



Consumer Federation of America



September 15, 2023

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

Re: SB 71 (Umberg): Request for VETO

Dear Governor Newsom:

On behalf of each of our organizations, we strongly urge you to veto SB 71 (Umberg), which would seriously harm millions of moderate and low-income Californians victimized by corporations that engage in illegal practices and violate California’s consumer protection laws, including California’s landmark auto lemon law.

SB 71 would expand the jurisdiction of limited civil courts from \$25,000 to \$35,000. Thus, SB 71 would make California’s court system more closely resemble that of Florida, where the jurisdictional limit for “county civil” courts was raised from \$30,000 to \$50,000 (effective January 1, 2023). This change was apparently part of a larger “tort reform” effort that resulted in numerous anti-consumer, anti-safety changes being passed by the Florida legislature and signed into law by Governor DeSantis.

While inflation has increased dramatically since the last time the courts’ jurisdictional limits were raised, wages and incomes have remained relatively stagnant. As a result, most California consumers have little or no discretionary income, are economically vulnerable, and need the full protection of the laws. Thus, the purported rationale for the bill – that court jurisdictional limits should arbitrarily keep pace with inflation – is fundamentally flawed.

SB 71 would benefit scofflaw corporations at the expense of California consumers

According to the California Senate Floor analysis, the sole supporters of SB 71 are the trade associations for debt collectors and auto manufacturers.

No wonder debt collectors favor the bill, which would allow them to extract even more money from low and moderate-income consumers who often lack legal counsel and end up defaulting and having their wages garnished.

Debt collection cases have already been increasing rapidly in our state. Recent research into California courts concluded that debt collection cases comprise 34% of California's limited civil docket. "In California, over the last ten years, debt collection cases totaled 20% of all cases filed, and 34% of the limited civil docket, second only to family law matters." ¹

Limited civil courts disadvantage California consumers

Already in California, limited civil courts tend to favor corporate interests at the expense of vulnerable consumers in multiple ways, including imposing the following procedural hurdles:

- Severe limitations on discovery
- Severe limitations on depositions (with rare exceptions, only one)
- Drastically reduced time period for filing appeals, from 30 days to 60 days
- Lack of access to appellate courts for appeals
- Lack of authority to provide injunctive relief
- Lack of access in many cases to civil penalties or punitive damages, which would otherwise serve to help deter violations of the law
- Arbitrary cap on damages that a jury or judge can award, even if appropriate damages would exceed the jurisdictional amount

We agree with the Legal Aid Society of San Diego, which was quoted in the Senate Judiciary Committee analysis in opposition to SB 71, arguing that:

"Limiting discovery in an even larger number of cases will adversely affect consumers. When our clients have cross-claims against the parties suing them, such as for fraud or identity theft, it takes considerable discovery to gather the required information in order to assert their rights. Consumers already face challenges in going up against well-funded opponents with vastly better resources. Limiting their ability to gather the documents and information necessary to support their claims only puts them at a further disadvantage."

Lack of Legal Representation Harms Vulnerable Consumers

Unfortunately, by raising the jurisdictional limit of limited civil courts, SB 71 plays into the hands of abusive debt collectors and other scofflaw corporations who exploit limited jurisdiction courts to prey on some of the most vulnerable people in our state, who often lack legal representation.

¹ "Low-Income Litigants in the Sandbox: Court Record Data and the Legal Technology A2J Market," by Claire Johnson Raba, Debt Collection Lab, July 30, 2023. page 4. Posted at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4069023

When SB 71 was presented on the Assembly Floor, it was argued that it would allow more consumers to access courts “without an attorney.” However, being without legal representation is hardly an advantage, particularly when up to \$35,000, one’s livelihood and financial viability, and / or personal safety are at stake.

"Cases filed in California courts to collect consumer debts disproportionately burden Black and Hispanic borrowers. Data drawn from civil court records show that claims to collect defaulted consumer debts are filed at a higher rate against borrowers of color than against white borrowers. The type of creditor also varies by the borrower’s race and ethnicity. **Black and Hispanic litigants are also less likely to be represented by an attorney.** The distribution of case participation and outcome also varies by race, with fewer answers filed and more judgments entered against Hispanic and Black defendants."²

SB 71 would deny more California consumers access to unlimited civil courts

SB 71 threatens to severely harm millions of consumers and their families, small business owners, and members of the U.S. Armed Forces stationed in or deployed from California who currently benefit from access to unlimited civil courts. Thanks to that access, important California consumer protection laws can often be enforced by those who are harmed, providing a vitally important deterrent effect. This benefits nearly all California consumers, and helps motivate corporations to comply with the laws.

