

New Requirements Regarding Public Access

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Business owners need to know about the new requirements regarding disability access that are set forth in SB 1608. SB 1608 became law earlier this month when Governor Schwarzenegger signed it. It adds numerous provisions to the existing laws regarding disability access. Republicans, Democrats, the California Chamber of Commerce, and advocates for disabled people all supported it.

The business community is hopeful that SB 1608 will discourage frivolous claims. Although many valid claims regarding disability access have been brought, there are also many instances where the claims have been filed only as a means of extortion. This has happened in cases where one plaintiff has paired up with a law firm to bring numerous claims against businesses that the plaintiff has not really had an interest in patronizing. Instead, the plaintiff has been interested in the business only as an opportunity to make money from it through a lawsuit. Some of these plaintiffs have filed hundreds of such lawsuits. Some of these plaintiffs have been found by courts to be “vexatious litigants”. SB 1608 includes provisions designed to curtail these so called “drive by lawsuits”. Specifically, SB 1608 requires that in order to have a construction related accessibility claim, the plaintiff must personally have been unable to access the public place on a particular occasion.

SB 1608 also includes a number of provisions designed to increase public access. In order to have their licenses renewed, architects will be required to demonstrate that they have completed coursework regarding disability access requirements. All construction inspectors, plans examiners and building officials will be required to complete at least eight hours of continuing education related to disability access requirements every three years.

The State Architect will establish a program to certify access specialists who will inspect sites and draft reports regarding compliance. Local agencies will be required to employ building inspectors who are also access specialists. If a building has been inspected by an access specialist, and then a construction related accessibility claim is served, the defendant will be entitled to a stay of court proceedings and an early evaluation conference on that claim. The defendant will be able to file the certified access specialist’s report with the court. It is hoped that these procedures will allow the claims to be quickly resolved.

Additionally, the California Commission on Disability Access will be established (if funding exists for it). This commission shall conduct studies and make reports to the Legislature regarding disability access. It shall provide information regarding

compliance with disability access laws, and it shall coordinate with other state and local agencies to ensure that the information provided regarding disability access requirements is complete and uniform. It shall also establish a checklist for building inspectors to use in determining compliance with disability access laws.

Business owners, whether they own or lease their places of business, should familiarize themselves with the provisions of SB 1608. They should also check to make sure that they are in compliance with all disability access laws.