

ALERT

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Bipartisan ADA Proposal Passes Policy Committees



SUPPORT

A California Chamber of Commerce-supported bill that will promote compliance with disability access requirements and address unwarranted litigation passed two Senate policy committees this week.

SB 1608 (Corbett; D-San Leandro) is a comprehensive reform that increases public access for individuals with disabilities while reducing unwarranted litigation by encouraging the use of

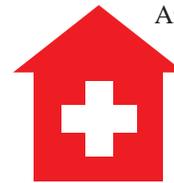
state-certified disability access specialists and establishing a court procedure for early evaluation of lawsuit claims.

Goals

This bipartisan comprehensive reform measure is designed to address two important goals:

- Promoting and increasing compliance with state and federal civil rights laws providing for equal access for individuals with disabilities in public accommodations.
 - Reducing unwarranted, unnecessary
- See Bipartisan: Page 4*

CalChamber Advises Caution on Mortgage Market Proposals



Amid an economic downturn spurred in part by an ailing national mortgage market, the California Legislature has been rapidly considering a slew of mortgage-related proposals that seek to improve the market's health and speed recovery.

Nearly 30 bills that deal with some aspect of the mortgage industry and the markets that support it have been introduced in the Assembly and the Senate this year. Proposals range from increasing aid to troubled borrowers facing foreclosure to providing the state greater regulatory authority over the servicing of home loans.

Actions to Avoid

Unfortunately, there is no shortage this year of bills that take what the California Chamber of Commerce believes to be flawed or misguided approaches to addressing the mortgage market situation.

From imposing burdensome California-specific restrictions on lenders to imposing liability on the secondary market for loans originated in California, numerous bills warrant the concern

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CalChamber Policy Advocate Kyla Christoffersen outlines for a Senate committee ways in which CalChamber-supported SB 1608 (Corbett; D-San Leandro) promotes disability access while reducing unwarranted litigation.

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Cal/OSHA Corner

Make Hepatitis B Vaccine Available to Employee Exposed on Job



Mel Davis
Cal/OSHA Consultant

Are all employees who have been exposed to hepatitis B required to be vaccinated?

If an employee has an "occupational exposure" to blood or other potentially infectious materials (OPIM), the employer's responsibilities are outlined

in General Industry Safety Orders Section 5193, Bloodborne Pathogens, Subsection (f).

An "occupational exposure" is defined as a "reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or other OPIM that may result from the performance of an employee's duties."

24-Hour Window

The employer is to make available the hepatitis vaccine and vaccination series to the affected employees within 24 hours of the occurrence. There also shall be post-exposure and follow-up evaluations.

The key statement within subsection (f)(1)(A) is "make available," because the regulation further states that an employee may "refuse to consent to a post-exposure evaluation and follow-up from the

employer-healthcare professional."

When consent is refused, the employer is to make available to the exposed employee, a confidential medical evaluation and follow-up from a health care professional outside of the exposed employee's employer.

Subsection (f)(2)(A) states that the hepatitis B vaccine shall be made available after training and information criteria contained in subsection (g)(2)(G)(9) has been met and within 10 working days of initial assignment of all employees who have occupational exposure.

The employer does not have to provide the employee the vaccine when the employee has already received the complete vaccination series, antibody-testing reveals the employee is immune or

See Make Hepatitis B: Page 4

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CalChamber-Sponsored Seminars/Trade Shows

For more information on the seminars listed below, visit www.calchamber.com/events.

Business Resources

Great Valley Center Annual Conference. Great Valley Center/UC Merced. May 7-8, Sacramento. (209) 522-5103.

GTC West 08: Conference on California's Future. Government Technology Conference, a division of e.Republic Inc. May 12-16, Sacramento. (916) 932-1300.

Career Networking. Wilcox Miller & Nelson. May 13, Sacramento. (916) 977-3700.

International Trade

EU Standards-Regulations Webinar. Export.gov. May 6.

World Trade Week Kickoff. Los Angeles Area Chamber. May 7, Los Angeles.

