

# HOUSE BILL REPORT

## ESSB 6484

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As Reported By House Committee On:  
Judiciary

**Title:** An act relating to disclosure of information in civil court proceedings.

**Brief Description:** Regulating confidentiality claims in court settlements involving public hazards.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators A. Smith and Nelson; by request of Governor Lowry).

**Brief History:**

Reported by House Committee on:  
Judiciary, February 25, 1994, DPA.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 17 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; H. Myers; Riley; Schmidt; Scott; Tate and Wineberry.

**Staff:** Pat Shelledy (786-7149).

**Background:** If a person is killed or injured or the person's property is allegedly damaged by a defective product or a toxic substance, the person may bring a civil case for personal injury, wrongful death, or property damage. In some cases, the parties may settle the case on the condition that the plaintiff does not subsequently disclose information about the allegedly defective product or toxic substance. In other cases, the trial judge may enter a "protective order" which prohibits parties from disseminating certain documents or other information about the case.

Critics of settlement agreements and protective orders have argued that some agreements and orders conceal information that should be available to the public, so the public can take steps to protect themselves from "public hazards" such as a defective product or toxic substance. In response, the Legislature passed a bill last year to limit the ability of

parties to enter into agreements which may conceal information about "public hazards." The bill also limited the court's authority to grant protective orders which may conceal information about public hazards.

The bill that passed the Legislature has been criticized as being overly broad, vague, and unworkable, and creates a risk that trade secrets and other confidential business and personal information will be revealed unnecessarily.

**Summary of Amended Bill:** Current law concerning concealing information about public hazards is repealed and replaced with another statute.

A "public hazard claim" means a claim for damages for personal injury, wrongful death, or property damage caused by an allegedly unsafe product or allegedly hazardous or toxic substance that presents a risk of similar injury to other members of the public. A "confidentiality provision" means any terms in a court order or a private agreement terminating a public hazard claim that limit possession or disclosure of information about an alleged public hazard.

The court may order confidentiality provisions in temporary orders as the court deems appropriate. When the case is resolved by trial or by summary judgment and the court finds that a public hazard exists, the court may order confidentiality provisions only concerning any information the court finds is not necessary for a lay member of the public to understand the nature, source, and extent of risk from the public hazard. When the case is resolved by a settlement agreement which is later challenged, the court must engage in a balancing test, balancing the interests of the public's right to protect its members against public hazards against the public's interest in protecting the confidentiality of business and personal information.

If a third party challenges confidentiality provisions in orders or agreements, the court may award to the prevailing party actual damages, costs, and reasonable attorneys' fees, and may impose other terms.

The act applies to confidentiality provisions entered regarding public hazard claims on or after the effective date of the act passed last year, which was July 25, 1993.

**Amended Bill Compared to Engrossed Substitute Bill:** The bill is restructured. An obligation that was placed on the judiciary to determine whether the risk to the public from the public hazard is "de minimis" is removed. A balancing test is added to evaluate whether a confidentiality provision in a private agreement is in the public interest.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** None.

**Testimony Against:** The bill still does not address the business community's concerns about protection of confidential business information. The bill does not give enough protection to the public from hazardous products.

**Witnesses:** Deborah Brunton, Microsoft (con); Karen Hedine, Procyte (con); Fred Tausend, American Electronics Association (con); and Larry Shannon, Washington State Trial Lawyers Association (con).