However, under SB 71, millions of moderate and low-income Californians harmed by corporations that violate California’s consumer protection laws would lose access to unlimited civil courts. Therefore, they are far less likely to be able to obtain legal counsel, putting them at an enormous disadvantage when they are victimized by unethical corporations armed with high-powered lawyers who specialize in finding devious ways to evade being held accountable for violating consumer protection laws.

Adverse impact on other consumers and the courts

Even plaintiffs with higher-dollar claims filed in unlimited civil courts would be disadvantaged. That is because under Code of Civil Procedure Section 1033, and pursuant to the Court’s decision in *Chavez v. City of Los Angeles (2010) 47 Cal. 4th 970*, when a case is filed in unlimited civil, but is resolved for less than the increased jurisdictional limit for limited civil courts, even plaintiffs who prevail may be denied their attorneys fees and costs. This would have a serious chilling effect on the ability of even more harmed consumers to obtain legal counsel and pursue justice in unlimited civil courts.

Another foreseeable consequence of SB 71 is the likely proliferation of defense motions seeking to remove cases to other jurisdictions, clogging the courts with procedural motions and further delaying justice.

SB 71 threatens enforcement of California’s landmark Auto Lemon Law and other laws to protect California’s motorists, their families and the general public

² “The Unequal Burden of Debt Claims: Disparate Impact in California Debt Collection Cases,” by Claire Johnson Raba, Debt Collection Lab, July 30, 2023, page 1. Posted at: <https://debtcollectionlab.org/research/unequal-burden-of-debt-claims>.

We are particularly concerned about the potential impact on litigation involving motor vehicles, including fraud, unfair and deceptive practices, illegal repossessions, violations of the Consumer Legal Remedies Act, and violations of California's auto lemon law, widely regarded as the best in the nation.

Motor vehicles are a necessity for most Californians, who need safe, reliable personal transportation in order to access jobs, schools, day care, medical care, and other necessities of modern life.

For most California consumers, a motor vehicle is also the largest purchase they make, second only to purchasing a home (for those who can afford a home). Yet, in many situations, the value of their vehicle would not exceed the higher jurisdictional limit, thereby trapping individual civilians, small business owners, and active duty military personnel who cannot afford vehicles that cost over \$35,000 in limited civil courts, usually without the benefit of legal counsel.

For decades, California governors have acted to improve and expand protections under California's auto lemon law, including expanding coverage to include small businesses, individual entrepreneurs, and members of the U.S. Armed Forces stationed in, or deployed from, California. SB 71 would be a radical departure from decades of pro-consumer precedents regarding California's lemon law, set by governors of both major political parties.

SB 71: Harmful fiscal impact

SB 71 is fiscally irresponsible. According to the Analysis of the Assembly Committee on Appropriations, SB 71 would result in a significant loss of revenue for the courts due to decreased filing fees, projecting the cost to California courts at an estimated \$3.65 million per year that may require additional backfill from the General Fund.

SB 71 would also adversely impact California's County Law Libraries by drastically reducing the revenue they receive from court filings.

Commission on the Future of the California Court System: Pilot Program

Finally, it is important to note that the Commission on the Future of the California Court System raised the prospect of implementing its recommendations in stages, beginning with a pilot project. In its Final Report to the Chief Justice, the Commission writes:

"FEASIBILITY OF BRANCH WIDE IMPLEMENTATION AND PILOT PROGRAMS"

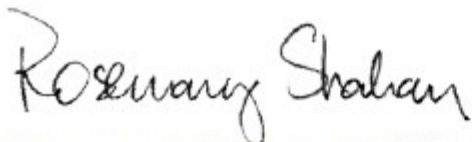
"It is envisioned that these recommendations will be most effective if implemented statewide. However, they represent major changes in the judicial branch and **might be better tested on a pilot basis**. Participation by one or more large, medium, and small counties would provide data on effectiveness and identify areas where further changes might be appropriate."³

³ Final Report of the Commission on the Future of the California Court System, 2017, page 27. (Emphasis added.) Posted at: <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>

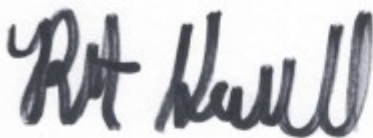
Instead of enacting SB71's sweeping, unprecedented changes to the California court system statewide, it would be wiser to proceed with more caution, as the Commission suggested.

For all of these reasons, we strongly urge you to VETO SB 71. Thank you for your consideration of our views.

Respectfully submitted,




Rosemary Shahan, President
Consumers for Auto Reliability & Safety (CARS)



Robert Herrell, Executive Director
Consumer Federation of California (CFC)



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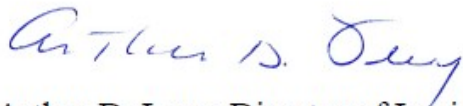
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