Global Awards Dinner. Bay Area World Trade Center. May 8, Oakland. (510) 251-5940.

International Supply Chain Strategies. Northern California World Trade Center. May 8, Sacramento. (916) 447-9827.

Apparel Sourcing Show 2008. Guatemalan Trade Office. May 13-15, Guatemala. (213) 383-6938.

Shunde: Gateway to Success in the New China. Bay Area World Trade Center. May 29, San Francisco. (510) 251-5940.

Labor Law

HR 201: Labor Law Update On-Demand Web Seminar. CalChamber. 90 minutes. (800) 331-8877.

Pregnancy Disability Leave 201 Web Seminar. CalChamber. May 29. (800) 331-8877.

CalChamber Calendar

California Business Legislative Summit:
May 20-21, Sacramento

Council for International Trade:
May 20, Sacramento

Water Committee:
May 20, Sacramento

Board of Directors:
May 20-21, Sacramento

CalChamber Fundraising Committee:
May 21, Sacramento

AB 32 Climate Change Policy Committee:
May 21, Sacramento

Transportation Committee:
May 21, Sacramento

CalChamber Outlines Principles to Consider in Analyzing Mortgage Market Proposals

From Page 1

of businesses and consumers alike.

The CalChamber believes that the following principles should be considered when judging the merits of pending mortgage legislation:

- **Avoiding policy efforts that create California-only rules** for loan servicing and foreclosure proceedings will help encourage investments in California's mortgage market.

- **Maintaining a diversity of lending products** by encouraging secondary market investors to purchase non-traditional or sub-prime mortgage loans will help maintain liquidity and keep loans more affordable.

- **Ensuring that the lending process in California conforms to established secondary market standards**, such as those dictated by Fannie Mae and Freddie Mac, will help keep down costs for California borrowers.

- **Maintaining consistent regulatory standards** between state and federally licensed mortgage lenders will keep California loans more affordable and encourage financial institutions to remain in the market.

Helpful Proposals



SUPPORT

The CalChamber is **supporting** a variety of bills that make sensible changes to current law in order to help alleviate the mortgage market situation. Indeed, certain increased protections

can help prevent a recurrence of some of the more problematic lending practices that were harmful to the economy and individual consumers.

The CalChamber also believes, however, that an overly restrictive regulatory environment will delay the market's recovery and deny prospective borrowers entry into the mortgage market.

Tangible Financial Relief

CalChamber-supported **SB 1055 (Machado; D-Linden)** and **AB 1918**

(**Niello; R-Fair Oaks**) conform to federal law by providing tangible financial relief for struggling borrowers by excluding debt forgiven by a lender from the borrower's taxable income.

When possible, lenders will sometimes agree to a short sale of a home as a financially viable alternative to foreclosure. Under current law, a borrower who has debt forgiven under the terms of a short sale will be taxed for this "phantom income" as if it were regular income.

At a time when the borrower can least afford it, the taxation of this forgiven debt has the potential to put these consumers one step closer to financial ruin.

SB 1055 and AB 1918 would instead exclude the forgiven debt for state income tax purposes, giving the borrower tangible relief at a time of significant financial duress. Both bills would make this tax relief temporary as well, in acknowledgment of California's current budget shortfall and in accordance with federal tax law.

Increasing Protections for Borrowers

CalChamber-supported **SB 1054 (Machado; D-Linden)** provides greater protections for borrowers by closing two loopholes in California real estate law:

- The first would give the Department of Real Estate greater ability to discipline bad actors in the real estate industry by banning individuals who violate California real estate law from any real estate-related employment for up to three years.

- Second, the bill removes a potential conflict of interest by prohibiting any real estate professional who gives an opinion of value on a property to a mortgage lender from acting as the listing agent on that property for one year. This would help to prevent the possibility of unscrupulous individuals giving false appraisals as a means to increase the odds of foreclosure in order to become the listing agent on the home.

These provisions in SB 1054 will provide increased protections for California borrowers by preventing known bad actors from committing further mortgage lending abuse and by giving greater safeguards to those potentially facing foreclosure.

