

AMENDED IN ASSEMBLY JUNE 3, 2009

SENATE BILL

No. 209

Introduced by Senators Corbett and Harman

February 23, 2009

An act to amend Section 55.54 of the Civil Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Corbett. Civil actions: disabled access.

Existing law requires a court, with respect to an action involving a construction-related accessibility claim, to issue an order that, among other things, grants a 90-day stay of the proceedings with respect to that claim, schedules an early evaluation conference, and directs the defendant to file with the court under seal and serve on the plaintiff a copy of any relevant Certified Access Specialist inspection report, which shall be subject to a protective court order, as specified, if the defendant has satisfied certain requirements relating to inspection of the site at issue. Existing law requires the early evaluation conferences be conducted by a superior court judge or commissioner, or a court early evaluation conference officer, as defined.

This bill would instead require the Certified Access Specialist inspection report to remain confidential and would allow disclosure only to the parties to the action, the parties' attorneys, and others necessary to the settlement of the case, as specified. The bill would also require the report to remain confidential throughout the stay and until the conclusion of the claim, unless there is a showing of good cause by any party.

This bill would make conforming and related technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

SECTION 1. Section 55.54 of the Civil Code is amended to read:

55.54. (a) (1) An attorney who causes a summons and complaint to be served in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the following notice to the defendant on separate papers that shall be served with the summons and complaint:

NOTICE TO DEFENDANT

YOU MAY BE ENTITLED TO ASK FOR A STAY (TEMPORARY STOPPAGE) AND EARLY EVALUATION CONFERENCE IN THIS LAWSUIT.

If the construction-related accessibility claim pertains to a site that has been inspected by a Certified Access Specialist (CAsp) and you have an inspection report for that site, you may make an immediate request for a court stay and early evaluation conference in the construction-related accessibility claim by filing the attached application form with the court. You may be entitled to the court stay and early evaluation conference regarding the accessibility claim only if ALL of the statements in the application form are true.

The court will schedule the conference to be held within 50 days after you file the attached application form. The court will also issue an immediate stay of the proceedings unless the plaintiff has obtained a temporary restraining order in the construction-related accessibility claim. At your option, you may be, but need not be, represented by an attorney to file the application to request the early evaluation conference. You may obtain a copy of the application form, filing instructions, and additional information about the stay and early evaluation

conference through the Judicial Council Internet Web site at <http://www.courtinfo.ca.gov/selfhelp/>.

You may file the application after you are served with a summons and complaint, but no later than your first court pleading or appearance in this case, which is due within 30 days after you receive the summons and complaint. If you do not have an attorney, you will need to file the application within 30 days after you receive the summons and complaint to request the stay and early evaluation conference. If you do not file the application, you will still need to file your reply to the lawsuit within 30 days after you receive the summons and complaint to contest it. You may obtain more information about how to represent yourself and how to file a reply without hiring an attorney at <http://www.courtinfo.ca.gov/selfhelp/>. If a plaintiff representing himself or herself hires an attorney after the case is filed, you will have 30 days to file an application for a court stay and early evaluation conference after you receive a Notice of Substitution of Counsel, unless an early evaluation conference or settlement conference has already been held.

You may file the application form without the assistance of an attorney, but it may be in your best interest to immediately seek the assistance of an attorney experienced in disability access laws when you receive a summons and complaint. You may make an offer to settle the case, and it may be in your interest to put that offer in writing so that it may be considered under Civil Code Section 55.55.

(2) An attorney who files a Notice of Substitution of Counsel to appear as counsel for a plaintiff who, acting in *propria persona*, had previously filed a complaint in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the notice specified in paragraph (1) upon the defendant on separate pages that shall be attached to the Notice of Substitution of Counsel.

(b) (1) Notwithstanding any other provision of law, upon being served with a summons and complaint asserting a construction-related accessibility claim, including, but not limited

1 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
2 defendant may file a request for a court stay and early evaluation
3 conference in the proceedings of that claim prior to or simultaneous
4 with the qualified defendant's responsive pleading or other initial
5 appearance in the action that includes the claim. If the qualified
6 defendant filed a timely request for stay and early evaluation
7 conference before a responsive pleading was due, the period for
8 filing a responsive pleading shall be tolled until the stay is lifted.
9 Any responsive pleading filed simultaneously with a request for
10 stay and early evaluation conference may be amended without
11 prejudice, and the period for filing that amendment shall be tolled
12 until the stay is lifted.

13 (2) Notwithstanding any other provision of law, if the plaintiff
14 had acted in propria persona in filing a complaint that includes a
15 construction-related accessibility claim, including, but not limited
16 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
17 defendant who is served with a Notice of Substitution of Counsel
18 shall have 30 days to file an application for a stay and an early
19 evaluation conference. The application may be filed prior to or
20 after the defendant's filing of a responsive pleading or other initial
21 appearance in the action that includes the claim, except that an
22 application may not be filed in a claim in which an early evaluation
23 conference or settlement conference has already been held on the
24 claim.

25 (c) (1) An application for an early evaluation conference and
26 stay shall include a signed declaration that declares both of the
27 following:

28 (A) The site identified in the complaint has been
29 CASp-inspected or is CASp determination pending and, if the site
30 is CASp-inspected, there have been no modifications completed
31 or commenced since the date of inspection that may impact
32 compliance with construction-related accessibility standards to the
33 best of the defendant's knowledge.

