

ASSEMBLY BILL

No. 36

Introduced by Assembly Member Steinberg

December 4, 2000

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

LEGISLATIVE COUNSEL'S DIGEST

AB 36, as introduced, 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 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. 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.

27 (c) Secrecy agreements can allow companies to shield
28 information that shows a practice of treating consumers unfairly
29 and can permit those companies to continue illegal practices
30 without accountability. The circumstances that allowed secrecy
31 regarding the claims of victims of the Northridge earthquake and
32 the contaminated drinking water connected with the story of Erin
33 Brockovich also highlight the need for openness.



1 (d) Secrecy agreements allow companies to shield
2 life-threatening dangers and harmful practices from public view,
3 thereby severely jeopardizing public welfare and safety. It is
4 against the public interest to allow secrecy agreements about
5 defective products, financial fraud, unfair insurance claims
6 practices, or environmental hazards to remain confidential except
7 in very limited circumstances upon careful judicial oversight and
8 review.

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

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

21 (b) Notwithstanding any other provision of law, in an action
22 based upon injury, wrongful death, or financial loss allegedly
23 caused by a defective product, financial fraud, unfair insurance
24 claims practice, or environmental hazard, information concerning
25 the defective product, financial fraud, unfair insurance claims
26 practice, or environmental hazard contained in settlement
27 agreements and confidentiality agreements not filed with the
28 court, and information acquired through discovery concerning the
29 defective product, financial fraud, unfair insurance claims
30 practice, or environmental hazard, shall be presumed to be public
31 information and may not be kept confidential pursuant to
32 agreement of the parties. This information may be kept
33 confidential for a period that the court deems appropriate only
34 pursuant to a court order based upon a finding that either:

35 (1) The information is a trade secret or otherwise privileged
36 under existing law.

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

39 (B) The overriding interest supports keeping the information
40 confidential.



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

3 (D) The proposed confidentiality is narrowly tailored.

4 (E) No less restrictive means exist to achieve the overriding
5 interest.

6 (c) Unless the information is a trade secret or otherwise
7 privileged under existing law, in an action based upon injury,
8 wrongful death, or financial loss allegedly caused by a defective
9 product, financial fraud, unfair insurance claims practice, or
10 environmental hazard, any portion of an agreement or contract that
11 restricts a party from disclosing information relating to the
12 defective product, financial fraud, unfair insurance claims
13 practice, or environmental hazard to a governmental agency with
14 enforcement authority over the defective product, financial fraud,
15 unfair insurance claims practice, or environmental hazard is void,
16 contrary to public policy, and may not be enforced.

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

19 (e) As used in this section:

20 (1) “Defective product” means a product that may be defective
21 because of a defect in manufacturing, or design, or a failure to
22 adequately warn the consumer of a hazard involved in the
23 foreseeable use of the product, where the defect may result in
24 personal injury to one or more persons.

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

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

33 (4) “Environmental hazard” means a release or threatened
34 release of a hazardous substance that poses a threat to public health
35 or safety involving present or future danger of death, bodily injury,
36 or health disability to human beings exposed to a hazardous
37 substance release or threatened release.

38 (f) An attorney shall not sell or offer for sale any information
39 obtained through discovery to any member of the State Bar or to
40 any other person in violation of the prohibitions on attorney



1 solicitation, fee splitting, or financial arrangements among
2 lawyers or nonlawyers included in Rules 1-320, 1-400, and 2-200
3 of the Rules of Professional Conduct adopted by the Supreme
4 Court. Violation of this paragraph shall be a basis for professional
5 discipline by the State Bar. This section does not alter or mitigate
6 any existing rule or provision that may also be applicable to the
7 conduct.

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