



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

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2018 Legislative Wrap Up

2017-2018	Total
Bills Introduced and Read	4,775
Bills Tracked by CAOC	581
Sponsored	15 Introduced 9 Chaptered
Supported	156 (35 Chaptered)
Opposed	42 (2 Chaptered)

By Nancy Peverini, Esq., CAOC Legislative Director

The 2017/2018 legislative session was one of unexpected turns and twists, and yes, opportunities. First, with the shocking 2016 election of President Trump, it was crucial that California continue to lead on consumer protection efforts. While our partners at AAJ continue the federal fight, CAOC fought hard to successfully defeat all anti-civil justice bills. Then, as we entered 2018, two major issues took the spotlight: the enormous Equifax data breach followed by the “MeToo” revelations, two key issues that demanded legislative responses. CAOC was at the forefront on these and other issues.

Our 2017 legislative successes focused on passing positive legislation limiting forced arbitration in fraud cases, ensuring that attorney voir dire was protected, and protecting abused children, among other bills. In 2018, CAOC passed the broadest data protection statute in the country and several bills that increase the legal rights of those subject to sexual harassment. And CAOC was successful in removing from the California ballot anti-consumer initiatives limiting Private Attorney General Act cases and the rights of those injured by lead exposure.

ANTI-CIVIL JUSTICE LEGISLATION KILLED

This session, with a few minor exceptions related to PAGA suits, we turned back every measure pushed by our opponents. Among them:

- MICRA limits for Caltrans claims (AB 965-Kiley)
- Onerous requirements on insurance policy limit demands which would have destroyed the ability to hold insurers accountable for denying legitimate demands (AB 2429-Caballero)
- Limits on PAGA Suits (AB 281-Salas, AB 945-Melendez, AB 1045-Flora, AB 1429-Fong, AB 1430-Fong, AB 2016-Fong, AB 2907-Flora, SB 1443-Stone)

- Immunity for Utilities that Cause Fires (Governor's proposal)
- Limits on asbestos victims' claims (AB 1056-Kiley, AB 2793-Kiley)
- Contingency fee limits (AB 1146-Flora, IBEW proposal to limit fees in mass disaster cases, AB 2773-Acosta)
- Pro defendant changes to Motions for Summary Judgment (AB 2651-Kiley)
- Prevailing attorney's fees for toxic polluters (AB 1621-Allen)
- Limits on joint and several liability (AB 2440-Acosta)
- Limits on construction defect claims (AB 1489-Brough, AB 2353-Frazier)
- Weakening wage and hour laws/Changes to meal and break laws (AB 1173-Harper, AB 1174-Harper, SB 524-Vidak, SB 662-Berryhill, AB 2482-Voepel, AB 2484-Voepel, SB 524-Vidak, SB 1188-Stone and SB 662-Berryhill)
- Changes to the hearsay rule (overturning *People v. Sanchez*) (SB 1276-Moorlach)
- Limits on regulation and oversight of doctors (SB 572-Stone)
- Immunity for owners of dangerous boilers and tanks (AB 1389-Bigelow)
- Public entity immunity for fire rings (SB 720-Allen)
- Limits on disability access claims (AB 150-Mathis, AB 913-Gray)
- Elimination of consumer protections for insureds (AB 1679-Burke)
- Immunities for realtors (AB 1289-Arambula)
- Immunities for nitrate and lead polluters (AB 1605-Caballero, AB 2851-Grayson)
- Limits on government tort claims (AB 3050-Flora)
- Restrictions on attorney advertising (AB 3217-Berman)
- Immunity for negligent hiring (AB 2647-Rubio)

Importantly, in the biggest political fight this year involving who will pay for wildfires caused by utility corporations, CAOC defeated Pacific Gas & Electric as it sought to eliminate the legal rights of homeowners killed and injured in the 2017 fire. CAOC has five hardworking and dedicated lobbyists. PG&E, in contrast, employs seven lobbying firms with a total of 40 lobbyists and spent more than \$1.7 million on lobbying in only three months of this year as it pressured California officials to reduce its legal liability and avoid costs for devastating wildfires caused by its poorly maintained power lines. Another big utility, Sempra, employs five in-house and 19 contract lobbyists and spent more than \$2.2 million on lobbying so far this year. These corporate interests also have very deep pockets to finance paid media and grass roots campaigns. You may have seen the millions that the utilities and their allies spent on television aimed at convincing legislators to change the liability laws. But justice, and CAOC, prevailed.

