

2 **SB 6089** - S AMD TO WM COMM AMD (S-4141.1/92)
3 By Senator A. Smith

4 NOT ADOPTED 3/5/92

5 On page 22, after line 2 of the amendment, insert the following:

6 "NEW SECTION. **Sec. 15.** A new section is added to chapter 7.70 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 used in the provision of health care, that:

12 (a) Presents a real and substantial potential for repetition of the
13 harm inflicted; or

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

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

19 (2) Except as provided in this section, no court shall enter an
20 order or judgment which has the purpose or effect of concealing a
21 public hazard or any relevant information or material concerning a
22 public hazard, nor shall the court enter an order or judgment that has
23 the purpose or effect of concealing any information or material that is
24 relevant to the public's knowledge or understanding of a public hazard.

25 (3) Any portion of an agreement or contract that has the purpose or
26 effect of concealing a public hazard, relevant information or material
27 concerning a public hazard, or information or material that is relevant
28 to the public's knowledge or understanding of a public hazard, is void,

1 contrary to public policy, and may not be enforced. A party to the
2 agreement or contract may bring a declaratory action pursuant to this
3 section to determine whether an agreement or contract conceals a public
4 hazard and is void.

5 (4)(a) In any declaratory or other civil action, a party may bring
6 a motion for a temporary order restraining disclosure to the public or
7 to third parties information or material about the party making the
8 motion which is known to another party or which is sought from the
9 party making the motion by another party. Upon good cause shown the
10 court shall examine in camera the information or material sought to be
11 protected. The court may in the court's discretion issue a temporary
12 order restraining a party or parties from disseminating the protected
13 information or material to the public or third parties. The temporary
14 order shall terminate upon the entry of a final order or judgment or a
15 dismissal of the action.

16 (b) In any final order or judgment entered in any declaratory or
17 other civil action, if the court finds that all or portions of the
18 information or material sought to be protected is relevant to the
19 public's knowledge or understanding of a public hazard, the court shall
20 require disclosure of the information or material. If the court finds
21 that all or a portion of the information or material sought to be
22 protected is not relevant to the public's knowledge or understanding of
23 the public hazard, the court shall require the information to be sealed
24 and may include in the final order or judgment provisions restraining
25 any or all parties from disclosing the information which is protected.

26 (5)(a) Any third party, including but not limited to
27 representatives of news media, has standing to contest a motion, order,
28 judgment, agreement, or contract that allegedly conceals a public
29 hazard. The third party may challenge the motion by intervention
30 during the court action or the third party may bring a declaratory

1 action pursuant to this section to determine whether the agreement,
2 contract, order, or judgment conceals a public hazard.

3 (b) The third party must (i) establish the existence of a public
4 hazard; (ii) establish that the public hazard was a subject within the
5 agreement, contract, order, or judgment; and (iii) establish a basis
6 for a reasonable belief by the third party that the agreement,
7 contract, order, or judgment concealed the public hazard in violation
8 of sections 15 through 17 of this act.

9 (c) If the court finds that the third party has met the
10 requirements of (b) of this subsection, the court shall order the
11 defendant to produce the information or material for an in camera
12 review by the court. The court shall determine whether the information
13 or material protected under the agreement, contract, order, or judgment
14 conceals a public hazard in violation of sections 15 through 17 of this
15 act. Upon review, the court shall issue an order regarding
16 dissemination of the information or material in accordance with
17 subsection (4)(b) of this section.

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

20 "NEW SECTION. Sec. 16. A new section is added to chapter 7.70 RCW
21 to read as follows:

22 Any person who violates an order either publishing or sealing
23 information or material issued under sections 15 through 17 of this
24 act, shall be in contempt of court. The court shall award attorneys'
25 fees and costs incurred in enforcing the order plus actual damages
26 against the party who violated the order."

27 "NEW SECTION. Sec. 17. A new section is added to chapter 7.70 RCW
28 to read as follows:

1 Any party who attempts to condition an agreement or contract upon
2 another party's agreement to conceal an instrumentality that the party
3 knows or reasonably should have known is a public hazard or any party
4 who enters into an agreement or contract that conceals an
5 instrumentality that the party knows or reasonably should have known is
6 a public hazard shall be in violation of the consumer protection act,
7 chapter 19.86 RCW. If the party is an insurance company then the
8 insurance company shall also be in violation of RCW 48.30.010."

9 "NEW SECTION. **Sec. 18.** A new section is added to chapter 7.70 RCW
10 to read as follows:

11 Sections 15 through 17 of this act shall apply to all agreements,
12 contracts, orders, and judgments entered on or after the effective date
13 of this act."

14 "NEW SECTION. **Sec. 19.** A new section is added to chapter 4.16 RCW
15 to read as follows:

16 An action for declaratory relief or other civil action brought
17 pursuant to sections 15 through 17 of this act to determine whether an
18 agreement, contract, order, or judgment conceals a public hazard in
19 violation of sections 15 through 17 of this act must be brought within
20 three years of entry of the order or judgment or three years from the
21 date the parties entered into the agreement or contract."

22 Renumber remaining sections and correct internal references.

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2 By Senator

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4 On page 64, after line 21 of the amendment, insert the following:

5 "NEW SECTION. **Sec. 53.** Sections 15 through 19 of this act shall

6 take effect July 1, 1992."

7 Renumber remaining sections and correct internal references.

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10 NOT ADOPTED 3/5/92

11 On page 66, line 7 of the title amendment, after "70.47.060;"

12 insert "adding a new section to chapter 4.16 RCW;"

13 On page 66, line 16 of the title amendment, after "providing"

14 strike "an effective date" and insert "effective dates"