

Dan Walters: Lawsuit dilemma redux: Once again, a real-world problem ignored

By Dan Walters -- Bee Columnist

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A melodrama that played itself out over two years in the Capitol, and eventually in the November election, reflected the polarized and unresponsive nature of California's political apparatus.

A real-world problem was presented to the Legislature. Some unscrupulous attorneys were conducting ill-disguised shakedowns of small businesses - auto repair shops, cafes, nail parlors and the like - by misusing the state's "unfair business practices" law. Business owners, many of them immigrants, were receiving harshly worded letters from the attorneys, threatening to sue them for big bucks for violating the law, citing some obscure and/or minor violation of state regulations, but offering to go away for payments.



State Attorney General Bill Lockyer accurately summarized what was happening, telling a legislative hearing: "There are abuses. I think they are extortionate, and we have to do something about it."

However, Lockyer and the Legislature's dominant Democrats said the remedy should be professional discipline of the law firms involved, not any changes in the law itself. They rejected a very mild corrective bill offered by a Democratic lawmaker and at one point, fashioned a substitute that would have actually made it easier to sue.

Why? Because the Consumer Attorneys of California, the lobby for lawyers who specialize in plaintiffs' lawsuits, didn't want to dilute a law that had been a handy catch-all tool for actions against big business. And CAC is very influential among the liberal Democrats who control the Capitol.

The Legislature's refusal to enact a reasonable fix for the small-business shakedown played into the hands of CAC's mortal enemies in big business, which had long sought a more extensive overhaul of the unfair business practices law. A business-backed coalition launched an initiative petition drive and placed its measure on the ballot. It passed handily and is already being applied to many unfair business practices suits that had been filed prior to the election.

One might think that with that history fresh in their minds, the trial lawyers and their friends in the Legislature would be eager not to repeat their political error. But they may be doing exactly that by

spurning a relatively mild bill aimed at another form of shakedown lawsuit, involving the federal Americans with Disabilities Act.

Small-business groups are complaining about a spate of lawsuits and threats of lawsuits for minor violations of the ADA, based on a California law - one of only three such state laws in the nation - that allows plaintiffs to seek punitive damages for ADA violations, even those involving something as trivial as a bathroom towel bar an inch too high. Small-business owners testified at a legislative hearing about the sometimes unfathomable complexities of ADA regulations and about being forced to spend tens of thousands of dollars in legal fees and settlement payments, rather than simply being allowed to correct problems brought to their attention. They made a persuasive case that the ADA's aim of helping disabled people gain access to private and public facilities was being undermined by professional plaintiffs and their lawyers.

The prescription offered in Senate Bill 855 by Sen. Chuck Pochigian, R-Fresno, was a model of moderation - notification of business owners of alleged violations and a reasonable time to fix them before legal action is instituted. No one's right to sue for grievous or persistent ADA violations would have been abridged, nor would the right to sue for actual injuries caused by violations.

But when Pochigian's bill reached the Senate Judiciary Committee, a potent coalition of trial lawyers and disabled activists lined up against it and the committee wouldn't even approve a shell bill that merely declared an intention to fix the legal problem. It was another stiff-arm to small business by a lawyer-dominated Legislature - and perhaps another invitation to take the issue to voters.

It raises anew this question: If the Legislature is so ideologically tilted that it cannot even entertain a reasonable compromise to a real-world problem, what chance does it have of ever coming to grips with more widespread issues? And why should it even continue to take up space?

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