CAOC also successfully fought off a major initiative and legislation that would have decimated existing cases on lead paint. Some of our key lawyers have fought for decades in the courts to make lead paint manufacturers accountable for lead poisoning. Once they won in the courts, the manufacturers both filed a destructive initiative and tried to pass bad legislation. This is horrible policy and precedent – we were very concerned that if they were successful, we would see effort after effort to use the initiative and legislative process to overturn consumer cases that had been years in the making. CAOC's successful grassroots and lobbying campaign led to the manufacturers withdrawing both their initiative and legislation.

We did face new challenges this year due to some isolated complications with our traditional allies in labor. First, the very powerful International Brotherhood of Electrical Workers formed an unholy alliance with their utility employers (including PG&E) to press for legislation that (1) would restrict legal liability for utility caused wildfires and (2) place MICRA-style fee caps on mass disaster cases. CAOC defeated that effort.

Second, the carpenters' union joined with its employers to successfully limit some PAGA cases. After the *Janus* decision came down in June saying that government workers who choose not to join unions may not be required to help pay for collective bargaining, the carpenters' union introduced AB 1654 (Rubio) to prohibit unionized workers in the construction industry from bringing cases under PAGA if the union expressly waives individual members' rights and there is final and binding arbitration in the collective bargaining agreement. The bill had support from Gov. Brown, Senate leadership and organized labor and passed despite our opposition. We were, however, able to get a sunset placed into the bill which will help us stop similar carve outs for other industries.

Last, AB 2605 (Gipson) was introduced late in the legislative session by refineries, big oil and the United Steel Workers. The bill exempts refinery workers from the holding in *Augustus* (non-exempt employees must be relieved of all duties during rest periods, including remaining on call with phones or radios, etc.). *Augustus v. ABM Security Services*, 2 Cal.5th 257 (2016). We were able to negotiate amendments that narrowed the scope of the bill significantly. The bill sunsets in two years and has a host of factors to limit its application.

CAOC SPONSORED/PRIORITY BILLS

Through your input and suggestions, Consumer Attorneys of California sponsored fifteen bills this session and received nine signatures, a record few other organizations can meet. Meanwhile, we continue to work behind the scenes on other issues like liens, court funding and minors' compromises. Here is a rundown of our 2017/2018 sponsored legislation:

ARBITRATION: CAOC sponsored and the governor signed SB 33 (Dodd), which addresses the Wells Fargo fraud to prevent financial institutions from claiming that a legitimate underlying arbitration provision also applies to an illegal account that was fraudulently created. We also sponsored AB 3080 (Gonzalez Fletcher) to prohibit forced arbitration of Fair Employment and Housing Act and Labor Code Claims. The bill was vetoed but will be reintroduced next year.

COURTS: CAOC sponsored and the governor signed SB 658 (Wiener), which addresses problems with voir dire and clarifies and strengthens the right to examine prospective jurors without a blanket time limit by removing some discretion from trial judges in conducting voir dire in civil cases, and also provides certain mandatory factors that a court must consider in exercising its discretion. We also sponsored SB 1012 (Hertzberg), which would have increased the maximum jurisdictional dollar amount for limited civil case tiers from \$25,000 to \$50,000. This bill did not move forward; however, CAOC has a task force continuing to work on this complicated issue.

DATA PROTECTION AND PRIVACY: CAOC was instrumental in negotiating and passing the California Consumer Privacy Act of 2018 (CCPA), a landmark privacy act which is now the strongest in the country. CAOC originally sponsored SB 1121 (Dodd), which as introduced would enact private rights of action for data breaches and failure to notify of a data breach with statutory damages. At the same time, high stakes negotiations were ongoing regarding the then pending California Consumer Privacy Act initiative. CAOC worked to ensure the data breach private right of action with statutory damages in SB 1121 was included in AB 375 (Chau), which ultimately enacted the CCPA. After this successful result, SB 1121 was amended into the technical cleanup bill for the Act which will go into effect January 1, 2020.

