



March 22, 2022

TO: Members, Assembly Business and Professions Committee

**SUBJECT: AB 1632 (WEBER) RESTROOM ACCESS: MEDICAL CONDITIONS
OPPOSE - AS INTRODUCED JANUARY 11, 2022
SCHEDULED FOR HEARING – MARCH 29, 2022**

The California Chamber of Commerce and the listed organizations are **OPPOSED** to **AB 1632 (Weber)** as introduced on January 11, 2022, because its present language creates liability risk for businesses who would be compelled to allow members of the public access to non-public areas of their business. We hope to resolve these concerns via amendments in the near future – but for now we are **OPPOSED**.

Background:

AB 1632 is part of a nationwide push to allow access to non-public bathrooms for those suffering digestive or bowel-related ailments that can cause urgent and unpredictable needs access to bathroom facilities. We are glad to see increasing awareness in this area and are sympathetic towards the plight of those effected with Crohn’s disease, ulcerative colitis, inflammatory bowel disease, irritable bowel syndrome, or other similar medical conditions.

Other versions of “Restroom Access Act” (or the “Ally’s Law”, as it is known) in this vein have been passed in more than 15 states. At a basic level, the laws compel businesses to allow access to non-public restrooms to a covered individual but allow businesses to insist upon a doctor-approved, state-issued card to certify their condition.

AB 1632 Covers Far More Workplaces Than Comparable Legislation – Making Safety and Liability Concerns More Urgent.

Other states that have passed their own version of “Ally’s Law”, it is usually limited to *retail establishments*.¹ In sharp contrast, **AB 1632** applies to all “place of business open to the general public for the sale of goods or services.” Functionally, that means **AB 1632** applies to almost all businesses, including a bank (with significant security concerns) or a mechanic’s shop (with heavy-equipment). This expansion is quite significant because it heightens safety concerns for employees and liability concerns for employers as the affected individual will have to potentially walk through more dangerous areas than may be present in a retail setting.

AB 1632 Does Not Include Employee or Liability Protections Which Other States Have Included in Adopting Similar Laws.

While we are sympathetic to the plight of those suffering from these conditions, we cannot ignore the safety and liability risks created by allowing members of the public access to non-public areas in this broad array of workplaces. Similarly, we cannot ignore the fact that false cards may be used to gain access to areas where valuable information or items may be stored.²

To that end, we request amends to limit liability in line with other states. Specifically, we ask that employers should not be liable for simple negligence claims related to accessing non-public spaces, but request that employers remain liable for grossly negligent or willful negligent behavior related to this new access. In

¹ As a short list of examples, see Illinois (<https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=094-0450>); Mass., (<https://malegislature.gov/Laws/GeneralLaws/PartIV/Title/Chapter270/Section26>); Maine (<https://www.mainelegislature.org/legis/statutes/22/title22sec1672-B.html>).

² Regrettably, COVID-19 has shown us that forgeries of state-issued cards are not difficult to create, and we must be aware that such forgeries could be created here if it would allow access past security precautions that would otherwise serve as deterrents to potential crime.

addition, we would ask that facilities be exempt from allowing access to private locations if there are three or less employees on site, in order to ensure that the employees' safety is more adequately protected. Notably, both these changes are common in similar legislation that has passed in other states which was limited only to retail, so we believe they are appropriate here.

AB 1632 Must Clarify that Businesses Are Not Required to Make Physical Changes to Their Restrooms.

Other states who have passed similar laws have also commonly included language specifying that "A retail establishment is not required to make any physical changes to an employee toilet facility under this section." This is to avoid an implicit obligation to upgrade existing non-public restrooms to accommodate all potential disabilities. Without such a provision, this bill would create substantial new (and presumably unintended) litigation risks.

Conclusion

We are not opposed to the intention of **AB 1632** – that individuals with these conditions should be allowed access to existing restrooms in a way that meets their emergency needs. However, such a new obligation must also be safe for employees on the site and avoid creating new liabilities for retailers. We have shared these concerns and a redline addressing them, and are hopeful that, with discussion, we can arrive at a version of **AB 1632** that accomplishes these goals.

However, until amends are made to address our concerns, we are **OPPOSED** to **AB 1632 (Weber)**.

Sincerely,



Robert Moutrie
Policy Advocate
California Chamber of Commerce
on behalf of

California Business Properties Association
California Chamber of Commerce
California Retailers Association
Family Business Association of California
National Federation of Independent Business

cc: Legislative Affairs, Office of the Governor
Raymond Contreras, Office of Assemblymember Weber
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