

AMENDED IN ASSEMBLY FEBRUARY 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 36**

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**Introduced by Assembly Member Steinberg**

December 4, 2000

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An act to add Section 188 to the Code of Civil Procedure, relating to confidentiality.

LEGISLATIVE COUNSEL'S DIGEST

AB 36, as amended, Steinberg. Confidentiality of writings.

Existing law provides for the confidentiality of trade secrets, government records, records maintained by financial and other institutions, privileged communications, and other writings.

This bill would provide that, in an action based upon injury, wrongful death, or financial loss allegedly caused by a defective product, financial fraud, unfair insurance claims practice, or environmental hazard, as defined, specified information contained in settlement agreements and confidentiality agreements not filed with the court, and specified information acquired through discovery, shall be presumed to be public information and may not be kept confidential pursuant to an agreement of the parties. The bill would permit this information to be kept confidential only pursuant to a court order based upon specified findings. The bill would further provide that, unless the information is a trade secret, *as defined*, or otherwise privileged, in an action based upon injury, wrongful death, or financial loss allegedly caused by a defective product, financial fraud, unfair insurance claims practice, or environmental hazard, any portion of an agreement or contract that restricts a party from disclosing certain information to a governmental

agency, as specified, is void and may not be enforced, with specified exceptions. The bill would authorize a court to request certain documents to implement its provisions. *This bill would provide that its provisions are not intended to affect the confidentiality of communications, negotiations, or settlement agreements between participants in mediation proceedings, or the confidentiality of evidence protected under specified sections of the Evidence Code.* The bill would also state legislative findings.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Secrecy agreements that prohibit disclosure to the public or  
4 public safety agencies of information relating to defective  
5 products, financial fraud, unfair insurance claims practices, or  
6 environmental hazards are injurious to the health, safety, and  
7 economic well-being of all Californians.

8 (b) Secrecy agreements can have tragic consequences. A  
9 widely known example of the disastrous consequences of secrecy  
10 agreements is the tragedy resulting from dangerous defects in  
11 Firestone tires, which have reportedly caused more than 150  
12 deaths and more than 500 injuries worldwide. For many years,  
13 Bridgestone/Firestone, Inc. knew about these dangerous defects,  
14 but kept the information out of the public eye by secretly settling  
15 many lawsuits brought as a result of crashes related to defective  
16 tires. During that time, the public continued to drive on Firestone  
17 tires, unaware of the mortal danger to their families and  
18 themselves. As a result of these hidden, dangerous defects, on  
19 August 9, 2000, Bridgestone/Firestone, Inc. and Ford Motor Co.  
20 jointly announced that Firestone would recall over 14 million tires.  
21 In the absence of a secrecy agreement, information about this  
22 dangerous product could have been disclosed publicly, which  
23 could have saved lives and avoided injuries. However, the  
24 companies demanded secrecy as the price of compensation for  
25 victims, resulting in many deaths and injuries that could have been  
26 avoided absent demands for secrecy agreements.



1 ~~(e) Secrecy agreements can~~ *They can also* allow companies to  
2 shield information that shows a practice of treating consumers  
3 unfairly and can permit those companies to continue illegal  
4 practices without accountability. ~~The circumstances that allowed~~  
5 ~~secrecy regarding the claims of victims of the Northridge~~  
6 ~~earthquake and the contaminated drinking water connected with~~  
7 ~~the story of Erin Brockovich also highlight the need for openness.~~

8 ~~(d) Secrecy agreements,~~ *and* allow companies to shield  
9 life-threatening dangers and harmful practices from public view,  
10 thereby severely jeopardizing public welfare and safety. ~~It is~~

11 *(c) It is therefore* against the public interest to allow secrecy  
12 agreements about defective products, financial fraud, unfair  
13 insurance claims practices, or environmental hazards to remain  
14 confidential except in very limited circumstances ~~upon careful~~  
15 ~~judicial oversight and review.~~

16 SEC. 2. Section 188 is added to the Code of Civil Procedure,  
17 to read:

18 188. (a) The Legislature finds that the Judicial Council has  
19 adopted Rule 243.1 of the California Rules of Court, which creates  
20 a presumption against secrecy for certain documents filed with the  
21 court. It is the intent of the Legislature to better protect  
22 Californians from injuries, deaths, or financial loss caused by  
23 defective products, financial fraud, unfair insurance claims  
24 practices, or environmental hazards by also creating a presumption  
25 against secrecy for settlement agreements and confidentiality  
26 agreements not filed with the court and information acquired  
27 through discovery.

