

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 22, 2006

To: The Commission
(Meeting of May 25, 2006)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 1311 (Soto) Liability waivers
As amended March 21, 2006**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support

SUMMARY: This bill would require any settlement, compromise, covenant, release, waiver of liability, or similar agreement, to be written and orally transmitted in both English and the native language of the person entering into the agreement, prior to execution, if that person is not represented by counsel. If the waiver is not in the language in which the injured party is fluent, the waiver may be rescinded by the “aggrieved” party.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill was introduced by Senator Soto in response to the questionable use of liability waivers by the Union Pacific Railroad after a train derailment in Rialto Hills. This bill would, among other things, require railroads to negotiate waivers of liability in good faith with non-English speaking residents who have suffered damage or injuries from a rail accident.

DIVISION ANALYSIS:

On the evening of April 4, 2005, thirteen cars of a Union Pacific Railroad Company (UP) train derailed near the Foothills Boulevard overpass in Rialto Hills, San Bernardino County. Nine of the thirteen cars were tank cars containing hazardous materials, and eight of those were on their sides. During a transloading operation, 200 gallons of chlorine gas were released, resulting in the evacuation of more than 100 residents of a nearby trailer park. Following the accident, UP approached the evacuated homeowners and/or tenants in the community with waiver agreements written in English only. Although many of the residents contacted by UP were fluent only in Spanish, UP

provided no translation assistance, and railroad claims agents coerced some residents into signing waiver agreements they did not understand.

At a community meeting held on June 24, 2005 in the San Bernardino City Council Chambers, the Rialto neighbors criticized the railroad for obtaining signatures on liability waivers written in English but signed by residents who spoke only Spanish. At the behest of State Senator Nell Soto, who presided over the meeting, the railroad representatives in attendance agreed to nullify any liability waivers signed by non-English speaking victims of the accident.

STATUS:

SB 1311 is set for hearing in the Senate Judiciary Committee on May 2, 2006.

SUPPORT/OPPOSITIONSupport:

None on file

Opposition:

None on file

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Date: May 22, 2006

BILL LANGUAGE:

BILL NUMBER: SB 1311 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 21, 2006

INTRODUCED BY Senator Soto

FEBRUARY 16, 2006

An act to add ~~Article 11 (commencing with Section 7740)~~
~~to Chapter 1 of Division 4 of the Public Utilities Code, relating to~~
~~railroads.~~ *Section 1726 to the Civil Code, relating to*
liability waivers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1311, as amended, Soto ~~Railroads: liability~~
Liability waivers.

Existing law provides that everyone is responsible for the result of willful acts and for injury to another occasioned by his or her want of ordinary care or skill in the management of his or her person or property, as specified.

This bill would require any ~~person, firm, or corporation~~
~~operating a railroad in this state that elects, in the event of a~~
~~derailment, to offer payment to an affected party for his or her~~
~~waiver of liability regarding any applicable cause of action, to~~
~~provide a written translation of the waiver agreement, prior to the~~
~~execution thereof, in a language in which the person signing the~~
~~waiver is fluent~~ *settlement, compromise, covenant,*
release, waiver of liability, or similar agreement, to be written and
orally transmitted in both English and the native
language of the person entering into the agreement, prior to
execution, if that person is not represented by counsel . The
bill would provide for ~~the waiver~~ *that*
agreement to be rescinded upon the failure to comply with this
requirement.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 1726 is added to the*
Civil Code , to read:

1726. (a) *If a person who is entering any settlement, compromise,*
covenant, release, waiver of liability, or similar agreement, is not
represented by counsel, that agreement, prior to execution, shall be
written and orally transmitted in both English and the native
language of the person entering into the agreement.

(b) *Upon a failure to comply with subdivision (a), the aggrieved*

person may rescind the settlement, compromise, covenant, release, waiver of liability, or similar agreement.

~~SECTION 1. Article 11 (commencing with Section 7740) is added to Chapter 1 of Division 4 of the Public Utilities Code, to read:~~

~~Article 11. Waiver of Liability for Railroad Accidents~~

~~7740. (a) Any person, firm, or corporation operating a railroad in this state that elects, in the event of a derailment, to offer payment to an affected party for his or her waiver of liability regarding any applicable cause of action, shall provide a written translation of the waiver agreement, prior to the execution thereof, in a language in which the person signing the waiver is fluent.~~

~~(b) Upon a failure to comply with subdivision (a), the person aggrieved may rescind the waiver agreement.~~