
THIRD READING

Bill No: SB 1149
Author: Leyva (D)
Introduced: 2/16/22
Vote: 21

SENATE JUDICIARY COMMITTEE: 6-2, 4/5/22
AYES: Umberg, Durazo, Laird, Stern, Wieckowski, Wiener
NOES: Borgeas, Jones
NO VOTE RECORDED: Caballero, Gonzalez, Hertzberg

SUBJECT: Civil actions: agreements settling actions involving public health or safety

SOURCE: Consumer Reports
Public Justice

DIGEST: This bill prohibits provisions in settlement agreements that restrict disclosure of information related to actions involving defective products or dangerous environmental conditions, as specified, with certain exceptions.

ANALYSIS:

Existing law:

- 1) Provides that a provision within a settlement agreement that prevents the disclosure of factual information related to the action is prohibited in any civil action the factual foundation for which establishes a cause of action for civil damages for any of the following:
 - a) An act that may be prosecuted as a felony sex offense;
 - b) An act of childhood sexual assault, as defined in Section 340.1;
 - c) An act of sexual exploitation of a minor or other conduct prohibited with respect to a minor, as defined in the Penal Code; or
 - d) An act of sexual assault against an elder or dependent adult, as defined in the Welfare and Institutions Code. (Code Civ. Proc. § 1002(a).)

- 2) Provides that the law does not preclude an agreement preventing the disclosure of any medical information or personal identifying information regarding the victim of the offense or of any information revealing the nature of the relationship between the victim and the defendant. (Code Civ. Proc. § 1002.)
- 3) Provides that an attorney's failure to comply with the requirements of this section by demanding that a provision be included in a settlement agreement that prevents the disclosure of factual information related to the action that is not otherwise authorized as a condition of settlement, or advising a client to sign an agreement that includes such a provision, may be grounds for professional discipline and the State Bar of California shall investigate and take appropriate action in any such case brought to its attention. (Code Civ. Proc. § 1002(e).)
- 4) Provides that a provision within a settlement agreement that prevents or restricts the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding any of the following, is prohibited:
 - a) An act of sexual assault that is not governed by subdivision (a) of Section 1002;
 - b) An act of sexual harassment, as defined in Section 51.9 of the Civil Code;
 - c) An act of workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, or an act of retaliation against a person for reporting or opposing harassment or discrimination, as described in subdivisions (a), (h), (i), (j), and (k) of Section 12940 of the Government Code; or
 - d) An act of harassment or discrimination, or an act of retaliation against a person for reporting harassment or discrimination by the owner of a housing accommodation, as described in Section 12955 of the Government Code. (Code Civ. Proc. § 1001(a).)
- 5) Permits a provision in the above cases that shields the identity of the claimant and all facts that could lead to the discovery of the claimant's identity, including pleadings filed in court, to be included within a settlement agreement at the request of the claimant. This exception does not apply if a government agency or public official is a party to the settlement agreement. A provision that precludes the disclosure of the amount paid in settlement of a claim is not prohibited. (Code Civ. Proc. § 1001(c), (e).)
- 6) Prohibits a court from entering an order in the above actions that restricts the disclosure of information in a manner that conflicts with the above provisions.

A provision within a settlement agreement that prevents the disclosure of factual information related to such actions or claims is void as a matter of law and against public policy. (Code Civ. Proc. §§ 1001, 1002.)

- 7) Provides that provisions in confidential settlement agreements of civil actions concerning potential violation of the Elder Abuse and Dependent Adult Civil Protection Act, except those requiring nondisclosure of the amount paid, may not be recognized or enforced by the court absent specified findings. (Code Civ. Proc. § 2017.310.)

