



# CONSUMER ATTORNEYS OF CALIFORNIA

*Seeking Justice for All*

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## 2015-2016 Legislative Wrap-Up

10 CAOC bills signed by Gov. Jerry Brown, all tort reform bills defeated, legislation enacted to allow full compensation for immigrants, key employment and senior bills signed, a priority bill on forced arbitration vetoed, and continued focus on political outreach.

	2015	2016	total for 2 year session
<b>Introduced</b>	2772	2331	5103
<b>Tracked</b>	357	264	621
<b>Sponsored/priority</b>	5	8	13 10 bills chaptered
<b>Supported</b>	29	65	94 53 bills chaptered
<b>Opposed</b>	20	21	41 0 bills chaptered

By Nancy Peverini, CAOC Legislative Director

CAOC won important legislative victories this session. In 2016 alone, six of CAOC's eight priority bills were signed by the Governor, a record unmatched by virtually any other group in Sacramento. And, thanks to the leadership of two progressive legislators, Speaker Anthony Rendon and President pro Tempore Kevin De Leon, the largely Democratic Legislature finally passed key legislation to increase the state minimum wage, combat climate change, and after years of unsuccessful efforts, give farm workers the right to overtime pay, ending a decades-long fight with industry and the Chamber of Commerce. Progressive leadership also permeated key committees with Asm. Mark Stone and Senator Hannah-Beth Jackson continuing to chair the important Judiciary committees, progressive Asm. Phil Ting joining the Assembly Judiciary Committee and labor leader Asm. Tony Thurmond becoming Chair of the Assembly Labor Committee, a key committee for workers. We saw legislative victories including staving off renewed efforts to gut the Private Attorney General Act (PAGA) and the rights of asbestos and other victims.

In this renewed atmosphere, CAOC continued its efforts to educate legislators on our issues and the importance of the civil justice system. We face hurdles, though, as evidenced by the difficulty in enacting key legislation aimed at forced arbitration, perhaps the biggest threat to the civil justice system. This session big business and the Corporate Democrats continued an assault on CAOC-sponsored legislation, defeating three of our major arbitration bills, one by only three votes.

In the 2016 primary alone, corporate PACs spent in excess of \$23M to elect "corporate democrats" and are on track to surpass that amount in the general election. Those PACs include major donors such as Chevron, PG&E, Wal-Mart, hospitals, realtors, and insurers. On the current Assembly Insurance Committee alone, five of the nine Democrats are among the top 10 recipients of money from these interests, leading to unique challenges as we fight for consumer legal rights.

### Legislative Department

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Additionally, in a remarkable statistic, 44 of the 52 Assembly Democrats have only been in Sacramento as elected officials for four years or less. In the 2015-2016 session, there were 16 brand new Democratic Assembly Members and 7 new Democratic Senators, almost all of whom are expected to serve 12 years. All in all, there were many new and inexperienced legislators finding their way as they began their 12-year terms.

Another hurdle is the sheer lack of attorneys serving in the state house. Of the 80 Assembly Members and 40 Senators, only 8 Democrats in the Senate are attorneys, only 9 Democrats in the Assembly are attorneys, and very few have a civil litigation background.

Despite these obstacles (well financed corporate Democrats, term limits, few attorneys), CAOC and our members continued the important job of pushing pro-consumer legislation and building relationships with legislators. Our efforts are paying off, as evidenced by our successes in 2016. While we celebrate this year's victories for consumers, we also continue to focus on finding new ways to build alliances and awareness for our causes that 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, and you, as CAOC members) to build relationships with the legislators, to support CAOC's political program and to explain the importance of the civil justice system and its impact on their constituents. It doesn't happen overnight and we must be vigilant about this crucial task. We could not have done this without the CAOC membership, and we thank you.

### **CAOC Sponsored/Priority Legislation**

**2016**

**Civil Damages for Undocumented Individuals AB 2159 (Gonzalez)** states that immigration status is irrelevant in personal injury and wrongful death actions and will ensure fair and just compensation for every Californian, regardless of immigration status. **SIGNED**

**Forum and Choice of Law SB 1241 (Wieckowski)** stops employers from forcing California employees to go out of state to settle disputes or forcing California employees to settle disputes under the laws of another state. **SIGNED.**

**Elders SB 1065 (Monning)** helps seniors get to trial more quickly in an Elder Abuse Act claim by providing an expedited appeal process with a fixed outer limit of 100 days to resolve the appeal of an order denying a petition to compel arbitration. **SIGNED.**

**Curbing the Prescription Drug Epidemic SB 482 (Lara)** requires prescribers to check the state's CURES prescription drug database before prescribing narcotics to first-time patients in order to prevent patients from receiving narcotics from multiple providers. **SIGNED.**

