



“Justice Killer” bills take aim at Californians

SACRAMENTO (Apr. 29, 2013) – As corporate executives continue to try to use the legislative process to rob Californians of their legal rights and line their own pockets at the public’s expense, a coalition of consumer advocacy groups is sounding a warning.

The coalition has identified a number of bills now before the California Legislature as “**Justice Killers**” that aim to trample the rights of California citizens.

The coalition consists of, in alphabetical order:

- **AFSCME California** (American Federation of State, County and Municipal Employees, AFL-CIO)
- **California League of Conservation Voters**
- **California Teamsters**
- **Consumer Attorneys of California**
- **Consumer Federation of California**

The coalition is particularly concerned about growing efforts to require that disputes with corporations be resolved through mandatory arbitration rather than in a court of law. Such arbitration clauses, typically buried in fine print in incomprehensible language, deny consumers and employees unfettered access to the courts and require them to enter a process that is often weighted in the companies’ favor. Such “agreements” (even if consumers don’t always know they are agreeing to them) are used by credit card, phone, mortgage and computer companies, retailers, banks, car dealers, HMOs, doctors, nursing homes and insurers. Even some employers are requiring employees to “agree” not to hold them accountable in court for civil rights violations as a condition of the job.

The right of Americans to have their complaints decided by a jury trial has its roots in the American colonial experience, when judges served at the pleasure of the King of England and George III abolished trials by jury. The issue was raised in the Declaration of Independence, when colonists accused the king of “depriving us in many cases, of the benefits of Trial by Jury.” The omission in the United States Constitution of the right to trial by jury was one of the strongest objections to the document and led to the Bill of Rights, which included the 7th Amendment establishing the right to trial by jury in civil cases.

James Madison, in his speech proposing the Bill of Rights amendments, described trial by jury as “essential to secure the liberty of the people.” Our court system is the only place where everyday people can confront powerful industries and institutions on equal ground. But their access to the courts and their legal rights are being eroded by corporate America.

Another concern is the move to strip consumers of their right to band together in class actions when many consumers are each cheated out of small amounts of money. In cases like these it makes no economic sense for an individual consumer to go to court to win back a small amount, but if consumers are not allowed to join together and hold the wrongdoers accountable, those companies can enjoy hundreds of thousands or sometimes millions of dollars of ill-gotten windfall. This concern has intensified since the U.S. Supreme Court's 2011 decision in *AT&T Mobility v. Concepcion*, which struck down a California rule that prohibited bans on class actions that are inserted in mandatory arbitration clauses. The Supreme Court's decision allows corporations to force consumers into private, corporate-designed systems to resolve their disputes and to unilaterally prohibit consumers from pursuing their disputes as a class action.

Our coalition will aggressively call out and oppose any “**Justice Killer**” bills that would attempt to take away fair access to the courts for all Californians.

Here are the “**Justice Killer**” bills still under consideration by the Legislature:

- **SB 737** (Sen. Bob Huff-R): The object of this bill is to eliminate class actions in California. Under current California law, court orders granting certification of a class are subject to modification by the court during the duration of the trial. The defendant can continue to attack the certification order while the case proceeds. SB 737 would give defendants the right to petition an appellate court to decertify a class. And defendants certainly would make that appeal, since it would bring proceedings to a halt for years until the appeal were decided. No class action would ever be resolved quickly, and even the most laudatory cases would be unnecessarily stalled. California defendants already have the right to challenge the class certification and don't need this excuse to drag out the proceedings and needlessly clog appellate court calendars. The bill will be heard by the Senate Judiciary Committee Tuesday, April 30.
- **SB 713** (Sen. Lou Correa-D): This bill lets a defendant off the hook for any violations of the law caused by following a written order or opinion from someone with a government agency or department — even if that order or opinion were in conflict with state or federal law or the official policies of the agency. This would in essence put these units of government above the law, giving their orders precedence over the actual applicable laws. Employers would be unaccountable for violations of state or federal labor laws if they said they were following advice they got from an agency staffer, no matter how inaccurate that advice was. This bill will be heard by the Senate Judiciary Committee May 7.
- **SB 697** (Sen. Tom Berryhill-R): The bill would undermine the legal protections of the eight-hour work day by allowing employees to “request” they work a four-day week of ten-hour days and then not receive overtime for working more than eight hours in a day. Of course, unscrupulous employers could force such a “request” on employees, who might not feel they could say no for fear of losing their jobs and thus could be forced into unsafe and unfair working conditions. The bill was defeated in the Senate Labor Committee on April 24 but is eligible to be brought back for reconsideration.
- **SB 554** (Sen. Joel Anderson-R): Another attempt to take advantage of workers by undercutting legal protections, this bill would prevent employees of certain residential care facilities from receiving overtime unless they worked more than 16 hours in a day. The bill was scheduled for a hearing in the Senate Labor Committee on April 24 but the hearing was cancelled at the request of the author; it could still be brought before the committee.
- **AB 223** (Asm. Kristin Olsen-R): This bill would allow local governments to get a pass on following the law. Local governments could delay legal proceedings brought against them by

disabled persons alleging violations of laws guaranteeing access for the disabled, and those local governments would also pay reduced damages for violations. We should, if anything, hold our units of government to an even higher standard when it comes to knowing and observing the law, and not get a break on occasions when violations are brought to their attention. This bill was scheduled for a committee hearing on April 16 that was cancelled at the request of the author; it could still be brought before the committee.

- **AB 228** (Asm. Dan Logue-R): This bill essentially gives employers leave to violate wage-and-hour and occupational safety regulations. It would allow the state Labor Commissioner to waive any penalties against the employer if the claim is resolved within 30 days. Why follow the law when you can just wait until after you get caught violating it to do what you're required to do? By that logic individuals should not be punished for stealing from someone if they give back what they took within 30 days of being caught. The bill was scheduled for a second hearing before the Assembly Committee on Labor and Employment on April 18 that was cancelled at the request of the author; it could still be brought before the committee.
- **AB 167** (Asm. Curt Hagman-R): This bill says it is okay for businesses to rip off customers — as long as it's for no more than \$499.99 each. It would require any member of a class filing suit under one of California's most important consumer protection laws, the Unfair Competition Law, to have suffered "injury in fact" or at least \$500. Of course, if the loss is less than that (as was the case in the \$30 the Concepcions were cheated out of that led to their class action against AT&T Mobility), it makes no financial sense for the victim to pursue an individual claim; the filing fee alone could be more than the amount lost. This bill was scheduled for a hearing before the Assembly Judiciary Committee, but the hearing was canceled at the request of the author. The measure can still be brought up for a hearing in January 2014.

For more on our coalition and these "**Justice Killer**" bills, contact:

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