









CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA

CIVIL JUSTICE PRIORITIES

TABLE OF CONTENTS

	WELCOME MESSAGE	3
	CJAC'S STORY	4
	POLICY PRIORITIES	5
	WHY BALANCE MATTERS	14
	MEET THE TEAM	15
	CONNECT WITH US	16





WELCOME MESSAGE

Dear Legal Reform Stakeholder:

At the heart of CJAC's mission for a fair and balanced civil justice system is a desire we all share — for California businesses, employees, and communities to grow and thrive.

Courts burdened with unnecessary and abusive litigation impede access to justice. And excessive liability burdens create a legal climate that is hostile to businesses and job creation.

National polls and studies perennially rank California's legal climate rock bottom among the states. These are not rankings befitting the Golden State, and we believe we can do better.

CJAC urges California policymakers and voters to support policies for a fair California, and we stand ready to serve as a resource and help in this important endeavor.

We look forward to partnering with you!

Kyla Christoffersen Powell
President & CEO

CJAC'S STORY

MISSION

Founded more than 40 years ago, CJAC is the only statewide association dedicated 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. Some of our most notable efforts 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 level of fault.

We take pride in our track record and are passionate about being the voice for balance on behalf of businesses throughout the state.

1979

CJAC is first founded as the Association for California Tort Reform

1986

Proposition 51 passes, tying non-economic damages to fault

1987

"Napkin Deal" made, achieving major civil liability reform

1999

Association renames itself the Civil Justice Association of California

2004

Proposition 64 passes, reforming Unfair Competition Law

2008

State Supreme Court win limiting punitives in breach of contract

2012

CJAC obtains passage of fix to vexatious litigant law

2019

CJAC turns 40

POLICY PRIORITIES

CJAC works in the legislative, appellate, and regulatory arenas to reduce excessive 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
- Arbitration
- Attorneys' Fees
- Litigation Funding
- PAGA
- 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 small and vulnerable ethnic and minority 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 businesses continue to get hit with suits and demand letters.

WHAT CAN BE DONE ABOUT IT?

There are several ways to reduce abusive ADA lawsuits, including:

- 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.
- Promote out of court resolution with businesses who may be out of compliance.



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 is resolved in less time 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?

There are several ways to preserve arbitration, including:

- 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

- Private Attorneys General Act (PAGA)
- Unruh Civil Rights Act, e.g., violations of the Americans with Disabilities Act (ADA)
- 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.



LITIGATION FUNDING

WHAT IS IT?

Third party litigation funding (TPLF) is a multibillion-dollar global industry where litigation financiers, such as hedge funds, invest money in lawsuits for an agreed percentage of any settlement. The investment is usually in the form of a loan to the law firm pursuing the litigation. Sometimes the loan is directly to the plaintiff.

WHAT IS THE PROBLEM?

TPLF has opened the doors for hedge funds and other financiers to profit off lawsuits at the expense of the actual parties to the suit and often without their knowledge. The hidden stake of these lenders in the case can be at odds with the plaintiff's rights and ability to settle or otherwise resolve the case. Since the lender does not have a fiduciary duty to the plaintiff, this raises serious ethical concerns, yet California currently does not regulate or require transparency of the TPLF process.

TPLF can also cause delays in case resolution, further clogging the courts and driving up unnecessary costs for all parties to the litigation.

WHAT CAN BE DONE ABOUT IT?

- Require the attorney for a represented party to notify and file with the court any existing agreement with a third-party lender who has a financial interest in the outcome of the case.
- Ensure that lending to consumers is fair and transparent.



PAGA

WHAT IS IT?

California's Private Attorneys General Act (PAGA) is also known as the "sue your boss law." PAGA allows private plaintiffs and their lawyers to sue employers on behalf of the State of California and other employees for alleged violations of the Labor Code. The intent was to supplement state enforcement of labor laws.

WHAT IS THE PROBLEM?

While well-intended, PAGA has become a shakedown lawsuit machine for some profit-seeking lawyers who go after California employers with up to seven-figure penalties for minor or easily-resolvable alleged violations.

Many PAGA violations are simple, innocuous technical errors such as a misspelling on a paystub that did not impact the employee. There does not have to be any showing by employees that they suffered harm to sue under PAGA. PAGA also forces employers to cover the attorney fees in these suits, a major incentive for lawyers to sue. This opens the floodgates for a deluge of lawsuits filed by lawyers looking for an easy payout.

The fate of PAGA remains to be seen, as the United States Supreme Court and California appellate courts have been examining its scope. There is also a measure that will appear on the 2024 ballot which, if passed, will return the full responsibility of enforcing the Labor Code to the state labor enforcement agency.

WHAT CAN BE DONE ABOUT IT?

- Replace PAGA with enforcement solely by the Labor Commissioner.
- Require a showing of damages or actual harm to bring a complaint.
- Ensure 100% of monetary awards go straight to the aggrieved employee, rather than the state and attorneys.



PRIVATE RIGHTS OF ACTION

WHAT IS IT?

Private rights of action (“PRAs”) give private individuals the right to sue to enforce a civil law normally enforced by the government. Often, the policy basis for creating PRAs is a concern there needs to be more enforcement than what the government can provide.

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?

Some PRAs can be brought even when there is no proof of damages or actual harm. This allows innocent businesses to be sued by merely alleging a wrongdoing. Additionally, some PRAs can be brought when there has been a technical violation but insignificant harm, e.g., not listing the employer’s full name on the paystub.

The ease of bringing PRAs makes them vulnerable to abuse by plaintiffs’ lawyers wanting to make a profit. A common abusive tactic is to make a money demand to a business, e.g., pay \$5,000 or you will get sued – “shakedown” lawsuits. Small, ethnic, or minority-owned businesses are often the targets.

WHAT CAN BE DONE ABOUT IT?

There are several ways to reduce the potential of PRAs being abused, including:

- Don’t create PRAs in the first place. 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 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 voters passed on the ballot. It requires businesses to provide warnings in the form of written labels before exposing individuals in California to approximately 900 dangerous chemicals.

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 the California Department of Justice's Proposition 65 enforcement database, \$29.8 million in settlement payouts went directly to plaintiff lawyers in 2019. On the other hand, the lawsuit abuses have been devastating for small businesses who are easy targets because they lack the resources to fight a case in court.

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 – doubling between 2015-2020. In the last year, Los Angeles County alone saw an estimated 40% jump in lawsuits. Around six or seven 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, though being offered nearly \$30,000 early in the case. The lawyer still requested almost \$1 million in fees.

Even judges are taking notice. For example, San Diego Superior Court Judge Timothy Taylor noted in one of his recent orders: “[S]ome in the lemon law plaintiff’s bar [have] been emboldened to over-litigate cases the manufacturers regularly seek to settle, with no benefit to the injured consumer.”

WHAT CAN BE DONE ABOUT IT?

- Provide pre-lawsuit notice, so manufacturers receive notice and opportunity to address consumer claims.
- Tie attorneys’ fee awards to the amount the consumer recovers, i.e., 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 \$4500 on every California household.



EXCESSIVE TORT COST IMPACT ON THE CALIFORNIA ECONOMY

US CHAMBER OF COMMERCE INSTITUTE FOR LEGAL REFORM, NOVEMBER 2022

\$60 billion in total tort costs
2% of state GDP
\$4599 per household

MEET THE TEAM



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