the public and that presents an alleged risk of
28 similar injury to other members of the public.

29 (b) "Confidentiality provision" means any terms in a court order or
30 a private agreement settling, concluding, or terminating a product
31 liability/hazardous substance claim, that limit the possession,
32 disclosure, or dissemination of information about an alleged hazard to
33 the public, whether those terms are integrated in the order or private
34 agreement or written separately.

1 (c) "Members of the public" includes any individual, group of
2 individuals, partnership, corporation, or association.

3 (2) Except as provided in subsection (4) of this section, members
4 of the public have a right to information necessary for a lay member of
5 the public to understand the nature, source, and extent of the risk
6 from alleged hazards to the public.

7 (3) Except as provided in subsection (4) of this section, members
8 of the public have a right to the protection of trade secrets as
9 defined in RCW 19.108.010, other confidential research, development, or
10 commercial information concerning products or business methods.

11 (4)(a) Nothing in this chapter shall limit the issuance of any
12 protective or discovery orders during the course of litigation pursuant
13 to court rules.

14 (b) Confidentiality provisions may be entered into or ordered or
15 enforced by the court only if the court finds, based on the evidence,
16 that the confidentiality provision is in the public interest. In
17 determining the public interest, the court shall balance the right of
18 the public to information regarding the alleged risk to the public from
19 the product or substance as provided in subsection (2) of this section
20 against the right of the public to protect the confidentiality of
21 information as provided in subsection (3) of this section.

22 (5)(a) Any confidentiality provisions that are not adopted
23 consistent with the provisions of this section are voidable by the
24 court.

25 (b) Any confidentiality provisions that are determined to be void
26 are severable from the remainder of the order or agreement
27 notwithstanding any provision to the contrary and the remainder of the
28 order or agreement shall remain in force.

29 (c) Nothing in section 1 of this act and this section prevents the
30 court from denying the request for confidentiality provisions under
31 other law nor limits the scope of discovery pursuant to applicable
32 court rules.

33 (6) In cases of third party actions challenging confidentiality
34 provisions in orders or agreements, the court has discretion to award
35 to the prevailing party actual damages, costs, reasonable attorneys'
36 fees, and such other terms as the court deems just.

37 (7) The following acts or parts of acts are each repealed on the
38 effective date of this section:

39 (a) RCW 4.24.600 and 1993 c 17 s 1;

1 (b) RCW 4.24.610 and 1993 c 17 s 2;
2 (c) RCW 4.24.620 and 1993 c 17 s 3;
3 (d) RCW 4.16.380 and 1993 c 17 s 5; and
4 (e) 1993 c 17 s 4 (uncodified).

5 NEW SECTION. **Sec. 3.** This act applies to all confidentiality
6 provisions entered or executed with respect to product
7 liability/hazardous substance claims on or after May 1, 1994.

8 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect May 1, 1994."

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