Promoting Financial Literacy

In an effort to improve financial literacy in the state, Assemblyman Ted Lieu (D-Torrance) introduced **AB 2123**, which would establish the California Financial Literacy Initiative. **Supported** by the CalChamber, this bill provides Californians with the tools they need to responsibly manage the financial commitments associated with loans.

The current mortgage market situation illustrates the need for greater financial education in California. Improved financial literacy contributes to a healthier economy, and the programs and services offered by AB 2123 can help achieve this goal.

CalChamber Position

California cannot regulate its way out of the current mortgage market situation. Fortunately, efforts to remedy some of the most problematic legislation this year have been successful thanks to the cooperative efforts of legislators, legislative staff and industry representatives.

If any reforms are to pass this year, however, it is important that the Legislature reduce the number of bills by finding workable compromises on, ideally, two pieces of legislation — one addressing the product side of the mortgage market, and one addressing the foreclosure process. Additional bills that create California-only requirements or contain duplicative or conflicting language complicate this process and do not serve the best interests of consumers, businesses, or the economy.

The CalChamber will continue to work to ensure that only responsible legislation adhering to the principles stated above reaches the Governor's desk for signature.

Staff Contact: Robert Callahan

Bipartisan ADA Proposal Passes Senate Policy Committees

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litigation that does not advance the goals of disability access.

SB 1608 responds to a significant ongoing state problem — the small, but widely destructive, atypical group of plaintiffs and lawyers using the disability laws and court system to systematically extract monetary settlements from businesses rather than to improve disability access. Too often, these lawsuits result in businesses closing their doors.

SB 1608 sets up a process to encourage business owners to be proactive in complying by obtaining the assistance of state-certified access specialists to determine whether buildings comply.

Joining Senator Ellen Corbett as authors of the bill are Senators Tom Harman (R-Huntington Beach), Darrell Steinberg (D-Sacramento), George Runner (R-Lancaster) and Ron Calderon (D-Montebello). Principal co-authors are Assemblymembers Cameron Smyth (R-Santa Clarita) and Lois Wolk (D-Davis).

Promoting Compliance

SB 1608 promotes compliance with disability access requirements and addresses unwarranted litigation through:

- **California Disability Access**

Commission: Creates an independent state commission on disability access in the state of California that will serve as an advisory body and information center on disability access issues. The commission would include legislators and representatives of the disability community, building professions and building owners.

- **Increased Education and Awareness:** Establishes minimum continuing education requirements for building inspectors and architects on disability access laws. In addition, demands for money issued by attorneys under the disability access laws must be accompanied by an advisory statement available in multiple languages explaining building owner/tenant obligations under the disability access laws, as well as legal options.

- **Promotes Use of State-Certified Disability Access Specialists:** Encourages owners of existing buildings to voluntarily use state-certified access specialists (CASps) to ensure compliance. It also requires that new construction and tenant improvements affecting access be inspected by building inspectors who also are CASps. The CASp program was established by 2003 legislation and is overseen by the Division of the State Architect.

- **Court Procedure Encouraging**

Compliance: Establishes a court procedure available only for defendants who have demonstrated diligence in complying with disability access laws by hiring a CASp. Such defendants, if sued because of an alleged construction-related accessibility violation, may request a temporary stay to litigation and a conference in which the judge and the parties must meet early to evaluate the case, including the alleged violations and whether resolution is possible.

Key Votes

SB 1608 passed the Senate Business, Professions and Economic Development Committee on April 28 on a unanimous vote of 9-0:

Ayes: Ridley-Thomas (D-Los Angeles), Aanestad (R-Grass Valley), R. Calderon (D-Montebello), Corbett (D-San Leandro), Denham (R-Merced), Florez (D-Shafter), Harman (R-Huntington Beach), Simitian (D-Palo Alto), Yee (D-San Francisco).

SB 1608 passed the Senate Judiciary Committee, 4-0, on April 29:

Ayes: Corbett (D-San Leandro), Harman (R-Huntington Beach), Kuehl (D-Santa Monica), Steinberg (D-Sacramento).

