

Disability Access Lawsuit Reform in Progress: Top 10 Things About SB 1608 That Help Business Owners

For a number of years, the business community has been victim to a small but widely destructive, atypical group of plaintiffs and lawyers using the disability laws and court system to seek monetary profits rather than access. The result has been unnecessary, costly litigation for significant numbers of California businesses across the state, and many of them closing their doors for good.

In answer to this problem, during the 2007-08 legislative session, the California Chamber of Commerce and other business groups worked closely with legislators and their staff, disability rights groups and the consumer attorneys to achieve historic reform to California's disability access laws. The resulting reform legislation, SB 1608 (Corbett; D-San Leandro, Chapter 549, Statutes of 2008), was signed into law on September 28, 2008.

Very soon after passage of SB 1608, there were marked positive changes in the form of fewer abusive lawsuit practices and tactics. On the other hand, some questionable lawsuit practices also continued to take place during 2009. This resulted in many businesses asking how SB 1608 helps address such practices.

This article provides an overview of the key provisions in SB 1608 that help businesses. It must be remembered, however, that SB 1608 does not provide a quick fix. Like any major reform, SB 1608 will take time to work. The legislation itself took two years to develop, and before that, there were several years of failed reform efforts. In addition, many of the SB 1608 provisions took effect only in October 2009, and other provisions will not take effect until future years.

CalChamber Position

Implementation of any major reform takes time. SB 1608 needs time to work, and businesses must do their part in order to maximize the reforms made available to them under SB 1608.

Overview of SB 1608

Key Provisions

SB 1608 provided a comprehensive solution through a combination of the following key reform provisions:

- Incentivizing building owners to use state-certified access specialists to ensure compliance.
- A new court procedure to encourage early resolution of disability access lawsuits.
- Clarifications in the law to help reduce unwarranted damages and attorneys' fees.
- A new disability access commission that is tasked with evaluating and providing recommendations on further disability issues having an impact on the disability community and business.
- Improved continuing education in disability access laws for building inspectors and architects.



New Business Window Sign

A new window sign is now available for CASp-inspected businesses. The state-issued sign is similar to this one.

SB 1608 Helpful Resources

- **Court Self Help**
www.courtinfo.ca.gov/selfhelp/additionalinfo/links.htm#disabilities
- **Money Demand Notice**
www.courtinfo.ca.gov/forms/documents/dal001.pdf
- **Stay and EEC Request Form and Notice**
www.courtinfo.ca.gov/forms/statutory.htm
- **State-Certified CASp Inspectors**
List available at
https://www.apps.dgs.ca.gov/casp/casp_certified_list.aspx
- **California Commission on Disability Access**
www.bsc.ca.gov/CCDA

For clickable direct links, visit www.calchamber.com/ADA.

Dates of Effect

Although some provisions of SB 1608 took effect on January 1, 2009, many of the provisions did not take effect until later in the year. Some of the key reform provisions were contingent upon the establishment of the California Disability Access Commission. In May 2009, initial appropriations for the commission became available. Thereafter, gubernatorial and legislative appointments were made, and the commission had its first meeting in October 2009. Thus, most of the major reform provisions in SB 1608 are now in effect as of fall 2009.

Top 10 Things About SB 1608 That Help Business Owners

One of the best ways to avoid being sued under the disability access laws is to ensure that buildings are in compliance. SB 1608 provides a number of ways to help business owners ensure they have followed the law. If business owners are still sued, SB 1608 provides a number of ways that help encourage early resolution of the lawsuit and help to reduce unwarranted litigation tactics.

Following is an overview of the top 10 things businesses should know about how SB 1608 is helpful to them. More information about SB 1608 is available at www.calchamber.com/ADA. The subject also is covered in the *2010 California Labor Law Digest*, available from calbizcentral.com.

1. Businesses should hire a CASp.

A certified access specialist (CASp) is a person business owners can be assured has been tested and certified by the state as an expert in disability access laws. SB 1608 sets up a process whereby business owners can voluntarily hire a CASp to inspect their buildings to ensure compliance with disability access standards and obtain an inspection report as proof they did so. A link to a list of certified CASp inspectors is available at www.calchamber.com/ADA.

2. Businesses should request and post a CASp window sign.

Only businesses with structures that

have been approved by CASps will be able to request a window sign signifying they have been CASp-inspected. The window sign (see previous page) will send the message that the business has taken proactive steps to comply with the disability access laws and is not an easy target for lawyers seeking to earn quick money.

3. Attorneys who issue demands for money must also provide the business owner with an advisory statement.

SB 1608 requires that written demands for money by attorneys be accompanied by an explanation of the legal rights of the building owner/tenant, including the ability to contact their insurance company as well as an

attorney experienced with ADA lawsuits. In addition, the advisory will explain that receipt of a demand for money does not necessarily mean the business is liable. Attorneys who fail to comply may be reported to the State Bar. The advisory statement will be available in multiple languages on the state court website. A copy of this notice (see above) is available at: www.courtinfo.ca.gov/forms/documents/dal001.pdf.

