

SENATE BILL REPORT

SB 6484

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 3, 1994

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

SPONSORS: Senators A. Smith and Nelson; by request of Governor Lowry

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6484 be substituted therefor, and the substitute bill do pass.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Quigley and Spanel.

Staff: Dick Armstrong (786-7460)

Hearing Dates: January 27, 1994; February 3, 1994

BACKGROUND:

Last year legislation was enacted which was intended to inform the public of the existence of public hazards. The statute generally provides that information regarding public hazards cannot be sealed by court orders nor concealed by private contract or agreement. Public hazards are products or instrumentalities which pose a danger of damage or injury to the public.

Concern has been expressed by the business community that the specific language of the bill is too broad and vague. The business community is concerned that the statute could be interpreted in a manner to require the unnecessary disclosure of trade secrets, confidential research, and proprietary, commercial or financial information concerning products and business methods.

SUMMARY:

The existing statute governing hazards to the public is repealed and replaced by a statute which provides more precise definitions of the type of damage claims covered by the statute, as well as specific criteria for courts to use in entering or enforcing confidentiality provisions.

The hazards to the public statute applies to product liability and environmental damage claims, which are defined as civil actions for personal injury, wrongful death or property damage caused by a defective product or hazardous substance, that present a risk of injury to the public.

Confidentiality agreements pertaining to such claims may not be entered or enforced by a court, unless the court determines that good cause exists to allow nondisclosure of information. To determine good cause, the court is to consider: whether such information is necessary for the public to understand the nature, source and extent of the risk; the severity of harm to the public if information is not disclosed, and the severity of harm if confidentiality is not provided.

The provisions of the bill apply to confidentiality provisions entered or executed on or after July 1, 1993.

EFFECT OF PROPOSED SUBSTITUTE:

The existing statute governing hazards to the public is repealed and replaced by a statute which provides more precise definitions of the type of damage claims covered by the statute, as well as specific criteria for courts to use in entering or enforcing confidentiality provisions.

The public hazard statute applies to civil causes of action for personal injury, wrongful death or property damage caused by a defective product or hazardous substance and which presents a risk of injury to the public.

Generally, confidentiality agreements which conceal information necessary for the public to understand the nature, source, and extent of risk of a public hazard may not be ordered or enforced by a court. If the risk to the public is minimal, confidentiality provisions may be ordered.

Courts are directed to make reasonable efforts to ensure that trade secrets, confidential research, and proprietary, commercial or financial information concerning products and business methods are exempt from disclosure, unless such information is necessary for the public to understand the nature of the risk from the public hazard. Courts are not to release information that is unnecessarily duplicative, technical or cumulative.

In third party actions challenging confidentiality provisions, the court may award the prevailing party costs and reasonable attorney fees. The provisions of the bill apply to confidentiality provisions entered or executed on or after July 1, 1993.

Appropriation: none

Revenue: none

Fiscal Note: none requested

Effective Date: Retroactive to July 1, 1993.

TESTIMONY FOR:

The 1993 legislation is too vague and places an undue burden on businesses, particularly the small, high-tech firms. The law does not protect patents, trade secrets, and other financial information which business need to protect.

TESTIMONY AGAINST:

The bill does not give enough protection to the public from hazardous products. The bill goes too far in allowing private litigants and courts to conceal information from the public.

TESTIFIED: PRO: Fred Tauserd, A&A; Leslie Deitz, ICOS Corp.; Deborah Brunton, Microsoft; Tom Renken, Immunex; CON: Larry Shannon, Dennis Martin, WSTLA