EMPLOYEE RIGHTS: CAOC sponsored three bills, one of which was signed by the governor and two that were vetoed but will be reintroduced in 2019. The governor signed CAOC's

landmark bill SB 820 (Leyva) which prohibits secret settlements in sexual harassment, assault and discrimination cases at the claimant's option. Unfortunately, Gov. Brown vetoed our AB 1870 (Reyes) which would have given victims additional time to seek civil and administrative remedies for Fair Employment and Housing Act (FEHA) claims by extending the current one-year time limit for filing a claim with the DFEH to three years. He also vetoed AB 1867 (Reyes) which would have required an employer with 50 or more employees to maintain internal complaint records of employee complaints alleging sexual harassment for at least 5 years.

DANGEROUS DOCTORS: The governor signed a priority bill, SB 1448 (Hill). SB 1448 establishes the Patients Right to Know Act of 2018, which requires physicians and surgeons to notify patients of their probationary status beginning July 1, 2019.

CHILDHOOD SEXUAL ABUSE: We sponsored two bills addressing childhood sexual abuse, both signed by the governor. SB 755 (Beall) limits a defense mental examination in any civil action involving a child under 15 years of age and an allegation of sexual abuse to no more than 3 hours, inclusive of breaks, unless the court grants an extension for good cause. SB 1053 (Beall) codifies current law that governs when a victim of childhood sexual abuse may file a claim against a public entity and clarifies that CCP Section 340.1 is the sole statute governing such claims.

CIVIL PROCEDURE: CAOC sponsored two bills, both signed by the governor. AB 644 (Berman) extends the requirement that counsel engages in a meet and confer process before a demurrer to motions to strike and motions for judgment on the pleadings. Second, AB 2230 (Berman) amends the Code of Civil Procedure to provide that the court may permit a party to submit a concise outline of their discovery request, in lieu of filing a separate statement as required by the California Rules of Court, and extends the timeline for filing a new trial motion and a motion to set aside or vacate a jury verdict from 60 to 75 days.

ELDER ABUSE: Unfortunately, the governor vetoed AB 859 (Eggman), which would have lowered the standard of proof from clear and convincing to preponderance of the evidence in physical neglect elder abuse cases brought under California's Elder Abuse Act when it is proven that a nursing home intentionally destroyed evidence.

ASBESTOS: CAOC sponsored SB 632 (Monning) which would have protected plaintiffs who are dying from mesothelioma from abusive depositions by limiting depositions to seven hours. The bill also allowed up to seven additional hours for no more than 14 hours of total testimony, if a court would have granted an extension after determining that the health of the deponent did not appear to be endangered by the additional time. We decided not to proceed after the Governor indicated a probably veto.

You can view any bill at www.leginfo.legislature.ca.gov

CAOC IS AT THE FOREFRONT OF "ME TOO" LEGISLATIVE EFFORTS

From the casting couches of Hollywood to the corporate boardrooms of Silicon Valley, when the #MeToo sexual harassment scandal hit in late 2017, all sectors felt it – especially the State Capitol. As members of the Legislature faced allegations of sexual harassment and assault, many other legislators and advocates demanded change, saying California has to do better.

CAOC was at the forefront on this issue, working with employment lawyers, key labor groups and women's rights groups to push a package of bills to help end sexual misconduct and

harassment in the workplace. Thanks to our joint efforts, California now leads the nation in efforts to protect women in the workplace and elsewhere. Although Gov. Brown vetoed a few crucial bills, next year will bring a new governor and new opportunities to continue the work we started this year.

COURT FUNDING

Efforts by CAOC helped in the successful fight for a funding boost of nearly \$258 million for the state's trial courts in the 2018-19 budget year. Included in that additional funding is \$75 million in discretionary money that will allow county trial courts to target their most pressing needs, be it additional court reporters or more court rooms or longer hours. The additional money is already proving a boon as the courts continue to recover from the more than \$1 billion in budget cuts they absorbed in the aftermath of the 2008 Great Recession. In particular, budget experts say, the extra money will help courts in hard-hit regions like the Inland Empire. Heading into 2019, more good news may be in the offing: Democratic gubernatorial nominee Gavin Newsom – whose father is a retired state appellate judge – has pledged to increase funding for courts.

