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**SUBSTITUTE HOUSE BILL 1320**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

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

Read first time March 6, 1991.

1            AN ACT Relating to full disclosure of civil court proceedings  
2 relating to public hazards; adding new sections to chapter 4.24 RCW;  
3 adding a new section to chapter 4.16 RCW; creating a new section;  
4 providing an effective date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

8            (1) As used in this section, "public hazard" means an  
9 instrumentality, including but not limited to any device, instrument,  
10 procedure, product, or a condition of a device, instrument, procedure,  
11 or product, that:

12            (a) Previously has caused injury to another person or persons and  
13 presents a real and substantial potential for repetition of the harm  
14 inflicted; or

1 (b) Involves a single incident which affected or was likely to  
2 affect many people.

3 As used in this section, the term "procedure" does not include acts  
4 or procedures by licensed professionals acting within the scope of  
5 their licenses.

6 (2) Except as provided in this section, no court shall enter an  
7 order or judgment which has the purpose or effect of concealing a  
8 public hazard or any relevant information or material concerning a  
9 public hazard, nor shall the court enter an order or judgment that has  
10 the purpose or effect of concealing any information or material that is  
11 relevant to the public's knowledge or understanding of a public hazard.

12 (3) Any portion of an agreement or contract that has the purpose or  
13 effect of concealing a public hazard, relevant information or material  
14 concerning a public hazard, or information or material that is relevant  
15 to the public's knowledge or understanding of a public hazard, is void,  
16 contrary to public policy, and may not be enforced. A party to the  
17 agreement or contract may bring a declaratory action pursuant to this  
18 section to determine whether an agreement or contract conceals a public  
19 hazard and is void.

20 (4)(a) In any declaratory or other civil action, a party may bring  
21 a motion for a temporary order restraining disclosure to the public or  
22 to third parties information or material about the party making the  
23 motion which is known to another party or which is sought from the  
24 party making the motion by another party. Upon good cause shown the  
25 court shall examine in camera the information or material sought to be  
26 protected. The court may in the court's discretion issue a temporary  
27 order restraining a party or parties from disseminating the protected  
28 information or material to the public or third parties. The temporary  
29 order shall terminate upon the entry of a final order or judgment or a  
30 dismissal of the action.

1 (b) In any final order or judgment entered in any declaratory or  
2 other civil action, if the court finds that all or portions of the  
3 information or material sought to be protected is relevant to the  
4 public's knowledge or understanding of a public hazard, the court shall  
5 require disclosure of the information or material. If the court finds  
6 that all or a portion of the information or material sought to be  
7 protected is not relevant to the public's knowledge or understanding of  
8 the public hazard, the court shall require the information to be sealed  
9 and may include in the final order or judgment provisions restraining  
10 any or all parties from disclosing the information which is protected.

11 (5)(a) Any third party, including but not limited to  
12 representatives of news media, has standing to contest a motion, order,  
13 judgment, agreement, or contract that allegedly conceals a public  
14 hazard. The third party may challenge the motion by intervention  
15 during the court action or the third party may bring a declaratory  
16 action pursuant to this section to determine whether the agreement,  
17 contract, order, or judgment conceals a public hazard.

18 (b) The third party must (i) establish the existence of a public  
19 hazard; (ii) establish that the public hazard was a subject within the  
20 agreement, contract, order, or judgment; and (iii) establish a basis  
21 for a reasonable belief by the third party that the agreement,  
22 contract, order, or judgment concealed the public hazard in violation  
23 of sections 1 through 3 of this act.

24 (c) If the court finds that the third party has met the  
25 requirements of (b) of this subsection, the court shall order the  
26 defendant to produce the information or material for an in camera  
27 review by the court. The court shall determine whether the information  
28 or material protected under the agreement, contract, order, or judgment  
29 conceals a public hazard in violation of sections 1 through 3 of this  
30 act. Upon review, the court shall issue an order regarding

1 dissemination of the information or material in accordance with  
2 subsection (4)(b) of this section.

3 (d) The court may award reasonable attorneys' fees and actual costs  
4 to the prevailing party in an action under this subsection (5).

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

7 Any person who violates an order either publishing or sealing  
8 information or material issued under sections 1 through 3 of this act,  
9 shall be in contempt of court. The court shall award attorneys' fees  
10 and costs incurred in enforcing the order plus actual damages against  
11 the party who violated the order.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW  
13 to read as follows:

14 Any party who attempts to condition an agreement or contract upon  
15 another party's agreement to conceal a known public hazard or any party  
16 who enters into an agreement or contract that conceals a known public  
17 hazard shall be in violation of the consumer protection act, chapter  
18 19.86 RCW. If the party is an insurance company then the insurance  
19 company shall also be in violation of RCW 48.30.010.

20 NEW SECTION. **Sec. 4.** This act shall apply to all agreements,  
21 contracts, orders, and judgments entered on or after the effective date  
22 of this act.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 4.16 RCW  
24 to read as follows:

25 An action for declaratory relief or other civil action brought  
26 pursuant to sections 1 through 3 of this act to determine whether an

1 agreement, contract, order, or judgment conceals a public hazard in  
2 violation of sections 1 through 3 of this act must be brought within  
3 three years of entry of the order or judgment or three years from the  
4 date the parties entered into the agreement or contract.

5 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and shall take  
8 effect July 1, 1991.