



CAPITOL UPDATE

MAY 5, 2005

Measure to Provide Relief from ADA Lawsuit Abuse Killed

Committee Rejects Pleas from Small Businesses and Disabled Community who Testify of Need to Curb Abuse of Access Laws

"The goal of the ADA is to bring property owners into compliance with the law, and grant full access to those in the disabled community. Unfortunately, this worthy cause has been exploited by a very small group of predatory litigants who target small businesses – often without regard for whether repairs are made. In killing this sensible reform, members of the Judiciary Committee sided with professional plaintiffs over the testimony of small business owners, members of the disabled community, and other victims of ADA lawsuit abuse who support reasonable reform."

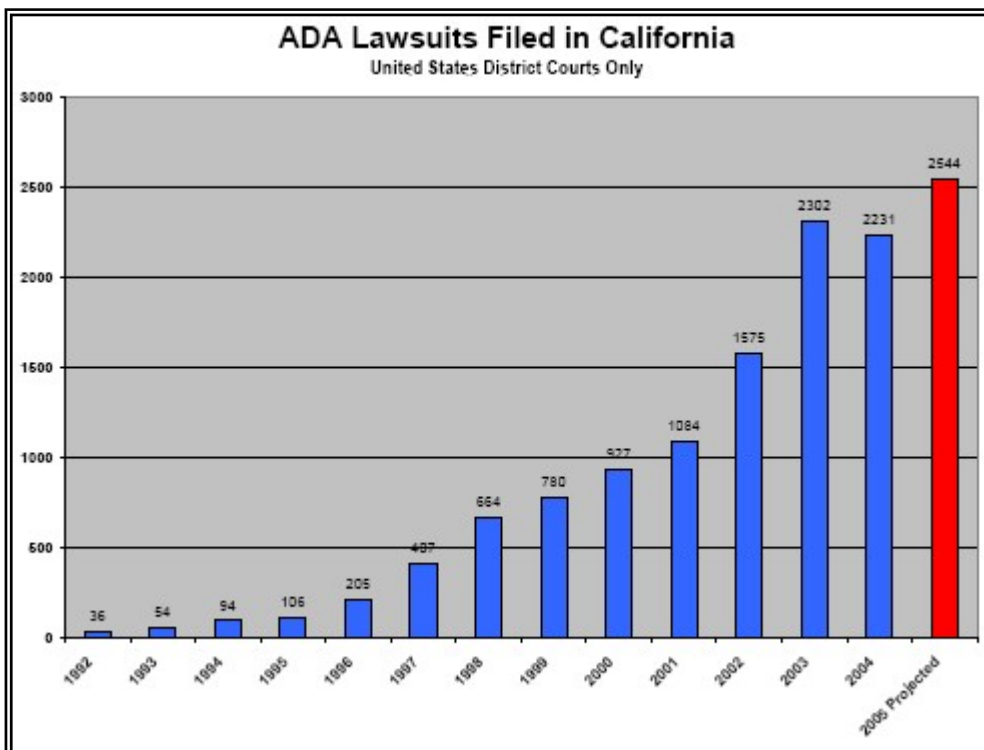
- Senator Chuck Poochigian

Sensible ADA Reforms Killed in First Hearing

Senator Chuck Poochigian's (R-Fresno) Senate Bill 855, a reasonable measure designed to increase access and reduce vexatious lawsuits filed under the Americans with Disabilities Act (ADA), was recently killed in the Senate Judiciary Committee hearing. The measure, sponsored by Gov. Schwarzenegger, proposed to allow business owners an opportunity to cure alleged violations before being sued for punitive damages, attorneys' fees, and other general damages. SB 855 would preserve the right to sue for actual damages, while allowing suits for additional sums if a business failed to make appropriate repairs within 120 days. It would also help to achieve the original intent of the ADA by ensuring that businesses **fix** alleged violations.

Background on the ADA

Passed in 1990, the ADA has helped ensure equal access to public and private facilities. In addition to calling for building standards to be user-friendly for disabled patrons, the federal law also allows individuals harmed by a violation to sue for monetary damages. California is one of only three states that also allows an injured party to recover extra monetary sums (attorneys' fees, punitive damages, etc.). Allegations of abuse of the ADA law, and the gross number of cases filed in courts, have skyrocketed in recent years (see chart).



Note: Chart reflects suits in federal courts in California which typically include demands for punitive damages and attorneys fees available only under California law. It does not include lawsuits filed in state courts or those many cases that are settled before a lawsuit is filed.

Californians Impacted by ADA Abuse Urge Legislature to Reform the Law

Disabled Californians, property owners, small businesses, and others impacted by ADA lawsuit abuse joined Senator Poochigian at the State Capitol on May 3 to call for sensible reform to California's ADA law at a press conference prior to SB 855's hearing. *"Accommodating Californians with special needs is vital, though abuse of the current system has resulted in great distress to many small businesses. Ironically, this law that was originally designed to open doors for the disabled has forced some businesses to close their doors altogether,"* said **Senator Poochigian**. *"The Americans with Disabilities Act should be about providing access, not a payday for shakedown artists."*

Dave Mock, the owner of Mock Bros. Saddlery, a saddle maker in Yucca Valley, testified that he was forced to close his family business due to suits over alleged ADA noncompliance. When lawyers' fees hit \$27,000, he shut down his store, even though he had already made all access renovations in just 10 days after learning of the complaint. His concern was that settling a lawsuit provided no protection against future lawsuits. Ironically, Mock Bros. was founded in 1941 by Archie Mock, Dave's uncle, a paraplegic who is now deceased.

