

Disabled access bill aims to increase compliance, reduce lawsuits

Opponents say S.B. 1608 is too broad to have much of an effect

KELLY JOHNSON | STAFF WRITER

Every year the Legislature takes up the fight over laws intended to guarantee that people with disabilities can gain access to businesses and public places. Every year, it weighs concerns of businesses that say they've been the victims of unwarranted lawsuits over disabled access.

And every year the bills go down in flames.

This year may be different.

Senate Bill 1608, intended to improve compliance with disabled access laws and reduce lawsuits, heads to the Senate Appropriations Committee this month. That's further than many of its predecessors got.

The key may be its very wide scope. The bill has something for businesses and disabled people alike. It's attracted bipartisan support. But in trying to satisfy disparate groups, the bill also has detractors who say it wouldn't accomplish enough to improve access or reduce litigation.

"It's sort of a mixed bag," said Catherine Corfee, a local attorney who defends businesses against access lawsuits. "It's better than nothing."

Some of her defense attorney colleagues,

though, don't think the bill goes far enough. Opponents include some disabled activists, including Connie Arnold of Elk Grove,



Ellen Corbett

and the California Council of the Blind. The list of supporting groups includes the state chamber of commerce, retail and restaurant groups, insurers, Consumer Attorneys of California, property owners, and groups serving people with disabilities.

State Sen. Ellen Corbett, a Democrat from San Leandro,

is the lead author. The other four senator/authors are Democrats Darrell Steinberg and Ron Calderon, and Republicans Tom

Harman and George Runner. Assembly members Lois Wolk, a Democrat, and Cameron Smyth, a Republican, are principal co-authors.

STANDING ON A BROAD BASE

The goal of the bill is to curb serial plaintiffs and their attorneys who file large numbers of lawsuits alleging access-law violations, often using boilerplate language and filling in a few business details for each case. Critics say those litigants are more interested in a quick payout than in improved access, and that their efforts sometimes lead to businesses closing. The legislation also tries to encourage business owners to comply with access laws.

The bill would:

- Create an advisory state commission on disabled access, at a cost of \$100,000.
 - Set minimum continuing-education requirements for architects and building inspectors on disabled access standards.
 - Encourage building owners to use state-certified access specialists and require that new construction and tenant improvements that affect access be inspected by them. The first group of such specialists, authorized by the state in 2003, is expected to be certified next year.
 - Establish a court procedure for defendants who have hired certified access specialists that would allow them to request a stay of court proceedings for 90 days and a conference for the judge and the parties to evaluate the case and consider a settlement or allow the defendant to fix the problem without the case going to court.
 - Establish that plaintiffs can't win damages unless access violations personally deterred them from patronizing a business.
- That last component especially pleases Corfee, the defense attorney. A van-accessible parking spot that's missing a required sign doesn't prevent someone from parking there, she said. That's a less exclusionary problem than having a step where a ramp should be, preventing access.
- Corfee said she's worried that access specialists would be required to identify whether sites meet access codes, without considering whether access was denied.