Absent/abstaining/not voting: Ackerman (R-Tustin).

Staff Contact: Kyla Christoffersen

Make Hepatitis B Vaccine Available to Employee Exposed on Job

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the vaccine is contraindicated for medical reasons.

The employee may decline to accept the hepatitis vaccination offered by the employer. However, the employer shall make available the hepatitis B vaccination series should the employee, while still covered by this regulation, decide to accept the vaccination series.

If the employee elects to decline the vaccination series, the employee is to sign a statement acknowledging being given the opportunity to receive the vaccination series and that the employee will continue to be at risk. The employee also can be vaccinated at a future date at no charge.

Pre-Exposure Vaccine

The employer does not have to offer pre-exposure hepatitis vaccine if exceptions outlined in Section (f)(1)(A) occur:

- the first aid provider's primary assignment is not the rendering of first aid; and

- any first aid rendered by such persons is rendered only as a collateral duty responding solely to injuries resulting from workplace incidents, generally at the location where the incident occurred.

The requirement for providing the hepatitis B vaccination is triggered by the employee's rendering of assistance in any situation involving the presence of blood

or OPIM, regardless of whether an exposure incident as defined in the standard, occurred. The exception to subsection (f)(1)(A) should be reviewed for additional conditions and requirements.

Frequently asked questions about bloodborne pathogens are answered on the Cal/OSHA website at www.dir.ca.gov/dosh/BloodborneFAQ.html.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

CalChamber Offers Pro-Jobs Approach to State's 'Green Chemistry' Rulemaking

Businesses already are taking steps to further enhance the safe use of chemicals, the California Chamber of Commerce and a coalition of business interests are reminding the state agency that is considering additional regulations as part of what is being called the California "Green Chemistry Initiative."

The initiative should help catalyze the adaptation already under way within industry, including more systematic application of green chemistry principles. The Thursday Group coalition writes in comments submitted this week to the state Department of Toxic Substances Control (DTSC).

In April 2007, Linda Adams, secretary of the California Environmental Protection Agency, assigned the DTSC to lead other agencies in developing the initiative, which moves the state from chemical-specific regulations to more all-inclusive policies modeled after Canada and the European Union.

"Green Chemistry seeks to transform industrial activity to create a zero-waste society," states the executive summary of a Cal/EPA report compiling policy options suggested during hearings in the first phase of the initiative program.

Sound Science Needed

Sound science and an approach that evaluates risks versus benefits should form the foundation for the regulatory structure, the coalition said. In addition, the process must give due consideration to the economic and societal needs of all Californians, the coalition states.

The coalition — made up of 65 business, industry, agriculture and other association groups — is committed to promoting public policies that strike a reasonable balance between economic growth and environmental protection. Coalition members acknowledge that environmental protection is an integral component of doing business in today's world and can provide a company an additional selling point in gaining customers.

California has some of the most stringent environmental laws in the country, some of which go beyond federal laws.

GREEN CHEMISTRY INITIATIVE

General Principles

The coalition emphasizes that the state's continued economic prosperity depends on leadership that uses the laws to protect the environment while leaving California businesses the flexibility to implement innovative, cost-effective solutions that promote business objectives.

The comments note that coalition members "are strong advocates of the philosophy that the marketplace should choose winners and losers when it comes to products." The coalition cautions against a "command and control regulatory scheme" that will stifle innovation, slow the economy and have a negative impact on job growth in California.

Specific Issues

The coalition's comments on specific issues include the following:

- **A tax on the production of hazardous chemicals isn't a viable policy option** because it will spur businesses to move production out of the state, place California businesses at a disadvantage when the economy is softening and could create adverse incentives.

- **Bans of existing chemicals provide no guarantee** of "greener" outcomes. Green chemistry is about reducing risks to health and the environment and not just substituting one hazard for another. A more rational alternative would be a risk reduction policy that accounts for the economic, social, health and environmental dimensions of chemistry.

