

# SENATE BILL REPORT

## SB 5646

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As of February 21, 2005

**Title:** An act relating to concealment of public hazard information.

**Brief Description:** Prohibiting confidentiality agreements in lawsuits involving public hazards.

**Sponsors:** Senators Kline, Rockefeller, Franklin, Shin, Fraser, Prentice, Keiser and Kohl-Welles.

**Brief History:**

**Committee Activity:** Judiciary: 2/16/05.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Lilah Amos (786-7429)

**Background:** In 1994 the Legislature reformed the statutory provisions regarding confidentiality agreements involving product liability/hazardous substance claims. 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. 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. Confidentiality provisions in settlement contracts or court orders are valid and enforceable only if the court finds that the confidentiality provision is in the public's interest. In order to determine if the provision is in the public's interest, the court must balance the right of the public to information regarding the alleged risk against the right of the public to protect the confidentiality of trade secrets and other confidential information.

Misappropriation of trade secrets is prohibited under the uniform trade secrets act, chapter 19.108 RCW.

**Summary of Substitute Bill:** "Public hazard" is defined as a condition, product, or practice that is reasonably likely to cause harm to others if not publicly disclosed. In determining whether a confidentiality provision is valid and enforceable, the court must specifically balance the right of the public to understand the risk from the alleged public hazard against the right of the public to protect confidentiality of trade secrets.

Standing to contest any order or agreement which conceals a public hazard is given to any substantially affected person, including news media representatives. In a legal action involving attempts to prevent disclosure of information or materials, the court must privately examine the information and must allow disclosure if the court finds that the information concerns a public hazard and may be useful in protecting the public from injury from that hazard. Only that portion of the information necessary or useful to the public regarding the public hazard can be disclosed.

**Substitute Bill Compared to Original Bill:** The original bill was not considered.

**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.

**Testimony For:** Products which cause repetitive harm to citizens must be disclosed to the public for safety reasons. Companies which manufacture these products hide behind confidentiality agreements or orders in an effort to shield themselves from additional liability. The existing statute does not work because third party intervention is not allowed. Giving standing to those who learn of the settlement after the confidentiality agreement is entered will greatly improve existing law. The existing balancing test should be more heavily weighed in favor of disclosure.

**Testimony Against:** The existing bill, which was enacted in 1994 at the request of Governor Lowry, is working well and does not need to be amended. The bill will interfere with discretion of judges to reach a fair result after balancing the privacy and trade secret interests. The bill will encourage litigation and make parties less inclined to settle. The definition of a public hazard is far too broad.

**Who Testified:** PRO: Senator Adam Kline, prime sponsor; Larry Shannon, Washington State Trial Lawyers Association; Rowland Thompson, Allied Daily Newspapers of Washington.

CON: Cliff Webster, Liability Reform Coalition; Kris Tefft, Association of Washington Business.