

SB 1608 Disability Access Law Reform: How Does It Help Business Owners?

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 reform legislation, **SB 1608 (Corbett; D-San Leandro, Chapter 549, Statutes of 2008)**, is designed to promote and increase compliance with laws providing equal public access in places of business to individuals with disabilities, while reducing unwarranted litigation that does not advance that goal.

This article provides guidance to business on how SB 1608 helps to reduce unwarranted Americans with Disabilities Act (ADA) litigation and what business owners need to do to benefit from the new law:

- How can business owners ensure compliance and reduce chances of getting sued?
- If a business owner does get sued, how does SB 1608 help to encourage early resolution of the lawsuit?
- What elements of SB 1608 help to reduce unwarranted ADA lawsuit practices?

Ensuring Compliance

How can business owners ensure compliance and reduce chances of getting sued?

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:

✓ **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.

When: Businesses should begin the process of obtaining an inspection as soon as possible.

- As with any other hired consultant, a price will need to be negotiated for this service. It will pay to shop around and obtain trusted referrals.
- Either building owners or tenants can order a CASp inspection. (Either can be sued for non-compliance.) If you are a tenant, you may want to discuss with the building owner whether a CASp inspection was already completed or if there are plans for one.
- Businesses should ensure when they hire a CASp that the CASp provides an inspection report detailing what was inspected. SB 1608 requires the CASp to notify you of the right to an inspection report. Without one, business owners will not have proof of the inspection.

- If the CASp determines that corrections are needed in order for the site to be approved, the business owner is entitled to a written report identifying changes that need to be made and recommended reasonable timeframes for fixes.

- Business owners should keep the inspection report confidential and in a safe place. If you are ever sued, you must have a CASp inspection report in order to be eligible to request a 90-day stay of the lawsuit and an Early Evaluation Conference (more about this on the next page). If you do not have a report, you will be barred from this benefit.

✓ **Businesses should request and post a CASp window sign.** Businesses whose structures have been approved by CASps will be able to request a window sign signifying they have been

See SB 1608: Page 4

New Business Window Sign Available Soon



A new window sign will be available by March 1, 2009 for CASp-inspected businesses. The state-issued sign will be similar to this one.

SB 1608 Disability Access Law Reform: How Does It Help Businesses?

From Page 3

CASp-inspected. The window sign 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.

When: The official window signs should be available by March 1, 2009.

✓ **Improved expertise in new construction and building inspections.**

For the first time, there will be 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.

When: The continuing education requirement will apply to license renewals beginning July 1, 2009. A CASp should be on staff in building inspection offices by July 1, 2010.

✓ **New state disability access commission part of the solution.**

SB 1608 created a new California Commission on Disability Access (CCDA), which will be a 17-member state advisory commission made up of legislative and gubernatorial appointees from both the disability and business communities. The commission will be assigned the task of evaluating and providing recommendations on further disability access issues having an impact on the disability and business communities.

When: The anticipated start date for the commission is May 1, 2009.

The commission's duties will include:

- Establishing a website resource for businesses that provides information on compliance with disability access laws.
- Establishing a master checklist for building inspectors to use in determining compliance with disability access laws, which also can be used as a guide for business owners.
- Evaluating continuing education requirements for those involved in building construction.

- Evaluating whether SB 1608 reforms are working as they should and are effective.

✓ **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 establishes a deadline for the state to propose amendments to the federal government that resolves these inconsistencies.

When: The deadline is December 31, 2010.

Resolving Lawsuits Early

If a business owner does get sued, how does SB 1608 help to encourage early resolution of the lawsuit?

