CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA

CIVIL JUSTICE PRIORITIES

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WELCOME MESSAGE

Dear Legal Reform Stakeholder:

Californians deserve a civil justice system that is fair, balanced, and affordable.

For 47 years, CJAC has worked to protect our courts from excessive litigation and policies that drive up costs for businesses and families alike. With Californians' cost of living skyrocketing, our mission matters more than ever.

When liability expands without limits, everyone pays – through higher prices, strained public budgets, and fewer opportunities for growth and innovation. Thoughtful legal reform can restore balance and ensure our courts serve the public – not special interests – while driving down costs across the board.

Together, we can strengthen California's economy, protect access to justice, and make our state more affordable for all!

Thank you for your partnership.

Jaime Huff
President & CEO

CJAC'S STORY

MISSION

Founded nearly 50 years ago, CJAC is the only statewide association dedicated solely to improving California's civil liability system.

Our mission is to fight excessive, abusive litigation so that California businesses, employees, and communities can grow and thrive. A trusted source of expertise in legal reform, we provide research and guidance on policy issues that impact California's justice system.

A VOICE FOR BALANCE

Throughout our history, CJAC has been at the center of landmark legal reforms in California. These include Proposition 64, which addressed abuses of the state's Unfair Competition Law; the famed Napkin Deal that curbed frivolous litigation; and Proposition 51, which tied non-economic damages liability to fault.

POLICY PRIORITIES

CJAC works in the legislative, appellate, and regulatory arenas to reduce excessive civil litigation and fight proposals that will drive up liability costs for California businesses. Our efforts span many pivotal issues, including the following policy topics which comprise some of CJAC's top priorities. The next pages provide an overview of each of these priority areas.

- ADA
- Antitrust
- Arbitration
- Attorneys' Fees
- Lawsuit Investing
- Private Rights of Action
- Prop 65
- Song-Beverly

ADA

WHAT IS IT?

Important state and federal disability laws have been adopted to ensure individuals with disabilities have access to places of public accommodation. These include the federal ADA, or Americans with Disabilities Act, and the California Unruh Civil Rights Act and Disabled Persons Act (collectively, “ADA”).

WHAT IS THE PROBLEM?

Some plaintiffs’ attorneys frequently abuse the ADA to enrich themselves rather than advance disability access. They issue threatening demand letters or file shakedown lawsuits, often aimed at vulnerable small and ethnic businesses. The goal – to extract settlements from businesses who can’t afford expensive litigation rather than work with them to resolve legitimate issues.

A growing trend in ADA shakedown lawsuits is in the area of website accessibility. The absence of clear standards in the digital space has spawned a new wave of litigation. While a few recent California court decisions have provided guidance and helped to mitigate some lawsuit filings, many communities continue to get hit with suits and demand letters.

WHAT CAN BE DONE ABOUT IT?

- Urge the U.S. Department of Justice to adopt clear and reasonable standards for website accessibility for private businesses.
- Strengthen regulations and consequences for “frequent filers” who abuse the ADA.
- Promote education of businesses to facilitate compliance with the ADA.
- Encourage out of court resolution with businesses who may be out of compliance.

ANTITRUST

WHAT IS IT?

Antitrust laws govern competition in the marketplace to promote fairness and protect consumers. At the federal level, these laws include the Sherman Act. In California, competition is regulated under the Cartwright Act, which largely mirrors federal antitrust standards.

WHAT IS THE PROBLEM?

California policymakers are considering significant expansions to the Cartwright Act. These proposed changes are unnecessary and risk upsetting the careful balance that currently exists between protecting competition and preventing abusive litigation.

Existing law already provides strong enforcement mechanisms. The Cartwright Act includes a private right of action enabling individuals to file lawsuits, including class actions, and to recover damages and attorneys' fees. Expanding liability or remedies further could drive unnecessary litigation, increase costs for California businesses, and create market uncertainty.

Overbroad expansion of antitrust laws would chill innovation, discourage investment, and ultimately harm consumers and the state's economy. California should preserve a stable, predictable legal framework that promotes both competition and economic growth.

WHAT CAN BE DONE ABOUT IT?

- Urge the legislature not to adopt unwarranted expansions of the antitrust law.
- Focus efforts on enforcement of the law and work with the business community to address areas of concern.

ARBITRATION

WHAT IS IT?

Arbitration provides a less expensive and quicker process than the courtroom for businesses, consumers, and employees to resolve their differences. The parties agree to allow a neutral and unbiased arbitrator decide their case instead.

WHAT IS THE PROBLEM?