**Charter Bus Safety SB 247 (Lara)** improves the safety of charter buses by requiring a charter-party carrier of passengers to ensure each vehicle operated for that purpose is equipped with specified safety features. **SIGNED.**

**Civil Procedure AB 2427 (Chau)**, co-sponsored bill with the California Defense Counsel, pursues procedural efficiency proposals, including allowing coroner's photographs to be released prior to litigation and requiring earlier disclosure of expert information. **SIGNED.**

## 2015

**Expedited Jury Trials AB 555 (Alejo)**, co-sponsored by the California Defense Counsel, implements a mandatory Expedited Jury Trial (EJT) statute. This legislation calls for juries of eight or fewer, limits peremptory challenges to four for each side and increases time limits for each side. The EJT will be mandatory for cases under \$25,000 with limited opt-out provisions and a right to appeal. AB 555 was well received in the Legislature, despite insurer opposition. This new statute will go a long way toward helping Californians more quickly get their day in court and facilitate settlement. **SIGNED.**

**Streamlined Demurrers SB 383 (Wieckowski)** improves trial and court-related efficiencies by providing procedures and deadlines to streamline the demurrer process so that cases can move efficiently through the judicial system. **SIGNED.**

**Medical Records AB 1337 (Linder)** eases the paperwork nightmare when seeking a client's medical records by authorizing the use of a standardized medical records request form that can be submitted to any health care provider in the state for the purpose of providing a patient's consent to the release of records to his or her attorney. **SIGNED.**

**Expert Costs AB 1141 (Chau)** corrects the previous disparity in application of expert cost awards under Code of Civil Procedure Section 998 by equally limiting both plaintiffs and defendants to post-offer expert costs. **SIGNED**

### Vetoed Sponsored/Priority Legislation

**Forced Arbitration AB 465 (Hernandez-2015)** requires any pre-dispute waiver of a Labor Code violation to be knowing and voluntary. Partnering with the California Labor Federation, CAOC lobbied heavily for AB 465, which overcame fierce resistance by the California Chamber of Commerce, which placed the bill on its "Job Killer" list. The Chamber, of course, has provided zero evidence AB 465 will cost a single job, but we all know what forced arbitration means for the common Californian: It is a "Justice Killer." We were profoundly disappointed when the Governor vetoed AB 465 in 2015, but we will not give up on our fight to protect employees and consumers from forced arbitration. **VETOED.**

**Arbitration provider firms' unfairness & bias SB 1078 (Jackson-2016)** prohibits the solicitation of a party or lawyer for a party during the pendency of the arbitration and prohibits an arbitrator from entertaining or accepting any offers of employment in another case from a party or lawyer for a party in the pending arbitration. **VETOED.**

**Extension of Statute of Limitations in Exide and Porter Ranch disaster AB 2748 (Gatto-2016)** ensures that any temporary or final settlement made in connection with the Aliso Canyon disaster and the Exide Technologies facility in the City of Vernon shall not release any claim that is unknown to the claimant at the time of the settlement, occurs subsequent to the settlement, or that is unrelated to the environmental disaster and extends the current statute of limitations for civil actions for injury or illness or wrongful death based upon exposure to a hazardous material or toxic substance for one additional year and provides prevailing plaintiff attorney's fees. **VETOED.**

## Major Oppose Legislation-2016

Not one tort reform bill passed the Legislature in the 2015-2016 session. We did face some last-minute attempts by business, including a proposal aimed to limit “piece rate” worker protection laws. Another proposed an absolute immunity to farmers for nitrate pollution. We are glad to report that neither last-minute proposal proceeded, due to CAOC intervention.

**Private Attorney General Act (PAGA)** – **AB 2461 (Grove), AB 2462 (Grove), AB 2463 (Grove), AB 2464 (Grove), AB 2465 (Grove), SB 1468 (Stone)** sought to weaken worker protections under PAGA, along with a budget proposal by Gov. Brown that would severely restrict PAGA actions.

**Public Contracts/Attorneys Fees** – **AB 2804 (Brown)** would limit the ability of public entities to contract with contingency fee attorneys, which is often necessary for public entities to recover taxpayer dollars and enforce laws that protect their residents.

**Asbestos** – **AB 2315 (Olsen)**, based on the proposed federal FACT Act, would delay resolution of asbestos claims, thereby delaying justice.

**Prelitigation Procedures** – **SB 1256 (Anderson)** would require injured people to write a letter to the wrongdoers setting forth injuries and damages prior to filing any legal action or pursuing legally-mandated alternative dispute resolution.