28 (b) Notwithstanding any other provision of law, in an action  
29 based upon injury, wrongful death, or financial loss allegedly  
30 caused by a defective product, financial fraud, unfair insurance  
31 claims practice, or environmental hazard, information concerning  
32 the defective product, financial fraud, unfair insurance claims  
33 practice, or environmental hazard contained in settlement  
34 agreements and confidentiality agreements not filed with the  
35 court, and information acquired through discovery concerning the  
36 defective product, financial fraud, unfair insurance claims  
37 practice, or environmental hazard, shall be presumed to be public  
38 information and may not be kept confidential pursuant to  
39 agreement of the parties. This information may be kept



1 confidential for a period that the court deems appropriate only  
2 pursuant to a court order based upon a finding that either:

3 (1) The information is a trade secret, *as defined in Section*  
4 *3426.1 of the Civil Code*, or otherwise privileged under existing  
5 law.

6 (2) (A) An overriding interest exists that overcomes the right  
7 of public access to the information.

8 (B) The overriding interest supports keeping the information  
9 confidential.

10 (C) A substantial probability exists that the overriding interest  
11 will be prejudiced if the information is not kept confidential.

12 (D) The proposed confidentiality is narrowly tailored.

13 (E) No less restrictive means exist to achieve the overriding  
14 interest.

15 (c) Unless the information is a trade secret, *as defined in*  
16 *Section 3426.1 of the Civil Code*, or otherwise privileged under  
17 existing law, in an action based upon injury, wrongful death, or  
18 financial loss allegedly caused by a defective product, financial  
19 fraud, unfair insurance claims practice, or environmental hazard,  
20 any portion of an agreement or contract that restricts a party from  
21 disclosing information relating to the defective product, financial  
22 fraud, unfair insurance claims practice, or environmental hazard  
23 to a governmental agency with enforcement authority over the  
24 defective product, financial fraud, unfair insurance claims  
25 practice, or environmental hazard is void, contrary to public  
26 policy, and may not be enforced.

27 (d) In order to implement this section, the court may require the  
28 requesting party to provide an identifying log or other document.

29 (e) As used in this section:

30 (1) “Defective product” means a product that may be defective  
31 because of a defect in manufacturing, or design, or a failure to  
32 adequately warn the consumer of a hazard involved in the  
33 foreseeable use of the product, where the defect may result in  
34 personal injury to one or more persons.

35 (2) “Financial fraud” means any fraudulent insurance practice  
36 or any fraudulent plan or scheme to sell a publicly offered  
37 investment product without full disclosure of the risks associated  
38 with the purchase of the product, where the plan or scheme may  
39 cause or has caused financial loss.



1 (3) “Unfair insurance claims practice” means any act or  
2 omission that would constitute a violation of subdivision (h) of  
3 Section 790.03 of the Insurance Code.

4 (4) “Environmental hazard” means a release or threatened  
5 release of a hazardous substance that poses a threat to public health  
6 or safety involving present or future danger of death, bodily injury,  
7 or health disability to human beings exposed to a hazardous  
8 substance release or threatened release.

9 (f) An attorney shall not sell or offer for sale any information  
10 obtained through discovery to any member of the State Bar or to  
11 any other person in violation of the prohibitions on attorney  
12 solicitation, fee splitting, or financial arrangements among  
13 lawyers or nonlawyers included in Rules 1-320, 1-400, and 2-200  
14 of the Rules of Professional Conduct adopted by the Supreme  
15 Court. Violation of this paragraph shall be a basis for professional  
16 discipline by the State Bar. This section does not alter or mitigate  
17 any existing rule or provision that may also be applicable to the  
18 conduct.

19 (g) *Nothing in this section is intended to affect the*  
20 *confidentiality of communications, negotiations, or settlement*  
21 *agreements between mediation participants pursuant to Chapter*  
22 *2 (commencing with Section 115) of Division 9 of the Evidence*  
23 *Code, or the confidentiality of evidence protected by Section*  
24 *1153.5 or 1154 of the Evidence Code.*

25 (h) *Nothing in this section shall be deemed to prohibit the entry*  
26 *or enforcement of that part of a confidentiality agreement,*  
27 *settlement agreement, or stipulated agreement between the parties*  
28 *which requires the nondisclosure of the amount of any money paid*  
29 *in a settlement claim.*

