

# SENATE BILL REPORT

## SB 6310

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As of January 15, 1996

**Title:** An act relating to insurance coverage for hazardous waste cleanups.

**Brief Description:** Requiring an insurer to provide an insured independent counsel when the insurer reserves the right to refuse to indemnify the policyholder for injury caused by the release of a hazardous substance.

**Sponsors:** Senators Prentice, Winsley, Franklin, Swecker, Schow, Sheldon, Rasmussen, Bauer, Fraser, Oke and Fairley.

**Brief History:**

**Committee Activity:** Financial Institutions & Housing: 1/16/96.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & HOUSING

**Staff:** Katie Healy (786-7403)

**Background:** An insurance policy may impose on the insurer a duty to defend the insured against a claim or claims. If a claim is filed against a policyholder, the insurer may agree to defend the insured in the action while reserving its right to deny coverage if information is later revealed that the claim or one of the claims is not covered under the insurance policy. The insurance company will provide an attorney for the insured. That attorney may not then directly represent the insurer in the same action.

The Rules of Professional Conduct are imposed on attorneys licensed to practice in the state of Washington. The rules govern attorneys' duties when a potential or actual conflict of interest is present, such as when another party pays for a defendant's attorney.

Concern has been expressed that insurers are trying to void insurance policies by threatening to sue the insured to recover the legal fees.

**Summary of Bill:** When an insurer agrees to pay for a policyholder's counsel because the policyholder faces a claim for bodily injury or property damage caused by a release of a hazardous substance, and the insurer does so under a reservation of rights, a conflict of interest is established between the policyholder and the insurer. The insurer must disclose this conflict to its insured. The insured may choose its own attorney to defend it, at the insurer's expense.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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