4. Multiple damages may not be recovered at a single facility.

SB 1608 helps to ensure that damages may be claimed only when a plaintiff personally encountered a violation or was deterred from gaining access on a particular occasion. SB 1608 clarifies that a denial of full and equal access

DAL-001

IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS

This form is available in English, Spanish, Chinese, Vietnamese, and Korean through the California Courts Web site. Persons with visual impairments can get assistance in viewing this form through the Web site. The Web site is located at www.courtinfo.ca.gov.

Existing law requires that you receive this information because the demand for money or complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of persons with disabilities to access public places.

You Have Important Legal Obligations.

Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect. (See www.dsa.dgs.ca.gov/access/ud_accessmanual.htm.) Commencing September 1, 2009, information will also be available from the California Commission on Disability Access Web site.

You Have Important Legal Rights.

You are not required to pay any money unless and until a court finds you liable. Moreover, receipt of this advisory does not necessarily mean you will be found liable for anything.

You may wish to promptly consult an attorney experienced in this area of the law to get helpful legal advice or representation in responding to the demand for money or complaint you received. You may contact the local bar association in your county for information on available attorneys in your area. If you have insurance, you may also wish to contact your insurance provider. You have the right to seek assistance or advice about this demand for money or complaint from any person of your choice, and no one may instruct you otherwise. Your best interest may be served by seeking legal advice or representation from an attorney.

If a complaint has been filed and served on you and your property has been inspected by a Certified Access Specialist (CASp; see www.dsa.dgs.ca.gov/access/casp.htm), you may have the right to a court stay (temporary stoppage) and early evaluation conference to evaluate the merits of the construction-related accessibility claim against you pursuant to Civil Code section 55.54. At your option, you may be, but need not be, represented by an attorney to file a reply and to file an application for a court stay and early evaluation conference. If you choose not to hire an attorney to represent you, you may obtain additional information about how to represent yourself and how to file a reply without hiring an attorney through the California Courts Web site at www.courtinfo.ca.gov/selfhelp. You may also obtain a form to file your reply to the lawsuit, as well as the form and information for filing an application to request the court stay and early evaluation conference, at that same Web site.

If you choose to hire an attorney to represent you, the attorney who sent you the demand for money or complaint is prohibited from contacting you further unless your attorney has given the other attorney permission to contact you. If the other attorney does try to contact you, you should immediately notify your attorney.

Form Approved for Optional Use
Judicial Council of California
DAL-001 (New October 25, 2009)

IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS
(Disability Access Litigation)

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CML Code, § 55.5
www.courtinfo.ca.gov

Advisory Notice

SB 1608 requires that written demands for money by attorneys be accompanied by an explanation of the legal rights of the building owner/tenant.

constitutes one violation per distinct facility for purposes of damages. Damages may not be recovered for each and every single offense that may exist at the particular facility.

5. Plaintiff must show harm or injury.

Plaintiffs may not recover for violations that may have existed at a facility, but which never caused harm or injury to the plaintiff, either in the form of an encounter or deterrence on a particular occasion.

6. Businesses may request a 90-day stay of the lawsuit and early evaluation conference.

Businesses that have been CASp-inspected before being sued—and only those businesses—are entitled to request a 90-day stay of the lawsuit and an Early Evaluation Conference (EEC). This provides a process to facilitate early resolution of lawsuits by providing a forum for the parties to meet, as well as placing a temporary hold on litigation (see chart on next page).

A defendant must file a request form with the court within 30 days of being sued. The appropriate form is required to be delivered with the lawsuit, but all necessary forms and instructions also will be made available on the state's court self-help website later this year. To find links to self help and court forms, see the "SB 1608 Helpful Resources" table in this article or www.calchamber.com/ADA.

7. Parties are encouraged to consider reasonable settlement offers.

SB 1608 clarifies that a court can consider, among other relevant factors, reasonable written settlement offers made and rejected by either party in determining the amount of an attorneys' fees award at the conclusion of a case. This will help reduce unreasonable delay tactics.

8. New state disability access commission part of the solution.

SB 1608 created a new California Commission on Disability Access (CCDA), which is a 17-member state advisory commission made up of legislative and gubernatorial appointees from both the disability and business communities. The commission is assigned the task of evaluating and providing recommendations on further disability access issues having an impact on the disability and business communities. The commission has been appointed and held its first meeting in October 2009.

9. Improved expertise in new construction and building inspections.

For the first time, there are minimum continuing education requirements for building inspectors and architects on disability access laws, to help reduce the problem of new construction failing to comply. Moreover, by July 2010, local building inspection offices will be required to have at least one CASp on

staff, available to provide consultation. Eventually all permitting and plan checks must be CASp-inspected.

10. Deadline for state to address inconsistencies between state and federal regulations.

A significant frustration for the business community has been inconsistent federal and state regulations—compliance with one may mean violation of the other. For the first time ever, SB 1608 established a deadline for the state to propose amendments to the federal government that resolves these inconsistencies. The deadline is December 31, 2010.



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90-Day Stay and Early Evaluation Conference (EEC) Process

