Senate Bill 1149

The Public Right to Know Act of 2022

Senator Connie M. Leyva (D-Chino)

SUMMARY

SB 1149 would prohibit discoverable factual information about dangerous public hazards from being shielded from the public through overly broad court protective orders and agreements to keep information about dangers secret.

BACKGROUND

In an open society, court records are presumptively open to public inspection. Even in a dispute between *private* parties, a court's resolution of that dispute is a matter of *public* interest. This is especially true when a case involves a public danger, such as a defective product or environmental hazard.

But courts repeatedly issue overbroad protective orders that keep discovery information secret and protect incriminating documents—and lawyers mutually agree to settlements and stipulated orders that prohibit disclosing the very facts that prompted the case. Secrecy is sometimes necessary to protect personal information or legitimate trade secrets, but it is grossly inappropriate when it keeps information about ongoing dangers from the public.

PROBLEM

Secrecy in litigation is often a matter of life and death. Each year brings new examples of secrecy that protects dangerous information, leading to enormous public harm. For example:

- **Oxycontin** is now known to have caused over 250,000 deaths as a direct result of its manufacturer, Purdue Pharma, telling outright lies about safe dosage levels and the likelihood of addiction. In late 2019, faced with state claims totaling over two ***trillion*** dollars, Purdue declared bankruptcy. But in 2004, when the first case—West Virginia's claims against Purdue—was settled, the judge allowed the information proving those claims to remain secret. Over a dozen judges in other cases did the same thing.[1] The result was 12 more years of secrecy until documents were leaked to the *Los Angeles Times* in 2016.[2] Until then, neither the public nor the regulators knew the truth.
- **Berkeley Balcony:** In early January 2022, a seventh victim died as a result of the 2015 Berkeley balcony collapse on the occasion of that recent victim's 21st birthday party. After the balcony tragedy, the young woman never recovered, suffering repeated strokes until dying earlier this year. What the partygoers and even state regulators did not know was that the construction company that built the complex had paid $26.5 million in settlements in previous defect cases, but the information about those cases was shielded behind courthouse secrecy.[3]

SOLUTION

To ensure that factual information about a public hazard is not shielded from the public in the future, this bill:

- Will create a presumption that **any court order that conceals discoverable information is prohibited** unless the court finds that the public interest in disclosure is clearly outweighed by a specific and substantial need for secrecy.
- Will **prohibit settlement agreements that restrict the disclosure of information about a defective product or environmental condition that poses a danger to public health or safety**, and make any provision in an agreement void as against public policy, and thus unenforceable.
- Narrowly tailors its application to only information about a "danger to public health or safety" that is likely to cause "significant or substantial bodily injury or illness, or death."

If signed, California would join several other states that have enacted similar anti-secrecy laws, including Florida, Louisiana, Montana, South Carolina, and Washington.

[1] https://www.reuters.com/investigates/special-report/usa-courts-secrecy-judges/

[2] https://www.latimes.com/projects/oxycontin-part1/

[3] https://www.nytimes.com/2022/01/03/world/europe/berkeley-balcony-collapse-death.html

AMENDMENTS

Since its introduction, the bill has been narrowed through several amendments, including:

- Narrowing the phrase "environmental condition" to "environmental hazard";
- Narrowing the definition section to make it clear that the bill does not apply to all products, but only to "defective" ones;
- Limiting the presumption of openness to "*discoverable factual*" information, rather than all information; now, privileged and irrelevant matters are clearly excluded from the bill, ensuring that the scope of discovery is unchanged from current limits;
- Third parties brought into the litigation by subpoena or otherwise are now also able to seek an order of nondisclosure, and must be given notice of that opportunity.

STATUS

Amended – May 9, 2022

SUPPORT

Consumer Reports (Co-Sponsor)
Public Justice (Co-Sponsor)

Alliance for Justice
Berkeley Judicial Institute – University of California, Berkeley Law School
California Employment Lawyers Association
California Labor Federation
CALPIRG
Center on the Legal Profession at Stanford Law School
Consumer Attorneys of California
Consumer Federation of America
Consumer Federation of California
Consumer Protection Policy Center
Consumers for Auto Reliability and Safety
Kids In Danger
Law Project for Psychiatric Rights
National Consumers League
Public Health Advocates

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