MINOR'S COMPROMISES

CAOC has a working committee on minor's compensation issues. The No. 1 issue has always been attorney's fees. Attorney fee appeals are difficult to say the least as reviewing courts do not overrule decisions unless the fee award is "clearly wrong." *Serrano v. Priest* (1977) 20 Cal.3d 25, 49. Given this elevated standard, the reversal in *Schulz v. Jeppesen Sanderson, Inc.* (Sept. 5, 2018, B277493) Cal.App.5th [2018 WL 4718836] sends a strong, positive message regarding minors' comp fees. In short, the Second District Court of Appeals reversed the trial court's reduction of the requested 31% to a mere 10% fee award in a wrongful death action. *Schulz* creates positive precedence for courts to consider *all* relevant factors of California Rule of Court 7.955, which lists more than a dozen factors for courts to consider in determining what a reasonable fee is in cases involving minors. The Second District held that the trial court gave "too little consideration" to one factor – the high risk that the plaintiffs' counsel faced when the retention agreement was signed. CAOC's Amicus Committee wrote a compelling letter successfully requesting and obtaining publication of *Schulz*.

MEDI-CAL LIENS

Last year, the California Department of Public Health's pursued a budget play to limit recovery for Medi-Cal liens. CAOC successfully defeated this budget proposal; however, in December the Department released a proposal to add a "fixed percentage option" for Medi-Cal members with injury-related third-party settlements totaling \$25,000 or less. CAOC met with the Department early this year to discuss this proposal and also initiate discussions on problems CAOC membership encounters with liens in general and the Department's difficult to navigate procedure specifically. The Department ultimately decided to withdraw the proposal but agreed to work with us on making the lien process smoother. CAOC worked with state health officials to produce a concise roadmap through logjams.

You also probably saw the May decision, *Pebley v. Santa Clara Organics*, holding that in instances that an injured plaintiff elects not to use his or her medical insurance there are no limitations on the lien-based medical expenses that may be presented to the jury subject to expert testimony on reasonableness. Our lien committee continues to work on this issue and CAOC's amicus committee will monitor it for any needed action.

CAOC AMICUS COMMITTEE

CAOC's amicus committee had a successful 2017-2018 session in the courts shaping consumer law, filing approximately two dozen amicus briefs, letters, and even an oral argument on behalf of CAOC. More than 80% of the amicus committee's work takes place in the California Supreme Court. The committee's members and volunteer writers contribute their valuable time, without reimbursement, to review the many requests and craft thoughtful and compelling briefs and letters to shape the law governing your practices. Given its capacity, the committee must strategically choose cases where a CAOC brief or letter could sway an impactful decision.

LOOKING AHEAD TO 2019

There are many issues already in the hopper as we look towards 2019. CAOC has subcommittees working in the following areas: cyber security/privacy, sexual harassment, liens, fire/homeowner's insurance, autonomous vehicles, intermediate case tiers, nursing homes, arbitration/arbitrator ethics, childhood sexual abuse, PAGA, employment and minor's compromises.

While we celebrate this year's victories for consumers, we also continue to focus on finding new ways to build strategic alliances and awareness of our causes, which continually face big business opposition. Facing challenges in the pursuit of justice is what we do; it is what you do; and we can succeed. This fight will not be easily won, but it is one we will continue to wage in years to come. It is our collective job (we, as advocates, you as CAOC members) to build relationships with state lawmakers, support CAOC's political program and explain the importance of the civil justice system and its impact on their constituents. This work doesn't happen overnight, and we must remain collectively diligent at this crucial task. We could not have accomplished anything without the CAOC leadership and membership, and we thank you.

The CAOC legislative counsel/advocacy team (Nancy Drabble, Nancy Peverini, Lea-Ann Tratten, Jacquie Serna and Saveena Takhar) would like to particularly thank 2017 President Greg Bentley, 2018 President Lee Harris, 2019 President Mike Arias, and 2018 Legislative Chair Micha Star Liberty for their efforts this session. We also thank our partners in the Communications Department (Eric Bailey, J.G. Preston, Sharon Scott, Chris Weaver), CAOC's grassroots and political support team (Paul Woods, Mark Wirth, Samantha Helton), CAOC legislative support staff (Beverly Johnson) and the rest of the talented CAOC staff. As always, thanks for your support of CAOC's legislative program.

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