"Closing Mock Brothers over claims of inaccessibility was devastating, since the founder of this family business was a paraplegic," said **Dave Mock**. *"This law is having the unintended consequence of hurting those it was originally meant to help while benefiting its abusers, which is truly disheartening."*

Leslie Morgan of Glendora has Multiple Sclerosis and is restricted to a wheelchair. She stated that exploiters of the ADA have made it harder for those in the disabled community who are not looking to benefit financially from these lawsuits.

"The Legislature has a remarkable opportunity, and an obligation, to see that the true intent of the ADA is maintained. A great injustice is being done to business owners and the disabled by those who are abusing this law and creating hostility between businesses and their customers," said **Morgan**. *"This bill preserves the right for someone who is disabled to sue if a business does not respond to a complaint about access, but it also allows a business to fix an alleged violation before being hit with a four, five or six figure lawsuit. Right now the disabled community is feared by the business community, and that is a shame."*

Susan Baumann of San Diego is the owner of Tom Ham's Lighthouse, which was built in 1971. Her business has been sued three times under the ADA since 1999, though she has repeatedly done all she can to bring her business into compliance. She believes that some of the plaintiffs never even visited her property.

"Our family restaurant underwent numerous remodels, building inspections, and attempts to bring our property into full ADA compliance, but we were hit just last month with another lawsuit," said **Baumann**. *"It is virtually impossible for small businesses like mine to be protected from someone intent on suing, and the extreme cost and stress of fighting these lawsuits makes it necessary to settle rather than to seek justice. We desperately need relief from abusers of the ADA law."*

Numerous other small business owners also told their stories of being hit with ADA lawsuits. One business owner, **Kathie Reece-McNeill**, who runs a hotel designated a historic property detailed spending over \$100,000 on ongoing cases fighting claims of alleged violations – money that she would have rather spent on renovations to provide better access. Others told of being forced to settle claims and close down their businesses altogether over ADA lawsuits after investing considerable amounts of money into renovations, attorneys fees, and other expenses.



During a Capitol press conference, San Diego small business owner **Susan Baumann** tells her story of being sued three times for ADA violations, after spending over a hundred thousand dollars to improve access. **Leslie Morgan**, a member of the disabled community in support of reforming the law, looks on with **Senator Poochigian** and a host of small business owners and others impacted by ADA abuse. Photos of **Dave Mock's** business, and others closed by ADA lawsuits, are displayed.

ADA Reform Receives Hostile Reception in Committee

Shortly after the press conference on May 3, 2005, the [Senate Judiciary Committee](#) heard SB 855 as a special order of business, due to a packed room of supporters from across the state who came to testify in support of the measure. Senator Poochigian outlined some key points of the bill. Specifically, SB 855:

- Allows those who suffer an actual physical injury to immediately file a claim to recover damages for that injury (just as under current state and federal law).
- Requires plaintiffs to notify property owners of the specific access issues before they can file suits for compensatory damages, punitive damages, or attorney's fees.
- Allows property owners 120 days to cure violations, if any exists.
- Allows the plaintiff to file a claim for compensatory or punitive damages or attorney's fees if violations are not fixed.

Following the Senator's opening remarks, members of the disabled community, small business owners and others impacted by ADA lawsuit abuse told their stories and testified of the need for reform. Opponents of the measure, including some professional plaintiffs, spoke against the measure.

In his closing argument, Senator Poochigian noted that this legislation does not weaken the requirements of the Americans with Disabilities Act, it simply requires that property owners be notified of alleged ADA violations and allowed to fix them before a lawsuit is filed. He stressed that the bill protects the right of an individual who suffers a physical injury to get actual damages paid, while limiting lawsuits for fees and general damages if property owners correct the problem. He stressed that businesses that choose not to fix ADA violations will remain vulnerable to lawsuits, while those that desire to correct the violation will be given the opportunity to comply.

SB 855 went into committee with broad support from small businesses, members of the disabled community, and others impacted by ADA lawsuit abuse. In spite of amendments negotiated with the committee's chair as conditions of the bill moving forward, in the end members of the committee sided with self-described "active litigants" and their attorneys, who opposed **any** changes to the law. In the final tally, SB 855 was defeated on a 2-3 party-line vote (required four votes to pass), though it was granted reconsideration.

"Small business owners in the state aren't scofflaws. They don't go about their daily lives trying to harm anyone – certainly not those with disabilities," said **Senator Poochigian** after the committee. *"SB 855 would have dealt a blow to shakedown lawsuits while improving access for the disabled. The measure was written to focus on the small subset of litigants who are abusing the ADA and going after those property owners who don't have the resources or the ability to respond."*

"Last November, California voters overwhelmingly approved a ballot measure to stop shakedown lawsuits while still protecting consumers. Once again, as with abusers of 'Sue your Boss' and 'Unfair Business Practices' laws, a small group of bad actors looking for an easy payday are exploiting holes in California's enforcement of the ADA law. I am committed to exploring all options to protect Californians seeking to obey the law from being hit with shakedown lawsuits."

- Senator Chuck Poochigian

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Senator Poochigian's website can be found by visiting: <http://www.sen.ca.gov/Poochigian>.

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