- California must determine if develop-

ing safer alternatives to products currently on the market is simply a desire or a priority. Developing recognition programs, tax incentives, regulatory efficiency and liability mitigation would be a declaration of California's priorities and willingness to be a partner in this process.

- **Rather than punishing companies** for failing to use what the state deems to be "safer alternatives," the state should recognize that the decision of manufacturers to use one chemical over another is far too complex and confidential to allow for a system that punishes choices. California should instead seek to provide an incentive for companies to use safer alternatives in their products, especially when a move to an alternative causes significant investment and risk for the business.

- **The state must commit itself to protect confidential business information**, such as product ingredients. The Green Chemistry Initiative should not create a one-size-fits-all approach when well-established and well-enforced guidelines already are in place that have been crafted to suit the needs of specific product categories.

- Any standard for risk assessment developed under the Green Chemistry Initiative should be applied to both in-use chemicals and new alternatives. A different standard would lead to unintended consequences and undermine the goals of the initiative.

Process

The department is holding a series of public hearings this month on suggestions it has received for its Green Chemistry Initiative. Recommendations for future policies are to be presented to the Governor later this summer, according to the timeline posted on the department website.
Staff Contact: Jason Schmelzer

Visit www.calchamber.com for the latest business legislative news plus products and services to help you do business in California.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Assembly Committee OKs Fuel Tax Increase



OPPOSE

A California Chamber of Commerce-**opposed** bill that taxes motor vehicles and vehicle fuels passed the Assembly Local Government Committee this week on a party-line vote of 5-2.

AB 2558 (Feuer; D-Los Angeles) assesses an unfair tax on businesses and consumers by authorizing the Los Angeles County Metropolitan Transportation Authority to impose a tax on either motor vehicles or vehicle fuel.

California's energy prices are already among the highest in the nation. AB 2558 proposes either a gas tax of up to 3 percent of the retail sales price of fuel or a tax on motor vehicles of up to \$90.

The CalChamber pointed out that taxes such as proposed in AB 2558, in addition to the rising energy prices due to existing environmental initiatives, are making it more and more difficult for California's small businesses to remain in the state.

The state Air Resources Board (ARB) is already working on the scoping plan for AB 32 (Núñez; D-Los Angeles), the Global Warming Solutions Act of 2006. This plan will be the guidebook for putting AB 32 into motion and developing the regulations. Since AB 32 gives the ARB

the ultimate authority to regulate the state's greenhouse gas emissions, it is important that local and regional entities refrain from setting up duplicative requirements.

AB 2558 disregards the multiple levels of work being done at the ARB to reduce the state's greenhouse gas emissions. Instead of working on a comprehensive, state approach to combating climate change, this bill would set up a climate change mitigation and adaptation expenditure plan funded by a new gas tax or tax on vehicles.

Lastly, all state taxes should require a two-thirds vote. AB 2558 proposes a special tax for a specific purpose. The CalChamber believes AB 2558 should also be subject to a two-thirds public vote.

Key Vote

The Assembly Local Government vote on AB 2558 was:

Ayes: Caballero (D-Salinas), De La Torre (D-South Gate), Galgiani (D-Stockton), Lieber (D-Mountain View), Saldaña (D-San Diego).

Noes: Houston (R-San Ramon), Smyth (R-Santa Clarita).

Staff Contact: Amisha Patel

Assembly Committee Delays Action on Internet Tax Bill



OPPOSE

California Chamber of Commerce-**opposed** legislation that could harm California Internet service provider companies is on the suspense file in the Assembly Appropriations Committee pending a review of the bill's fiscal impacts.

AB 1840 (Charles Calderon; D-Montebello) clouds the definition of "nexus" — the standard used to determine which companies must collect California sales or use taxes. In particular, AB 1840 eliminates the safe harbor rule that the use of a California web server in and of itself will not trigger the collection obligation.

The CalChamber-led coalition of companies opposing AB 1840 pointed out in a letter to the committee that the bill could harm highly coveted California technology sector companies, such as web host companies and online marketplaces, by

removing the certainty created by California's current clear nexus standard.