This bill:

- 1) Enacts the “Public Right to Know Act of 2022.”
- 2) Prohibits a provision within, or agreed to in connection with, a settlement agreement that purports to restrict the disclosure of factual information related to a civil action the factual foundation for which establishes a cause of action for civil damages regarding a defective product or environmental condition that poses a danger to public health or safety (“a covered civil action”).
- 3) Defines a “defective product or environmental condition that poses a danger to public health or safety” as a product or condition that has caused, or is likely to cause, significant or substantial bodily injury or illness, or death.
- 4) Establishes a presumption that the disclosure of information relating to a covered civil action shall not be restricted, and a court or arbitral tribunal shall not enter, by stipulation or otherwise, any order that restricts the disclosure of such information, except as provided.
- 5) Does not preclude a provision or order that restricts the disclosure of any of the following information relating to a covered civil action:
 - a) Medical information or personal identifying information regarding a person injured by a defective product or environmental condition;
 - b) The amount of a settlement;
 - c) Citizenship or immigration status, as provided; or
 - d) Information relating to a current proprietary customer list or a trade secret, if the party moves the court or arbitral tribunal in good faith for an order of nondisclosure restricting the disclosure of specified information and the order is granted. The party requesting the order must demonstrate that the presumption in favor of disclosure is clearly outweighed by a specific and substantial overriding confidentiality interest. The order shall be narrowly tailored to restrict the disclosure of no more information, and for no longer a

period of time, than is necessary to protect the interest. Nonparties may also file such motions for nondisclosure, as provided.

- 6) Provides that a provision that purports to restrict the disclosure of factual information related to the action is void as a matter of law and as against public policy and shall not be enforced, except as provided.
- 7) Provides standing to any person, including a representative of news media acting on behalf of the public, for whom it is reasonably foreseeable that the person will be substantially affected by a provision, agreement, or order in violation of the above provisions, to challenge the provision, agreement, or order by motion in the covered civil action, or by bringing a separate action for declaratory relief in the superior court.
- 8) Provides that an attorney's failure to comply with these requirements are grounds for professional discipline, and the State Bar of California may investigate and take appropriate action in any such case brought to its attention, when the attorney does any of the following:
 - a) Requests that a provision be included in a settlement agreement that prevents the disclosure of factual information related to the action, and that is not otherwise authorized;
 - b) Advises a client to sign an agreement that includes such a provision; or
 - c) Moves for an order of nondisclosure that does not meet the good faith requirements above.
- 9) Makes a series of findings and declarations.

Background

Settlements of civil actions can generally include provisions that restrict disclosure of certain underlying information upon agreement of the parties. While settlement is generally encouraged for the sake of judicial efficiency and in the interests of the parties, existing law prohibits such "secret settlements" in connection with certain actions, including sexual assault and harassment claims.

Concerns have arisen that nondisclosure provisions in certain settlement agreements can ultimately lead to greater societal harms where information that could prevent future injuries is kept from public view. This bill targets such settlements and related court orders in cases involving defective products or environmental conditions that pose a danger to public health or safety. It prohibits provisions that aim to keep secret factual information connected to such covered

civil actions. There are exceptions, including for trade secrets and certain medical or other personally identifiable information.

This bill is sponsored by Consumer Reports and Public Justice. It is supported by numerous consumer groups, as well as the California Employment Lawyers Association and the California Labor Federation. This bill is opposed by a coalition of groups led by the California Chamber of Commerce.

Comments

This bill extends existing sunshine laws to “covered civil actions,” those where the factual foundation establishes a cause of action for civil damages regarding a defective product or environmental condition that poses a danger to public health or safety. “Defective product or environmental condition that poses a danger to public health or safety” is further defined to mean “a product or condition that has caused, or is likely to cause, significant or substantial bodily injury or illness, or death.” Provisions within, or agreed to in connection with, settlement agreements in these actions that seek to restrict disclosure of relevant information are prohibited. This bill further establishes a presumption that the disclosure of information relating to these actions is not restricted, and prohibits courts and arbitral tribunals from entering, by stipulation or otherwise, any order that restricts the disclosure of such information, except as provided.

This bill bolsters these provisions by granting standing to affected persons, including media representatives, to challenge any provision, agreement, or order in violation of the law in the covered civil action, or in a separate action for declaratory relief in the superior court.

