



## CAOC-backed bills win approval

Bills would protect elder rights and combat fraud

**SACRAMENTO (May 28, 2014)** – A bill supported by the Consumer Attorneys of California that would create a bill of rights for residents of assisted-living facilities in California was approved by the state Assembly today, while a measure to protect consumers from junk products won Senate approval.

AB 2171, authored by Assemblyman Bob Wieckowski (D-Fremont), would offer residents of Residential Care Facilities for the Elderly (RCFE) protections similar to those already enjoyed by the state's nursing home residents, including bolstered legal rights. It passed on a vote of 42-20 and now goes to the state Senate.

Meanwhile, a CAOC-sponsored bill that seeks to hold manufacturers liable for fraud when selling junk products passed the Senate today. SB 1188, authored by Sen. Hannah-Beth Jackson (D-Santa Barbara), was approved on a vote of 21-14 and now goes to the state Assembly.

AB 2171 is the linchpin of a package of bills introduced this year to protect seniors and those with disabilities who reside in assisted living homes, which are fast becoming the go-to destination for the frail elderly. The measure will protect RCFE residents in areas such as visitation, privacy, confidentiality, personalized care and adequate staffing while also strengthening a resident's right to make choices about his or her care, treatment and daily life in the facility.

Legislation is necessary because the state agency responsible for overseeing such residential care facilities has been decimated by cutbacks and is exceedingly slow to act in the face of an epidemic of neglect. Thirty years ago, regulators inspected such homes every six months. Today, budget cuts have reduced government oversight to drive-by inspections once every five years.

To ease concerns of proliferating litigation, the bill gives an errant facility an opportunity to cure the problem before a civil suit can be filed. The "private right of action" in the bill will provide a pathway for residential care residents and their families to stop ongoing violations through the civil courts without a big cost to California taxpayers.

SB 1188, co-sponsored by the Consumer Federation of California, clarifies long-standing California law that a company is committing fraud when it fails to disclose a known defect, even if that defect is not a threat to safety. The Consumers Legal Remedies Act (CLRA), enacted in 1970, has been used to hold businesses accountable for fraud if they misrepresent information about a known product defect, such as a defect that turns TV screens hazy or causes computers to stop working or washing machines to prematurely die. As such, the CLRA has served as a strong disincentive to duplicitous and deceitful marketplace behavior.

But since a 2006 state appeals court ruling in the case of *Daugherty v. American Honda Motor Co.*, CLRA fraudulent omission claims in federal courts have been rejected if a product or service did not pose a demonstrable risk to consumer health or safety. In short, the product had to maim or kill to be declared a fraudulent omission. That sort of extreme legal threshold was never the intent when state lawmakers crafted the CLRA as a weapon in the fight against consumer fraud and duplicitous merchants. If signed into law, SB 1188 will ensure that corporations can be held accountable when they sell products they know will soon become junk.

Another CAOC priority bill, AB 2617 by Assemblywoman Shirley Weber (D-San Diego), won approval in the Assembly today on a 46-20 vote. The measure prohibits forced arbitration in cases involving hate crimes.

*Consumer Attorneys of California is a professional organization of plaintiffs' attorneys representing consumers seeking accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.*

**For more information:**

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