



Contact: Rebecca Marcus
rebecca.marcus@asm.ca.gov
916-319-2029

April 4, 2017

Stone Bill to Protect the Public from Danger Clears First Committee

SACRAMENTO— The Assembly Judiciary Committee approved AB 889 by Assemblymember Mark Stone (D-Monterey Bay) which restricts the ability of civil litigants to use protective orders or secrecy provisions in a settlement agreement to hide an ongoing danger to public health and safety from public view. With this measure California will join eleven other states that have already enacted such legislation.

“We have far too many examples of courts sealing documents, issuing protective orders, or condoning settlements that keep evidence of a public danger from public view. Perhaps the best known example involved treads that separated from Bridgestone tires – causing accidents, injuries, and deaths. Long before public exposure of the defect, Firestone settled cases which required attorneys not to discuss the case or required the return of documents that contained evidence of the danger. That was 15 years ago. Sadly, we have let it continue to happen,” said Stone.

To ensure that evidence of a public hazard is not shielded from public scrutiny in the future, AB 889 will prohibit any order or agreement that conceals evidence of a danger to public health and safety, unless a court finds that the interest in secrecy outweighs the public interest in disclosure. Florida passed the first "Sunshine in Litigation" Act in 1990. Louisiana, Texas, Virginia, Arkansas, North Carolina, Nevada, Oregon, South Carolina, Washington, and Montana have enacted statutes since then. Contrary to the fears of critics, there is no evidence that such legislation discourages settlements, exposes proprietary interests or trade secrets, or imposes burdens on the courts.

Secrecy in litigation can be a matter of life and death. For example, Public Justice, a national public interest law firm with an office in Oakland, recently posted thousands of previously-sealed documents showing a defect in Remington rifles that caused the guns to discharge without anyone pulling the trigger. Though that information is finally available, for several years protective orders and confidentiality agreements kept the dangerous defect from public view. In 2005, Montana passed the "Gus Barber Anti-Secrecy Act" named for the nine-year old boy killed by a defective Remington trigger.



Protective orders and secrecy agreements have hidden other public dangers as well. For example, over 500 settlements involving defective Cooper Tires included secrecy provisions, as did lawsuits involving car ignition and airbag failures, illegally shortened guard rails, fertilizers that cause plant explosions, window shade cords that strangle, and front seatbacks that collapse in a rear-end collision. Although

information about some of these dangers is now public, that is largely because news organizations have obtained leaked documents or advocacy groups have brought actions to unseal or otherwise gain access to documents. It is impossible to calculate how many lives could have been saved if information of public dangers had never been shielded from public view in the first place, or how many undisclosed dangers still remain.

AB 889 will next be considered by the Assembly Privacy and Consumer Protection Committee.

###