

SENATE BILL REPORT

SB 5054

As of January 25, 2012

Title: An act relating to legal proceedings involving public hazards.

Brief Description: Regulating legal proceedings involving public hazards.

Sponsors: Senators Kline and Harper.

Brief History:

Committee Activity: Judiciary: 1/24/12.

SENATE COMMITTEE ON JUDICIARY

Staff: Aldo Melchiori (786-7439)

Background: Washington law governs the use of confidentiality provisions with respect to product liability or hazardous substance claims. A product liability or hazardous substance claim is defined as a claim for damages for personal injury, wrongful death, or property damage caused by a product or hazardous or toxic substances, that is an alleged hazard to the public and that presents an alleged risk of similar injury to other members of the public. Members of the public have a right to information that is necessary to understand the nature, source, and extent of the risk from alleged hazards. Members of the public also have a right to the protection of trade secrets and other confidential research, development, or commercial information concerning products or business methods.

A provision in a court order or private agreement settling or terminating a product liability or hazardous substance claim that limits the possession or disclosure of information about an alleged hazard to the public is considered to be a confidentiality provision. These provisions may be entered into, ordered, or enforced by a court only if the court finds, based on the evidence, that the confidentiality provision is in the public interest. In determining the public interest, the court must balance between the right of the public to information regarding an alleged risk from the product or substance and the right of the public to protect the confidentiality of information. Despite potential limitations on the use of confidentiality provisions, protective or discovery orders may be issued during the course of litigation pursuant to court rules.

Summary of Bill: The Legislature intends to create a presumption against the sealing of court documents relative to public hazards. The definition of product liability or hazardous

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substance claim is amended to mean a claim for damages for personal injury, wrongful death, or property damage caused by a public hazard. A public hazard is defined as a condition of a product that has caused, or can be reasonably expected to cause death or serious bodily harm or other serious harm to a person unaware of the condition.

At the conclusion of litigation, the court is required to review all discovery or protective orders issued during the litigation in order to determine whether they comply with the statutory provisions governing public hazards. Confidentiality provisions may be entered into, ordered, or enforced only if the court finds, based on the evidence, that the confidentiality provision does not conceal the existence of a public hazard. In determining whether to allow a confidentiality provision, the court must balance between the right of the public to information an alleged risk from the product or substance and the right of the public to protect the confidentiality of information.

No agreement between parties regarding the final resolution of a case in litigation involving a public hazard may require a party to agree to withhold or remain silent on information regarding a public hazard as a condition of achieving a settlement of the litigation.

The provisions of this act apply to all causes of action that exist on or after July 1, 2011, except for monetary damage claims reduced to final judgment by a superior court.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The purpose of the bill is to prevent sealing orders that prevent the public from discovering public hazards that cause repeated injury. Our court system should not be used to hide important product information from the public. This will help ensure that products are safer. Openness of the court system increases public confidence in government.

CON: There are legitimate concerns regarding the disclosure of trade secrets. The current law reduces litigation and saves money. Companies do not hide the truth about product hazards, they fix them. The bill encompasses alleged hazards, not only those that have been proved.

Persons Testifying: PRO: Senator Kline, prime sponsor; Larry Shannon, Mark Kamitomo, WA Assn. for Justice; Reed Schifferman, citizen; Rowland Thompson, Allied Daily Newspapers.

CON: Cliff Webster, Liability Reform Coalition.