This bill allows for limited exceptions in connection with medical or other personally identifying information regarding the injured plaintiff, including their immigration or citizenship status, and the amount of the settlement. Given concerns about the potential release of a defendant’s trade secrets, this bill authorizes a party to move the court for an order of nondisclosure of current proprietary customer lists or trade secrets, as defined. The party seeking nondisclosure must demonstrate to the court that the presumption in favor of disclosure is clearly outweighed by a specific and substantial overriding confidentiality interest. If it grants such a motion, the court is required to narrowly tailor the order to restrict the disclosure of no more information, and for no longer a period of time, than is necessary to protect the interest. These orders of nondisclosure are also available for nonparties and intervenors.

Just as with similar laws, attorneys attempting to violate or circumvent the law are subject to professional discipline and other action taken by the State Bar.

According to the author:

Court records, discovery and information in a case that could protect the public from a defective product or environmental hazard should be open to public inspection. However, this is not the case under current law. Even in a dispute between private parties, a court's resolution of that dispute is a matter of public interest. This is especially imperative when a case involves a public danger, such as a defective product or environmental hazard.

Nevertheless, examples abound of courts issuing overbroad protective orders that keep discovery information secret and protect incriminating documents without any basis—and lawyers mutually agreeing 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 not appropriate when it keeps information about ongoing dangers from the public.

SB 1149 will protect Californians and potentially save lives by ensuring that factual information about dangerous public hazards does not remain shielded behind overbroad and unnecessary secrecy and concealment. Lawyers and the courts will no longer be able to keep vital information from reaching the public when disclosing it can prevent countless injuries and death.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/5/22)

Consumer Reports (co-source)
Public Justice (co-source)
Alliance for Justice
California Employment Lawyers Association
California Labor Federation
California Public Interest Research Group
Consumer Attorneys of California
Consumer Federation of California
Consumer Protection Policy Center
Consumers for Auto Reliability and Safety
Law Project for Psychiatric Rights
National Consumers League

One individual

OPPOSITION: (Verified 4/5/22)

AdvaMed
Almond Alliance of California
American Property Casualty Insurance Association
Association of California Egg Farmers
Biocom California
California Apartment Association
California Association of Winegrape Growers
California Building Industry Association
California Business and Industrial Alliance
California Business Properties Association
California Chamber of Commerce
California Farm Bureau
California Grain and Feed Association
California League of Food Producers
California Life Sciences
California Manufacturers & Technology Association
California Pear Growers Association
California Seed Association
Civil Justice Association of California
National Federation of Independent Business
National Marine Manufacturers Association
Official Police Garages of Los Angeles
PhRMA
Western Growers Association

ARGUMENTS IN SUPPORT: Consumer Reports writes in support:

As an essential part of proving their case, a person who has been injured, or the family of a person who has been killed, as the result of a defective product or toxic environmental condition must collect evidence. When the victim collects sufficient evidence to prove the case, the defendant often offers to settle it – but insists, as a pre-condition for settling, that all records of the danger be sealed. Too often, the victim is in no position to resist, and is essentially coerced into agreeing in order to recover the compensation they are due. This deprives the public of their right to know of the dangers involved, thereby unjustly exposing others to the same danger.

The Public Right to Know Act of 2022 would put an end to this unjust and dangerous practice, by explicitly prohibiting it as part of any settlement, and creating a strong presumption against any restriction on disclosure of information related to a case involving such a product or condition. Personal information and a business's trade secrets could be appropriately kept confidential.

ARGUMENTS IN OPPOSITION: A coalition of groups, including the Official Police Garages of Los Angeles, argue that “this legislation will disincentivize efficient settlement of cases – regardless of their merits – and thereby increase litigation time and cost for both plaintiffs and defendants.” They assert:

[I]n a case where a defendant's product or condition did cause harm to the plaintiff, the defendant might desire to negotiate an early settlement and properly pay the plaintiff's costs. In such a scenario, one term of negotiation might very well be a correction of the defect going forward, and a recall of such products. However, in the event such a settlement is going to be made public, then the defendant is incentivized to litigate the case to trial even if their chance of success is slim.

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
4/8/22 11:06:12

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