The current safe harbor for servers guards against the otherwise chilling effect on the ability of California Internet companies to compete for a highly mobile global online customer base. Online sellers can reach California customers regardless of whether they use California web host or online marketplace companies.

Attempting to generate revenue under AB 1840's new nexus definition could also result in significant new revenue-draining litigation costs for the state because of court challenges that could last for years.

Action Needed: Contact members of Assembly Appropriations and urge them to **vote "no"** on **AB 1840**.

Staff Contact: Kyla Christoffersen

State's Legal Climate Ranks in Bottom 10 in New Survey of Attorneys Nationwide

California's legal system continues to rank in the bottom tier in an annual assessment of state legal environments.

California ranked 44 out of 50 in the "Lawsuit Climate 2008: Ranking the States," conducted by Harris Interactive for the U.S. Chamber Institute for Legal Reform and released on April 23.

California moved up one spot from 2007, when it ranked 45th.

Attorneys with Experience

For the study, Harris Interactive, a leading non-partisan market research firm, asked 957 attorneys representing business (most of whom had on average, 20 years of experience, including more than nine years in their current positions) to evaluate up to five states in which they were "very" or "somewhat familiar" with the litigation environment.

Survey respondents assigned each state a letter grade for each of 12 factors, ranging from overall treatment of injury/damages and contract litigation to the competence and impartiality of judges.

The survey results underscore the need for California Chamber of Commerce efforts to promote balance and stability in the state's legal system,

Treatment of Class Action Suits/Mass Consolidation Suits

Best

1. Delaware
2. Utah
3. Nebraska
4. South Dakota
5. Colorado

Worst

46. California
47. Illinois
48. Mississippi
49. Louisiana
50. West Virginia

Source: U.S. Chamber of Commerce Institute for Legal Reform

including compliance with disability access laws, punitive damages, class action lawsuits and arbitration.

Frivolous Lawsuits

A separate survey of California business owners, released on April 21, found that 88 percent believe frivolous lawsuits are a serious problem.

The survey, conducted by Virginia-based Public Opinion Strategies for the U.S. Chamber, found 59 percent believe the number of unfair lawsuits against businesses in California will increase over the next five years and 73 percent say California should enact new laws to help protect business from unfair and frivolous lawsuits.

Impact on Economy

The California business owners in the Public Opinion Strategies survey reported raising prices, limiting the types of products sold, reducing employee benefits or laying workers off in response to their concerns about frivolous lawsuits.

Of the 250 business owners surveyed, 85 percent were small businesses with fewer than 20 employees.

Other studies have shown the direct correlation between a healthy legal climate and a healthy economy. In a 2002 U.S. Chamber study, for example, economists found that per capita state gross domestic product rises 0.75 percent for every 10 percent improvement in a state's legal climate ranking.

Staff Contact: Kyla Christoffersen

CalChamber Small Business Committee Needs You!

The California Chamber of Commerce is encouraging members with an interest in the state's future and the well-being of their business to get involved and join the CalChamber Small Business Committee.

The Small Business Committee represents the small business perspective on priority legislation across various issue areas in cooperation with other standing committees of the CalChamber. It also promotes legislative action on key issues through the grassroots network of local chambers and small businesses.

The principles that guide CalChamber policy advocates grow out of work of the member volunteers on CalChamber standing and ad hoc committees.

In presenting the business perspective to state policymakers, the CalChamber relies on members to tell us about the real world impact of legislative and regulatory proposals.

Each committee focuses on a subject (or related subjects) of concern to business. Other CalChamber policy committees cover issues such as health care policy, labor and employment, international trade, legal reform and protection, taxation, trans-

portation, infrastructure and workers' compensation.

When issues arise that fall outside the realm of standing committees, the CalChamber forms ad hoc groups to review and recommend policies in the new area.

Take your career to the next level. Have an impact on public policy. Fresh outlook needed; no experience required!

To join the Small Business Committee, contact Marti Fisher at (916) 444-6670 or submit an online form at www.calchamber.com/getinvolved.



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