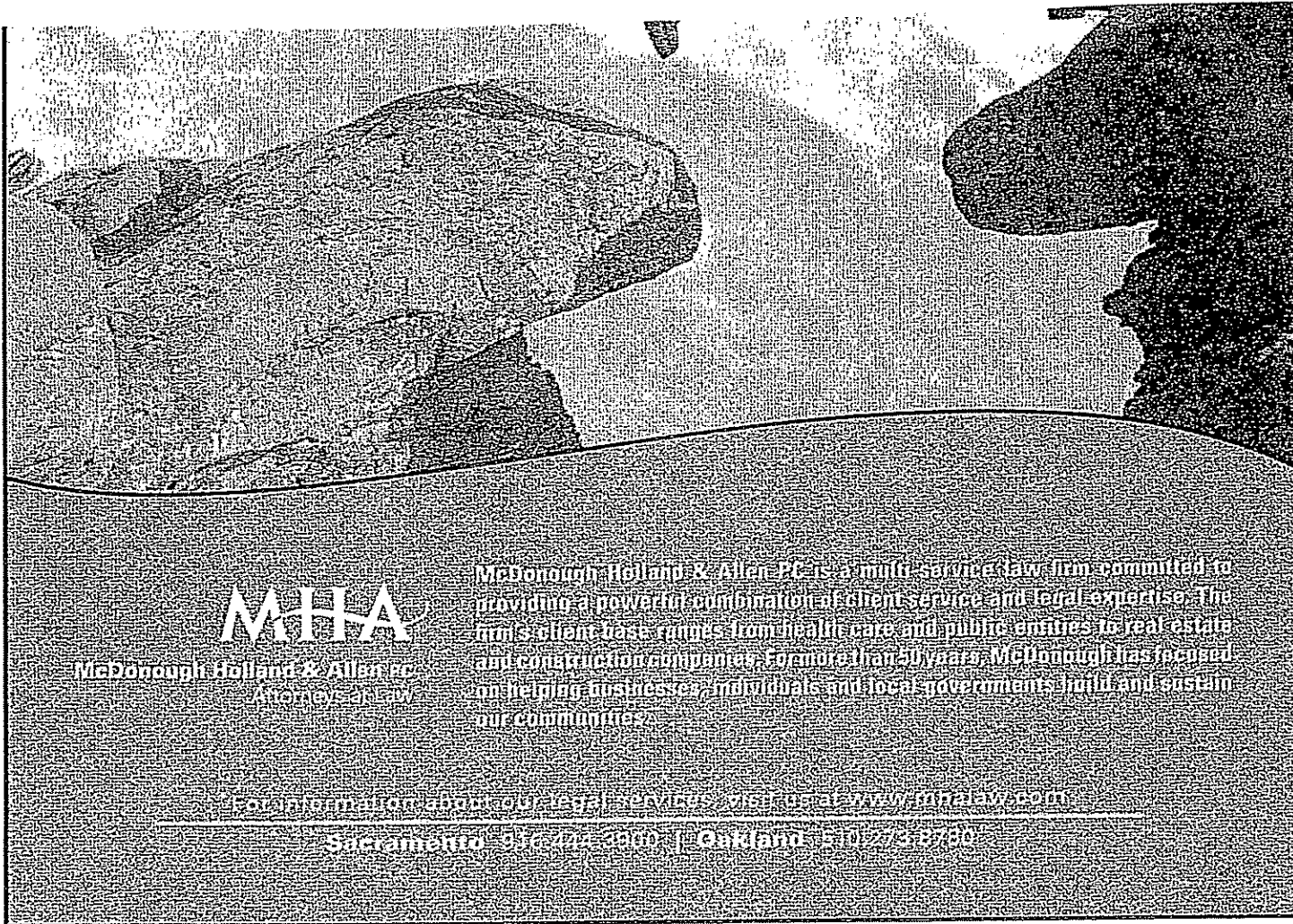
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"Failing to perfectly meet access codes does not mean that a business automatically discriminated against the disabled plaintiff," she said.

CHAMBER BACKING

CalChamber, formerly the California Chamber of Commerce, considers S.B. 1608 a well-thought-out, balanced reform measure that respects the interests of businesses, attorneys and people with disabilities, said lobbyist Kyla Christoffersen.

The bill would give businesses "greater assurance we're in compliance" and would result in dramatically fewer lawsuits, said Bill Dombrowski, president of the California Retailers Association.

Corfee disagrees. The bill might cause a few "reasonable" plaintiffs to settle early for less money, but it's a start, she said.

"The real problem isn't litigation," said Arnold, an Elk Grove woman who uses a power wheelchair and has filed some of her own access lawsuits over the years. "The real problem is a lack of compliance."

S.B. 1608 is a solution in need of a problem, said Dan Kysor, governmental affairs director for California Council of the Blind. Proponents haven't determined how many businesses are going under because of frivolous access lawsuits. He also thinks there are other solutions. For one, instead of changing the law, he said, courts could curb serial plaintiffs by labeling them as vexatious litigants.

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