



Wells Fargo-inspired arbitration bill heads CAOC sponsored legislation package

Seven bills also include protections for immigrants, seniors, abused kids

SACRAMENTO (Feb. 17, 2017) – A bill inspired by the fraudulent behavior of Wells Fargo in creating fictitious bank accounts and credit cards is the centerpiece of a package of seven bills sponsored by Consumer Attorneys of California in this year’s California legislative session.

CAOC’s legislative package also includes bills to enforce the legal rights of immigrants, protect seniors and dying asbestos victims, help children who have been sexually abused, ensure impartial juries in civil trials and improve court efficiency.

[Senate Bill 33](#), authored by Sen. Bill Dodd (D-Napa), prohibits financial institutions from forcing customers to give up their legal rights when the bank has committed fraud or identity theft. It was written in response to a scandal in which at least 3,500 Wells Fargo employees opened approximately 1.5 million bank accounts and approximately 565,000 credit cards without the consent of their customers, creating additional fees for customers and damaging their credit ratings.

The measure ensures that fraud cases are heard in the public setting of a court instead of secret arbitration hearings. Customers have been trying to sue Wells Fargo over these fraudulent accounts since at least 2013. The bank successfully argued that its customers were bound to arbitration agreements in accounts they never agreed to open. By forcing these cases into closed-door arbitration proceedings, Wells Fargo kept the scandal out of public view, allowing the fraud to mushroom, and the bank continued to profit while evading accountability.

Senate Bill 33 prohibits the use of forced arbitration only in cases involving fraud or identity theft, leaving intact any arbitration agreement that a consumer enters into knowingly and not as a condition of the service. It is co-sponsored by Consumer Federation of California.

“Opponents are already calling SB 33 a ‘job killer,’” said Consumer Attorneys of California president Gregory L. Bentley. “But the real job killer was Wells Fargo, which fired thousands of rank-and-file employees for doing what the bank ordered.”

Here is a brief summary of CAOC’s other sponsored bills:

[Assembly Bill 859](#), authored by Assemblymember Susan Eggman (D-Stockton), will protect seniors physically abused in nursing homes by discouraging facilities from intentionally destroying legal evidence in violation of the law. Normally, to show elder abuse, the victim must show “reckless neglect” by clear and convincing evidence. However, some nursing homes intentionally destroy that very evidence to prevent victims from proving their case. Under AB

859, when a judge has found that a nursing home has intentionally destroyed legal evidence, the victim's burden of proving the case is by a preponderance-of-evidence standard, and not the higher clear-and-convincing standard. This bill has the support of California Advocates for Nursing Home Reform.

[Senate Bill 755](#), authored by Sen. Jim Beall (D-San Jose), will for the first time limit the length of time that a civil defendant's paid expert can conduct psychological testing of a child under age 15 where there exists credible evidence that the child has been sexually abused. Unnecessarily long and abusive psychological exams potentially can turn traumatic for a child who already has been victimized by an adult.

[Senate Bill 658](#), authored by Sen. Scott Wiener (D-San Francisco), will make certain the proper procedures are in place to ensure fair and impartial juries by addressing the issue of unreasonable and arbitrary restrictions on attorney examination of potential members of a jury during the process known as *voir dire*. Some courts have limited *voir dire* to as little as 30 minutes in unlimited civil jurisdiction cases. Under current law, in order to select a fair and impartial jury, each party in civil cases has the right to examine prospective jurors without a blanket time limit.

[Senate Bill 632](#), authored by Sen. Bill Monning (D-Carmel), will clarify that dying asbestos victims receive the benefit of current law that sets a time limit for the deposition for victims with a terminal illness. Despite the clear intent of the California Legislature in 2012 to protect dying victims from abusive depositions, courts dealing with asbestos cases used broad language permitting "judicial discretion" to ignore time limits. As a result, dying victims can be subjected to marathon sessions that are physically and psychologically debilitating.

[Assembly Bill 644](#), authored by Marc Berman (D-Palo Alto), is co-sponsored by CAOC and the California Defense Counsel as a vehicle to address civil procedure and court function issues with the goal of improving current litigation procedures. The exact language has yet to be developed.

The Assembly Judiciary Committee plans to sponsor [legislation](#) later this month that will prevent inquiries into a consumer's immigration status for purposes of California consumer protection laws. This clarification of the California Civil Code will add protections already granted in employment settings and for consumers harmed through no fault of their own. The bill is co-sponsored by the California Low-Income Consumer Coalition and Consumers for Auto Reliability and Safety.

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.

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