FLOOR ALERT

July 20, 2009

TO: Members of the California State Assembly

FROM: California Chamber of Commerce
Association of California Insurance Companies
California Business Properties Association
California Financial Services Association
California Grocers Association
California Independent Grocers Association
California Manufacturers and Technology Association
California Restaurant Association
California Retailers Association
Greater Fresno Area Chamber of Commerce
Guntert Steel
Lawyers Against Lawsuit Abuse, APC
Lumber Association of California and Nevada
Milpitas Chamber of Commerce
Personal Insurance Federation of California

SUBJECT: SB 242 (YEE) CIVIL RIGHTS: LANGUAGE RESTRICTIONS
OPPOSE – JOB KILLER

The California Chamber of Commerce, on behalf of the above-listed coalition of business and employer organizations must respectfully **OPPOSE SB 242 (Yee)**, as amended July 14, 2009, which would make it a violation of the Unruh Civil Rights Act to require, limit, or prohibit the use of any language in or with a business establishment without a business necessity.

While the bill is well-intentioned, we have strong concerns about the unintended consequences arising from the creation of a new private right of action around such a vague and broad new standard:

- **Creates uncertainty which will give rise to lawsuits**. Even as amended, **SB 242** establishes a new private right of action with vague terminology that will create uncertain new obligations for businesses. For example, has language use been limited if a business has a policy of posting customer signage in a language the customer does not understand? – or hires staff who are unable to respond to a customer's question in a language understood by the customer?

  At a minimum, the uncertainty could give rise to litigation over whether the business limited use of the customer's language, and if so, whether the business: a) nonetheless had no affirmative duty

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to prevent the limitation; or b) had a business necessity – "an overriding legitimate business purpose" – for the limitation. It is unclear what would be necessary for a business to successfully establish either of these defenses.

For small businesses in particular, defending a single such lawsuit could pose an extreme hardship and result in closed doors, especially at a time when many businesses are suffering in the economic downturn.

- **May give rise to unwarranted settlement demands and lawsuits**. Even worse, the uncertain new obligations could be a magnet for unwarranted settlement demands and "shakedown" type lawsuits by a small group of atypical lawyers and plaintiffs from inside and outside the state already using the Unruh Act to gain monetary profit by securing large numbers of settlements from multiple businesses. The Unruh Act's treble damages, minimum damages of $4,000, and attorneys' fees provisions make new opportunities to sue especially attractive. And even meritless lawsuits can be profitable because most small businesses cannot afford to defend even a single lawsuit and will feel forced to settle.

- **Liability even when no intent or personal harm:** Businesses found to have limited use of a language without business necessity could be on the hook for treble damages, and in no case less than $4,000 in damages, plus attorney's fees on a strict liability basis. In other words, the business is liable even if the limitation of the language use was inadvertent or unintentional, and even if the plaintiff did not suffer any personal harm or damage as a result of the limitation.

SB 242 could result in unreasonable and significant new liability exposure and unwarranted shakedown lawsuits against businesses of all types. For these and other reasons, we **OPPOSE SB 242**.

Sincerely,

Kyla Christoffersen
Policy Advocate

cc: The Honorable Leland Yee
Aaron Maguire, Office of the Governor
Mark Redmond, Assembly Republican Caucus
Kirstin Kolpitcke, Office of Planning and Research
Laura Zuniga, State and Consumer Services Agency
Traci Stevens, Business Transportation and Housing Agency

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