**Construction Defects** – **AB 2784 (Frazier)** was a placeholder bill sponsored by developers to limit construction defect litigation.

**Loser Pays-Consumers Legal Remedies Act** – **SB 1306 (Stone)** would require a court to award court costs and attorney fees to the prevailing party in claims based on the Consumers Legal Remedy Act.

**Employment–Meal Periods** – **AB 1948 (Wagner)** would eliminate civil and criminal penalties for failure to provide meal or rest or recovery period breaks.

**Lemon Law–RVs** – **AB 2526 (Achadjian)** would weaken the lemon law and give RV manufacturers an additional final repair attempt.

**Punitive Damages** – **AB 1728 (Wagner)** was a placeholder bill sponsored by CJAC to negatively change the law on punitive damages.

## Courts

In 2016, CAOC continued its strenuous advocacy for court funding. We have been in the forefront of aggressively advocating for the courts for over a decade. When the final state budget was signed, the judicial branch received a total of \$3.6 billion, including \$135 million in new money. This amount included \$20 million in new, discretionary operational money for the trial courts. While court funding has slowly improved since the devastating cuts during the economic downturn, our members still face significant delays in getting motions heard and obtaining firm trial dates in many parts of the state.

## **Republican Outreach**

CAOC also expanded and improved its Republican outreach program in 2015-2016. We targeted nine Republicans who we believed would be able to thoughtfully review consumer issues and met with them throughout the session. One of our sponsored and signed bills (AB 1337 related to medical records requests) was authored by Asm. Eric Linder (R-Corona), and in fact several Republicans, including Asm. Linder and Asm. Brian Maienschein (R-San Diego), have better voting records on CAOC-sponsored bills than several Democrats. CAOC's SB 1241, which prohibited choice of law and forum clauses in employment contracts, received 8 Republican votes, despite opposition from the Civil Justice Association of California.

## **Amicus**

CAOC's amicus committee, filing over a dozen briefs, had another successful year shaping consumer law at the appellate level. The committee has always been a volunteer effort that operates without any budget. Given its capacity, the committee has been strategic in choosing where to allocate its resources. The committee has helped shape consumer law in half a dozen California Supreme Court cases and many more appellate court decisions. Special thanks goes out to our committee co-chairs, Sharon Arkin, Kevin Green, and Lee Harris, and Associate Staff Counsel Saveena Takhar, who are tasked with the chore of managing the committee and providing strategic and editorial guidance.

One important victory in 2016 was *Bristol Myers Squibb Company v. The Superior Court of San Francisco County* (August 29, 2016, S221038). The California Supreme Court held that although California cannot exercise general jurisdiction over a pharmaceutical giant in litigation brought by non-resident personal injury plaintiffs because the company was not "at home" in the State, California *can* exercise specific jurisdiction over the claims of non-resident plaintiffs. The court reasoned specific jurisdiction was appropriate due to the substantial connection between the company's business activities in California (including the sale of more than \$1 billion worth of Plavix to Californians) and the existence of similar claims by California residents. Sharon Arkin authored the *Bristol Myers* brief on behalf of CAOC.

Another notable change in 2016 occurred when the Supreme Court announced that citation rules would change regarding Court of Appeal opinions that have been granted review. For over 100 years California's rule was clear that a Supreme Court grant of review renders a published Court of Appeal opinion non-citable precedent. However, beginning July 1, 2016, Court of Appeal opinions on review may still be cited for any "potentially persuasive value." Cal. Rule of Court 8.115(e)(1).

One case worth keeping an eye on in the future is *TH v. Novartis*, a California Supreme Court case. This appeal concerns whether brand-name manufacturers who market mislabeled drugs can ever be held liable for injuries caused by individuals who rely on the brand-name manufacturer's misleading drug label in choosing to consume, to their physical detriment, a generic version of the same drug. The amicus will be submitted in December.

## **Looking Forward**

The 2015-2016 legislative session is now over and it has been one of our best legislative sessions in a decade. We are currently planning for next year and welcome your legislative suggestions. As always, thanks for your support of the CAOC legislative program. The CAOC legislative advocacy team (Nancy

Drabble, Nancy Peverini, Lea-Ann Tratten, Jacquie Serna and Saveena Takhar) would like to particularly thank 2016 President Elise Sanguinetti, 2017 President Greg Bentley, and 2016 Legislative Chair Lee Harris 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 political support team (Paul Woods, Mark Wirth, Samantha Helton), CAOC legislative support staff (Jonathan Begonia and Liz Teves) and the rest of the talented CAOC staff. As always, thanks for your support of CAOC's legislative program.