There are frequent efforts in the California Legislature to take away the right to use arbitration because of misperceptions about whether it is fair to everyone. In fact, numerous studies show that arbitration benefits consumers. For example, the U.S. Chamber Institute for Legal Reform found that:

- Employees and consumers are more likely to win in arbitration than in court.
- Plaintiffs had better chances to win higher monetary awards in arbitration.
- Arbitration cases are resolved more quickly than in court.

The only group likely to win less money during arbitration is plaintiffs' lawyers who have diminished opportunity to run up fees. There is long-standing court precedent supporting arbitration, and the Federal Arbitration Act (FAA) pre-empts state laws that disfavor arbitration agreements.

WHAT CAN BE DONE ABOUT IT?

- Stop legislation that restricts or reduces access to arbitration.
- Uphold and apply the FAA when interpreting state law impacting arbitration.
- Increase awareness of the benefits of arbitration to employees and consumers.

ATTORNEYS' FEES

WHAT IS IT?

Under a number of California consumer protection and employment laws, plaintiffs' attorneys are entitled to receive 100% of their fees from a losing defendant. Winning defendants do not have the same entitlement – if they win, they cannot recover attorneys' fees against a losing plaintiff. This policy is known as one-sided fee-shifting.

WHAT IS THE PROBLEM?

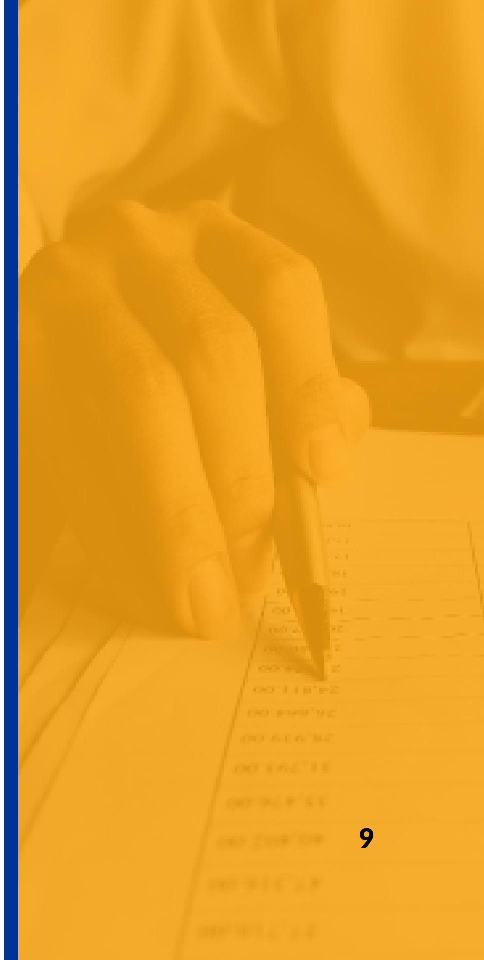
While one-sided fee-shifting statutes are intended to facilitate consumer access to legal help and the courts, they also incentivize unethical attorneys to delay case resolution and over-litigate. This harms their clients' interests in quick and fair case resolution and burdens businesses and the courts with unnecessary and wasteful litigation.

Examples of California Laws with One-Sided Fee Shifting

- Unruh Civil Rights Act, e.g., violations of the Americans with Disabilities Act (ADA)
- Proposition 65
- Fair Employment and Housing Act
- Song-Beverly Warranty Act

WHAT CAN BE DONE ABOUT IT?

- Make attorneys' fees proportionate to the amount the consumer recovers or cap fees so the focus is on consumer recovery.
- Avoid one-sided fee-shifting statutes. If a fee-shifting provision is added to a statute, it should be two-sided.



LAWSUIT LOANSHARKING

WHAT IS IT?

Lawsuit loansharking is a multibillion-dollar global industry where financiers, such as hedge funds, invest money in lawsuits in exchange for what is often an exorbitant percentage of any settlement. The investment is often in the form of funding given to the law firm pursuing the litigation.

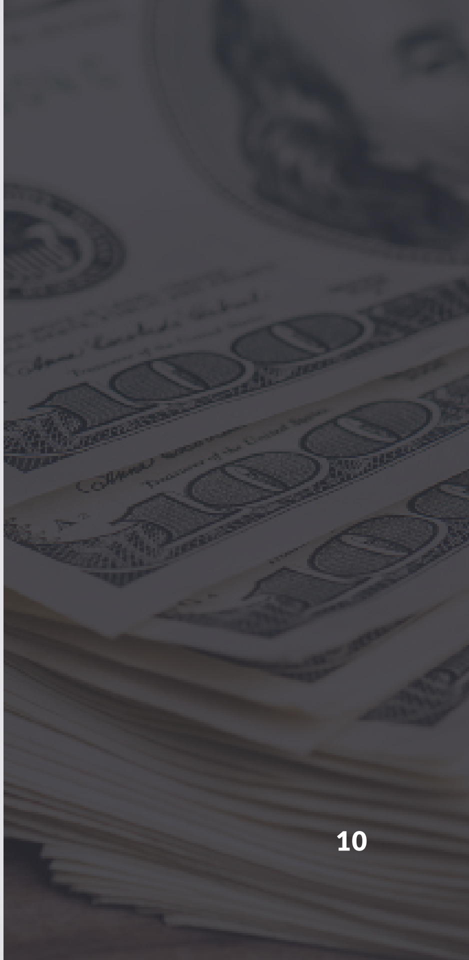
WHAT IS THE PROBLEM?