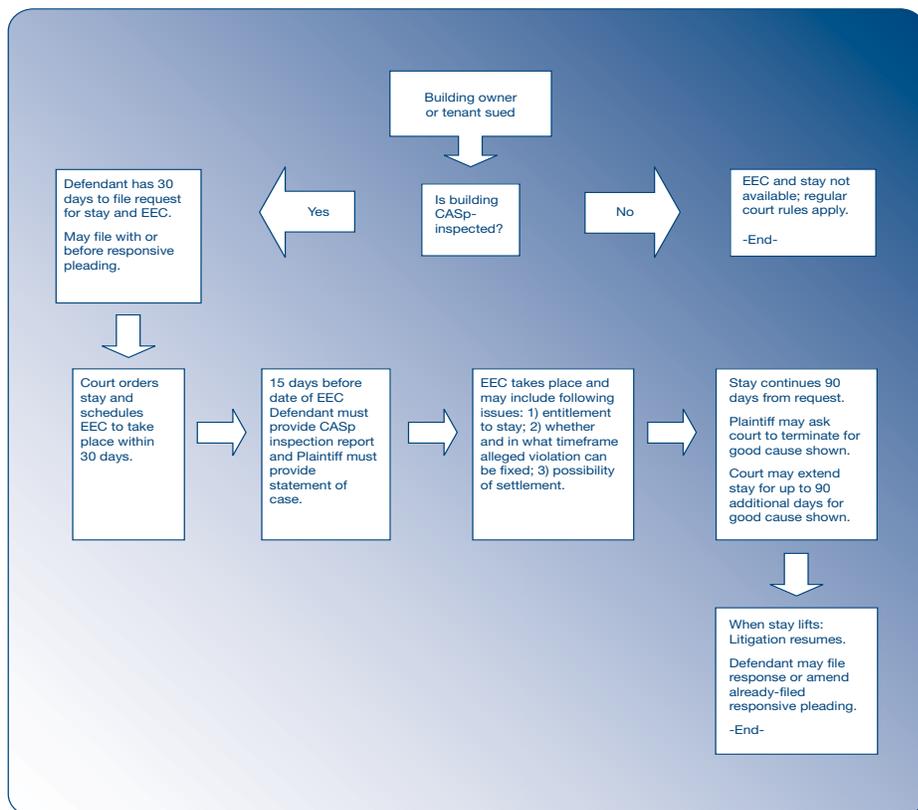
Even when businesses have reduced their chances of a lawsuit by hiring a CASp to ensure their building is in compliance and posting their CASp sign, unfortunately, there is never a 100 percent guarantee of not getting sued. However, SB 1608 gives CASp-approved businesses some tools for helping to resolve unnecessary litigation and encouraging early resolution.

✓ **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).

When: The anticipated date of implementation is May 1, 2009.

- A stay is a temporary halting of
- See SB 1608: Page 5*

Use of Certified Access Specialists Encourages Early Resolution of Lawsuits



SB 1608 Disability Access Law Reform: How Does It Help Businesses?

From Page 4

all litigation. A major benefit of halting litigation temporarily is that attorneys will not be able to engage in motions or discovery and other activities that incur expensive attorneys' fees.

- The EEC is a court-run conference between the parties, at which the parties will have the opportunity to explore whether the lawsuit can be settled. For example, if the lawsuit is based on an alleged violation that would be easy for the business to fix, and the business is willing to resolve the issue quickly, the parties will be able to discuss whether further litigation is necessary.

- ✓ **How to request the stay and EEC.** 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. A link to this information will be posted at www.calchamber.com/ADA when it becomes available.

The court will grant the stay and EEC upon receipt of the request and schedule a time for the conference, within 50 days from the filing of the request. The plaintiff and defendant will be directed to appear in person at the time of the conference.

- ✓ **Defendant must provide the CASp inspection report.** No later than 15 days before the EEC, the defendant absolutely must file with the court and provide the plaintiff with a copy of the CASp inspection report. If the defendant does not do so, the court may lift the stay absent a showing of good cause. The confidentiality of the report must be maintained until the conclusion of the lawsuit.

The plaintiff, in turn, must provide the court and defendant with a statement that includes the basis for the claimed violations, amount of damages claimed, amount of attorney's fees and costs incurred to date, and any settlement demands.

Reducing Unwarranted Lawsuits

What elements of SB 1608 help to reduce unwarranted ADA lawsuit practices?

SB 1608 also established important reforms that will help to reduce inappropriate attorney monetary demands and provide significant clarifications in the law for both plaintiffs and defendants concerning recoverable damages and settlement offers:

- ✓ **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.

When: The anticipated implementation date is May 1, 2009.

- ✓ **Multiple damages may not be recovered at a single facility.** SB 1608 will help to ensure that damages may be

claimed only for violations the plaintiff personally encountered or was deterred from on a particular occasion. SB 1608 clarifies that a denial of full and equal access 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.

In addition, the plaintiff 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.

When: The anticipated implementation date is May 1, 2009.

- ✓ **Parties will be 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.

When: The anticipated implementation date is May 1, 2009.

Staff Contact: Kyla Christoffersen

Free CalBizCentral Web Seminar Explains New Disability Access Law



A free web seminar explaining how businesses can reduce their risk of disability access lawsuits is being offered by

CalBizCentral, the source for California business and human resource compliance products, presented by the California Chamber of Commerce.

The live web seminar focuses on *SB 1608: What California's New Accessibility Law Reforms Mean to California Employers*. The half-hour web seminar, set for February 19 beginning at 10 a.m., will outline how the new law can help businesses and illustrate the new protections the law creates for employers.

Topics to be covered include:

- California's new state-licensed CASp inspectors and why a business

should consider hiring one through a lawyer right away.

- How CASp inspectors can confirm that a business meets appropriate accessibility standards, or help the business do so.

- How a CASp inspection can provide important protections if a business does get served with a lawsuit.

- The new law's major reforms to ADA/accessibility litigation in California.

- New strategies for dealing with ADA/accessibility claims.

- Limitations to the protections of CASp inspections and SB 1608.

- New parking area changes that were required July 1, 2008.

- Common pitfalls and emerging claims.

For more information or to register for the free webinar, visit www.calbizcentral.com/training or call (800) 331-8877.