
Judiciary Committee

ESB 5886

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

Brief Description: Regulating legal proceedings involving public hazards.

Sponsors: Senator Kline.

Brief Summary of Engrossed Bill

- Creates a presumption against the sealing of court documents related to public hazards.
- Modifies when confidentiality provisions may be used in legal proceedings involving public hazards.

Hearing Date: 3/25/09

Staff: Courtney Barnes (786-7194)

Background:

Washington law governs the use of confidentiality provisions with respect to product liability/hazardous substance claims. A "product liability/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." RCW 4.24.611(1)(a).

Confidentiality Provisions

Confidentiality provisions are terms in a court order or private agreement that limit the possession or disclosure of information. A provision in a court order or private agreement settling or terminating a product liability/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. Confidentiality provisions may be entered into, ordered, or enforced

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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 is required to balance the right of the public to information regarding an alleged risk to the public from the product or substance against 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.

Right to and Protection of Information

Members of the public have a right to information necessary to understand the nature, source, and extent of the risk from alleged hazards to the public. RCW 4.24.611(2). Members of the public also have a right to the protection of trade secrets, or other confidential research, development, or commercial information concerning products or business methods. RCW 4.24.611(3).

Summary of Bill:

The Legislature creates a presumption against the sealing of court documents relative to public hazards. The definition of "product liability/hazardous 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."

Confidentiality Provisions

At the conclusion of litigation, the court is required to review all discovery or protective orders issued during the litigation 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 is required to balance the right of the public to information regarding the alleged risk to the public from the product or substance against the right of the public to protect the confidentiality of information.

No agreement between parties involving 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, 2009, except for monetary damage claims reduced to final judgment by a superior court.

Appropriation: None.

Fiscal Note: Requested on March 24, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.