



PUBLIC JUSTICE

IMPACT. CHANGE.

Date: August 8, 2022

To: Members of the California State Assembly

From: Public Justice

Re: **SB 1149 (Leyva), Public Right to Know Act – SPONSOR’s response to CJAC/Chamber of Commerce opposition dated August 4, 2022**

Public Justice is the proud sponsor of SB 1149 (Leyva), as amended on August 4, 2022. This important legislation will allow the public to learn the truth about dangerous defective products and environmental hazards that today are far too often protected by the courts behind a veil of secrecy.

Discovery has always been intended to be an open and transparent part of our legal system.¹ But for decades, settlement agreements between the parties in litigation and, more recently, stipulations for court orders and standing protective orders have sealed information that the public has a right to know. This information relates not to legitimate trade secrets, but to dangers in the form of defects and hazards that must be disclosed to protect the public health.

On August 3, 2022, one of our nation’s brightest legal minds, UC Berkeley Law Dean Erwin Chemerinsky, wrote an op-ed in favor of SB 1149 entitled, “How California can prevent companies from selling products they know are dangerous.”² In it, he wrote that SB 1149 is “a commonsense and long-overdue reform” that would “save countless lives.”

On August 4, 2022, CalChamber, CJAC and their partners circulated an opposition letter that repeats old and inaccurate statements and adds new disinformation. Their opposition is extraordinary for the extent of the false information provided. Specifically:

1. SB 1149 “interferes with long-time discovery norms, including using protective orders during discovery.”

False. Rather than interfering, this bill actually restores “long-time discovery norms.” It is a fundamental precept in our democracy that courts – including court records - are

¹ Mary Elizabeth Keaney, *NOTE – Don’t Steal My Sunshine: Deconstructing the Flawed Presumption of Privacy for Unfiled Documents Exchanged During Discovery*, 62 *Hastings L.J.* 795 (2011).

² Chemerinsky, Erwin, “How California can prevent companies from selling products they know are dangerous,” Aug. 3, 2022, (online at: <https://www.sacbee.com/opinion/op-ed/article263630868.html>).

open and transparent, and that any departure from the presumption of openness must be narrow and well-justified.

Unfortunately, for several decades, courts have enforced protective orders that keep critical information hidden from the public. In product defect and environmental hazard cases, those documents are a matter of life and death. This bill will bring openness back to our courts and allow Californians to learn about product defects and environmental hazards that threaten their health and well-being.

2. **“SB 1149 would make. . . routine protective orders significantly harder to utilize by creating a presumption against such an order (in conflict with existing law) and by severely limiting the basis in which a protective order may be granted.”**

False. The existing presumption under current law places the burden on the party seeking the protective order, and uses the **identical standard** used in SB 1149: the need for secrecy must **clearly outweigh** disclosure. See CCP section 2017.020. Plus, SB 1149 protects those documents that should be kept secret: trade secrets and personal information.

3. **CalChamber/CJAC claims it’s unfair that “the party trying to protect information will need to litigate the confidentiality of each piece of discovery with the court before producing it,” making litigation less efficient for the parties.**

False. Here is the dystopian truth: A dangerous product is sold to the public. Over time, people are injured and killed. The company learns of the injuries but, after speaking with consultants, determines that it is cheaper to pay families out as they are injured or killed rather than recall the product. With each injury comes a lawsuit, and with each lawsuit, a protective order hiding the dangers. The product stays on the market, causing further injuries and death. Cases settle, more people are injured and killed. More injuries, more death, and more litigation.

SB 1149 will lead to far less litigation and greater judicial efficiency, as well as saving lives. Instead of the unending cycle of injuries, hush money payments, and secrecy, under SB 1149, when litigation about a product defect or environmental hazard begins, the company will only be able to protect true trade secrets and not information about the defect or hazard. The result is a discovery process that protects trade secrets and discloses factual information about dangers. With this information available to the public, it will substantially reduce the need for repeated lawsuits over the same issues.

4. **SB 1149 “infringes upon trade secrets and intellectual property rights.”**

False. The legislation specifically recognizes and protects trade secrets and current proprietary customer lists. It provides an appropriate procedure that keeps this information undisclosed.

SB 1149 specifically allows for an order of nondisclosure that fully protects “[i]nformation relating to a current proprietary customer list or a trade secret[.]” See SB 1149, §§(d)(3)(A) and (d)(3)(B).

Proprietary information remains protected and remains so no matter how many times the opposition says it does not. Information about dangers to public safety is not and has never been proprietary.

Cal Chamber/CJAC claims that SB 1149 would “put all businesses in California at risk of losing valuable proprietary information whenever they are sued.” This statement is unsubstantiated and unworthy of response. This bill specifically and clearly provides a mechanism for companies to protect actual proprietary information.

Finally, the opposition ignores the fact that this law already exists in nine states, including other mostly Republican states. For example, Texas has had a similar law in effect for 30 years – only it applies to all litigation in Texas rather than just cases related to product defects and environmental hazards. Courts enforce this law and businesses operate accordingly.

In conclusion, Cal Chamber/CJAC’s memorandum buries its head in the sand, ignoring the fundamental tragedy that SB 1149 seeks to address: Countless people are severely injured and killed because courts routinely enforce overbroad secrecy orders. Instead, the opposition seeks to divert the reader’s attention to the technicalities of the bill – which it gets wrong.

In addition to its unsubstantiated claims, CalChamber/CJAC’s memorandum is frankly offensive to Californians who have suffered real harm because of defective products and environmental hazards. It ignores the real-life dangers of the present regime, falsely evaluates judicial efficiency and corporate ease of discovery, and avoids weighing the importance of the deaths and injuries of countless Californians.

The most important job for any legislator is to protect the public. As Dean Chemerinsky made clear in his op-ed, this legislation will do just that. Now is the time to pass SB 1149.

VOTE YES ON SB 1149 (LEYVA) – The Public Right to Know Act!

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