

Senate Bill No. 262

CHAPTER 872

An act to amend Section 4458 of, and to add Sections 4459.5, 4459.6, 4459.7, and 4459.8 to, the Government Code, and to amend Sections 19954 and 19958.5 of, and to add Section 19958.6 to, the Health and Safety Code, relating to building standards, and making an appropriation therefor.

[Approved by Governor October 12, 2003. Filed
with Secretary of State October 12, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 262, Kuehl. Buildings: access: enforcement.

(1) The federal Americans with Disabilities Act of 1990 and the California Building Standards Code require that specified buildings, structures, and facilities be accessible to, and usable by, persons with disabilities. Existing law establishes in the Department of General Services the State Architect with responsibilities relating to architectural services and state buildings.

This bill would require the State Architect to establish and publicize a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. It would require the State Architect, no later than January 1, 2005, to determine minimum criteria a person must meet for certification, which may include knowledge sufficient to review, inspect, or advocate universal design requirements, completion of specified training, and testing on standards governing access to buildings for persons with disabilities. It would require the State Architect to annually publish and make available to the public a list of certified access specialists and provide that this certification is effective for 3 years and renewable.

This bill would authorize the State Architect to require applicants for certification and renewal of certification under this program to pay specified fees, which would be deposited in the Certified Access Specialist Fund created by the bill. The bill would continuously appropriate this fund for use by the State Architect to implement the certified access specialist program.

(2) Existing law authorizes the district attorney, the city attorney, the Attorney General or, in certain instances, the Department of Rehabilitation acting through the Attorney General, to bring an action to enjoin a violation of prescribed requirements relating to access to buildings by handicapped persons.

This bill would authorize the county counsel to also bring those actions if the district attorney does not bring an action. The bill would additionally authorize any of those officials, including the county counsel if the district attorney does not bring an action, to bring a civil action to impose civil penalties on persons who violate prescribed statutes or regulations relating to access to buildings by handicapped persons. The bill would prescribe the amounts, according to circumstances set forth in the bill, and the disposition of those civil penalties.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 4458 of the Government Code is amended to read:

4458. The district attorney, the city attorney, the county counsel if the district attorney does not bring an action, or the Attorney General may bring an action to enjoin a violation of this chapter.

SEC. 2. Section 4459.5 is added to the Government Code, to read:

4459.5. The State Architect shall establish and publicize a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. No later than January 1, 2005, the State Architect shall determine minimum criteria a person is required to meet in order to be a certified access specialist, which may include knowledge sufficient to review, inspect, or advocate universal design requirements, completion of specified training, and testing on standards governing access to buildings for persons with disabilities.

SEC. 3. Section 4459.6 is added to the Government Code, to read:

4459.6. The State Architect shall appoint an ad hoc advisory committee to assist in developing the requirements for certification as access specialists pursuant to Section 4459.5. This committee shall include individuals with disabilities, and a representative from each of the following:

- (a) The Governor.
- (b) The Secretary of Health and Human Services.
- (c) The Attorney General.
- (d) Local government.
- (e) Architects.
- (f) Building inspectors.
- (g) Business.

SEC. 4. Section 4459.7 is added to the Government Code, to read:

4459.7. (a) No later than October 31 of each year, the State Architect shall publish and make available to the public a list of certified



access specialists who have met the requirements of Section 4459.5. This list shall include a written disclaimer of liability as specified in subdivision (b).

(b) Notwithstanding any other provision of law, a state agency or employee of a state agency may not be held liable for any injury or damages resulting from any service provided by a certified access specialist whose name appears on the list published pursuant to subdivision (a).

(c) The State Architect may perform periodic audits of work performed by a certified access specialist as deemed necessary to ensure the desired standard of performance. A certified access specialist shall provide an authorized representative of the State Architect with complete access, at any reasonable hour of the day, to all technical data, reports, records, photographs, design outlines and plans, and files used in building inspection and plan review, with the exception of proprietary and confidential information.

SEC. 5. Section 4459.8 is added to the Government Code, to read:

4459.8. (a) The certification authorized by Section 4459.5 is effective for three years from the date of initial certification and expires if not renewed. The State Architect, upon consideration of any factual complaints regarding the work of a certified access specialist or of other relevant information, may suspend certification or deny renewal of certification.

(b) The State Architect shall require each applicant for certification as a certified access specialist to pay fees, including an application and course fee and an examination fee, at a level sufficient to meet the costs of application processing, registration, publishing a list, and other activities that are reasonably necessary to implement and administer the certified access specialist program. The State Architect shall require each applicant for renewal of certification to pay a fee sufficient to cover the reasonable costs of reassessing qualifications of renewal applicants.

(c) All fees collected pursuant to this section shall be deposited into the Certified Access Specialist Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340, this fund is continuously appropriated without regard to fiscal years for use by the State Architect to implement Sections 4459.5 to 4459.8, inclusive.

SEC. 6. Section 19954 of the Health and Safety Code is amended to read:

19954. The district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General may bring an action to enjoin any violation of this part.



SEC. 7. Section 19958.5 of the Health and Safety Code is amended to read:

19958.5. The district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General may bring an action to enjoin a violation of this part.

SEC. 8. Section 19958.6 is added to the Health and Safety Code, to read:

19958.6. (a) A person who violates Section 19952, 19955, 19955.5, 19956, 19956.5, or 19959 or any of the regulations implementing those sections that have been promulgated by the State Architect pursuant to Section 4450 of the Government Code and approved by the California Building Standards Commission shall be subject to a civil penalty of two thousand five hundred dollars (\$2,500) for each violation.

(b) A person who remains in violation of the statutes and regulations specified in subdivision (a) for more than 90 days after receipt of written notice from a governmental agency identifying the violation shall be subject to an additional civil penalty of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each violation for each additional day that the violation remains. In assessing the amount of the civil penalty under this subdivision, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

- (1) The nature and seriousness of the violations.
- (2) The number of violations.
- (3) The persistence of the violations.
- (4) The willfulness of the defendant's conduct.
- (5) The defendant's assets, liabilities, and net worth.
- (6) Any economic benefit to the defendant resulting from the violation.

A court may suspend a portion of any penalty imposed pursuant to this subdivision to the extent that the person, despite diligent efforts, cannot complete all steps necessary to correct a violation within the 90-day period. Any suspension of daily penalties shall be conditioned on adherence to a court-ordered schedule for correcting the violation.

(c) When imposing penalties under either subdivision (a) or (b), the court shall impose a separate civil penalty for each violation of the statutes and implementing regulations mentioned in subdivision (a). Multiple identical violations at one facility may be deemed to constitute one violation if the court finds that the multiplicity of violations did not significantly increase the degree to which access was compromised.



(d) Every civil action brought under this section shall be brought in the name of the people of the state by the district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General. An action brought in the name of the people of the state shall not preclude an action being brought by an injured person under other applicable laws.

(e) (1) If the action is brought by the Department of Rehabilitation acting through the Attorney General, or by the Attorney General, the civil penalties shall be paid to the Treasurer. Upon prevailing, the Attorney General shall be entitled to recover all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(2) If the action is brought by the district attorney, or the county counsel, the civil penalties shall be paid to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by the city attorney, the civil penalties shall be paid to the treasurer of the city bringing the action. Upon prevailing, the city attorney shall be entitled to recover all costs of investigating and prosecuting the action, including, but not limited to, expert fees, reasonable attorney's fees, and costs.