Lawsuit loansharking has opened the doors for these financiers to profit off lawsuits at the expense of the actual parties to the suit and often without their knowledge. The hidden stake these firms have in the case can be at odds with the parties' rights and ability to settle or otherwise resolve the case.

For example, Lion Air crash victims' families never received their money because their lawyer, Tom Girardi, arranged for investors to get paid first. Yet California currently does not regulate or require transparency of the lawsuit investing process. Lawsuit investing is clogging the courts and harming our civil justice system.

WHAT CAN BE DONE ABOUT IT?

- Require investors to notify the court and all parties to litigation of any arrangement that creates a financial interest in the case.
- Ensure that investing is fair and transparent.
- Protect consumers – plaintiffs should get their money first.



PRIVATE RIGHTS OF ACTION

WHAT IS IT?

Private rights of action ("PRAs") give private individuals and lawyers (non-government) the right to sue to enforce a civil law. There is a perception PRAs are needed for added enforcement.

Examples of California Laws with Private Rights of Action

- Safe Drinking Water and Toxic Enforcement Act of 1986 – Proposition 65
- California Consumer Privacy Act (CCPA)
- Private Attorneys General Act (PAGA)
- Unruh Civil Rights Act, e.g., violations of the Americans with Disabilities Act (ADA)

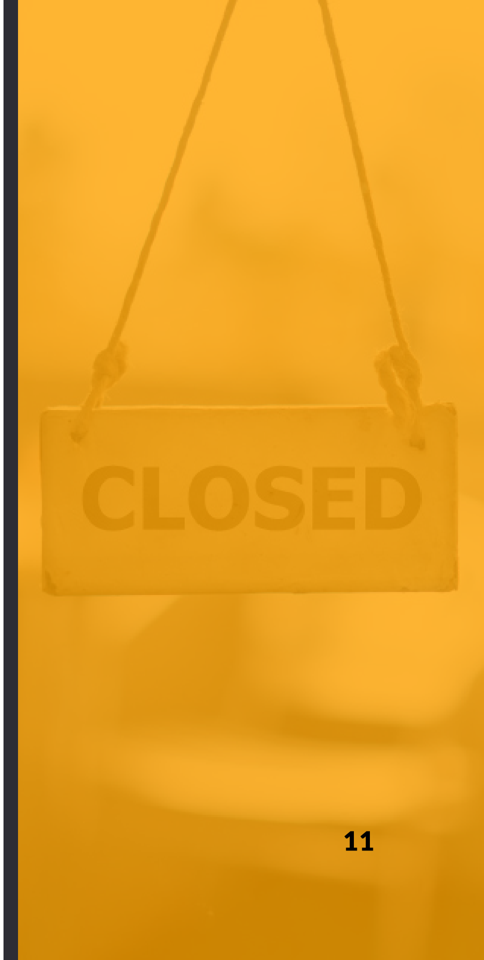
WHAT IS THE PROBLEM?

PRAs allow innocent businesses to be sued by merely alleging a wrongdoing without requiring proof of actual damages or demonstrable harm. In some instances, PRAs may proceed even where the violation is purely technical and results in minimal or no meaningful harm - for example, the omission of an employer's full legal name on a paystub.

The ease of bringing PRAs invites abuse by lawyers seeking quick profits. A common abusive tactic is to make a money demand to a business, e.g., pay $10,000 or you will get sued – also called a "shakedown" lawsuit. Small, ethnic, or minority-owned businesses are often the targets, as they may have more limited access to legal resources and may feel greater pressure to settle quickly..

WHAT CAN BE DONE ABOUT IT?

- Don't create PRAs. Rather, provide adequate funding to the government enforcement entity.
- Provide an opportunity to fix errors before a PRA can be brought.
- Only allow PRAs where there is evidence of actual harm and proof of damages.



PROPOSITION 65

WHAT IS IT?

Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Prop 65”) is a “right-to-know” law that requires businesses to provide warning labels on products containing approximately 900 chemicals identified by the state as dangerous.

WHAT IS THE PROBLEM?

Prop 65 was intended to improve public health, but its many flaws have imposed massive burdens on businesses without appreciably improving Californians’ health.

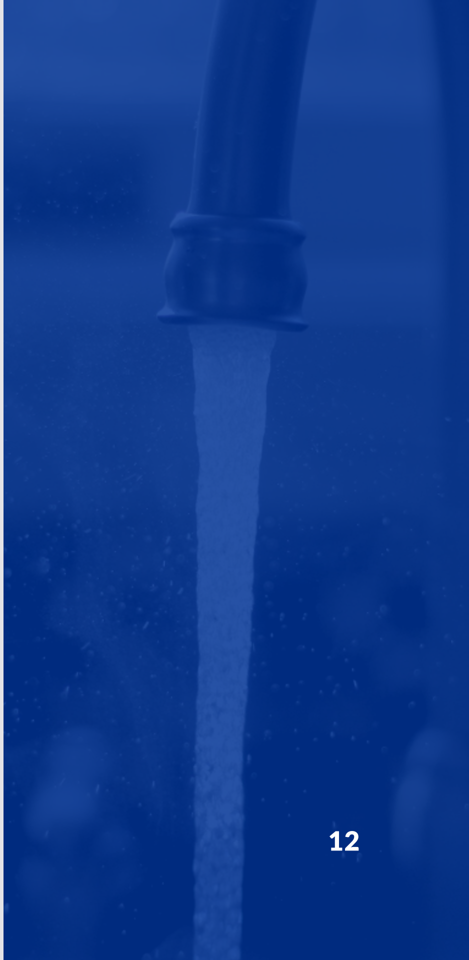
Lawsuit Abuse Problems Under Prop 65 Include

- Exposes small businesses throughout California to an increased risk of shakedown lawsuits.
- Allows private attorneys to win lucrative fees by suing businesses for failing to post generic signs.
- Does not require a showing of actual harm to pursue a lawsuit.
- Unnecessarily alienates consumers from safe products.

The primary beneficiaries under Prop 65 are lawyers. According to California Department of Justice data, $29.8 million in settlement payouts went directly to plaintiffs’ lawyers in 2019. Meanwhile, small businesses who can’t afford to fight these cases in court continue to be devastated.

WHAT CAN BE DONE ABOUT IT?

- Most reforms of Prop 65 would require another ballot measure, but it should be revised to require a showing of actual harm to bring a lawsuit.
- Eliminate the private right of action and reserve enforcement to state regulators.
- Educate small businesses about abusive suits so they are vigilant when facing these claims.



SONG-BEVERLY

WHAT IS IT?

The 1970 Song-Beverly Consumer Warranty Act ("lemon law") was enacted to require that manufacturers repurchase or replace vehicles with serious auto defects expeditiously.

WHAT IS THE PROBLEM?

In recent years, the lemon law has been hijacked by a small group of plaintiffs' firms who have turned it into a profit-making machine. The number of lemon lawsuits is skyrocketing in California – increasing by 67% since 2022. Los Angeles County alone saw an estimated 1400% jump in lawsuits in its branch courts between 2021-2023. Under a dozen California firms file half of all lemon lawsuits!

A main driver for abuses of the lemon law are attorneys' fees that can be recovered under the statute – if the plaintiff prevails, the defendant must pay all the plaintiff's fees but not vice versa. This incentivizes lawyers to drag out cases longer than needed to run up fees. For example, in one case, the plaintiff won only $1 at end of trial, despite being offered nearly $30,000 early in the case. The lawyer still requested almost $1 million in fees.

WHAT CAN BE DONE ABOUT IT?

- Although there has been recent legislation aimed at addressing abuses, the state must remain vigilant against any continued abuses.
- More reforms would help, including making attorneys' fee awards proportionate to the consumer's award.
- Encourage use of the California Department of Consumer Affairs arbitration program, which provides quick and free resolution of lemon law claims.

WHY BALANCE MATTERS

A hostile legal climate is not only harmful for businesses of all types and sizes, but for all Californians. It creates a drag on our economy that ultimately eliminates precious resources that could be allocated to job creation and investment.

Studies show that excessive litigation costs our state billions of dollars each year and creates an annual “tort tax” of over $5400 on every California household.

EXCESSIVE TORT COST IMPACT ON THE CALIFORNIA ECONOMY

US CHAMBER OF COMMERCE INSTITUTE FOR LEGAL REFORM, NOVEMBER 2024

$72 billion in total tort costs

2% of state GDP

$5429 per household

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