34 (B) An inspection report pertaining to the site has been issued
35 by a CASp. The inspection report shall be provided to the court
36 and the plaintiff at least 15 days prior to the court date set for the
37 early evaluation conference.

38 (2) The following provisional request and notice forms may be
39 used and filed by a qualified defendant until forms are adopted by

1 the Judicial Council for those purposes pursuant to subdivision
2 (k):

- 1 PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE
- 2 INSERTED

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1 (3) The provisional forms and any replacement Judicial Council
2 forms shall include the defendant's declaration of proof of service
3 of the application, the notice of the court's order, and the court's
4 order pursuant to subdivision (d).

5 (d) Upon the filing of an application for stay and early evaluation
6 conference by a qualified defendant, the court shall immediately
7 issue an order that does all of the following:

8 (1) Grants a 90-day stay of the proceedings with respect to the
9 construction-related accessibility claim, unless the plaintiff has
10 obtained temporary injunctive relief that is still in place for the
11 construction-related accessibility claim.

12 (2) Schedules a mandatory early evaluation conference for a
13 date as soon as possible from the date of the order, but in no event
14 later than 50 days after issuance of the order, and in no event earlier
15 than 21 days after the filing of the request.

16 (3) Directs the parties, and any other person whose authority is
17 required to negotiate and enter into settlement, to appear in person
18 at the time set for the conference. Appearance by counsel shall not
19 satisfy the requirement that the parties or those with negotiation
20 and settlement authority personally appear, provided, however,
21 that the court may allow a party who is unable to attend in person
22 due to his or her disability to participate in the hearing by telephone
23 or other alternative means or through a representative authorized
24 to settle the case.

25 (4) Directs the defendant to file with the court and serve on the
26 plaintiff a copy of any relevant CASp inspection report at least 15
27 days before the date of the conference. The CASp inspection report
28 is confidential and is available only as set forth in paragraph (5)
29 of this subdivision or in paragraph (4) of subdivision (e).

30 (5) Directs the parties that the CASp inspection report may be
31 disclosed only to the court, the parties to the action, the parties'
32 attorneys, those individuals employed or retained by the attorneys
33 to assist in the litigation, and insurance representatives or others
34 necessary to the settlement of the case.

35 (6) Directs the plaintiff to file with the court and serve on the
36 defendant at least 15 days before the date of the conference a
37 statement that includes, to the extent reasonably known, for use
38 solely for the purpose of the early evaluation conference, all of the
39 following:

1 (A) An itemized list of specific conditions on the subject
2 premises that are the basis of the claimed violations of
3 construction-related accessibility standards in the plaintiff's
4 complaint.

5 (B) The amount of damages claimed.

6 (C) The amount of attorney's fees and costs incurred to date, if
7 any, that are being claimed.

8 (D) Any demand for settlement of the case in its entirety.

9 (e) (1) A party failing to comply with any court order may be
10 subject to court sanction at the court's discretion.

11 (2) The court shall lift the stay when the defendant has failed
12 to file and serve the CASp inspection report prior to the early
13 evaluation conference and has failed also to produce the report at
14 the time of the early evaluation conference, unless the defendant
15 shows good cause for that failure.

16 (3) The court may lift the stay at the conclusion of the early
17 evaluation conference upon a showing of good cause by the
18 plaintiff. Good cause may include the defendant's failure to make
19 reasonably timely progress toward completion of corrections noted
20 by a CASp.

21 (4) The CASp inspection report shall remain confidential
22 throughout the stay and shall continue to be confidential for the
23 duration of the litigation, until the conclusion of the claim, whether
24 by dismissal, settlement, or final judgment, unless there is a
25 showing of good cause by any party. Good cause may include the
26 defendant's failure to make reasonably timely progress toward
27 completion of corrections noted by a CASp. The confidentiality
28 of the inspection report shall terminate upon the conclusion of the
29 claim, unless the owner of the report obtains a court order pursuant
30 to the California Rules of Court to seal the record.

31 (f) All discussions at the early evaluation conference shall be
32 subject to Section 1152 of the Evidence Code. It is the intent of
33 the Legislature that the purpose of the evaluation conference shall
34 include, but not be limited to, evaluation of all of the following:

35 (1) Whether the defendant is entitled to the 90-day stay for some
36 or all of the identified issues in the case, as a qualified defendant.

37 (2) The current condition of the site and the status of any plan
38 of corrections, including whether the qualified defendant has
39 corrected or is willing to correct the alleged violations, and the
40 timeline for doing so.

1 (3) Whether the case, including any claim for damages or
2 injunctive relief, can be settled in whole or in part.

3 (4) Whether the parties should share other information that may
4 facilitate early evaluation and resolution of the dispute.

5 (g) Nothing in this section precludes any party from making an
6 offer to compromise pursuant to Section 998 of the Code of Civil
7 Procedure.

8 (h) The court may schedule additional conferences and may
9 extend the 90-day stay for good cause shown, but not to exceed
10 one additional 90-day extension.

11 (i) Early evaluation conferences shall be conducted by a superior
12 court judge or commissioner, or a court early evaluation conference
13 officer. A commissioner shall not be qualified to conduct early
14 evaluation conferences pursuant to this subdivision unless he or
15 she has received training regarding disability access requirements
16 imposed by the Americans with Disabilities Act of 1990 (Public
17 Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern
18 access to public facilities, and federal and state regulations adopted
19 pursuant to those laws. For purposes of this subdivision, a “court
20 early evaluation conference officer” means an attorney employed
21 by the court who has received training regarding disability access
22 requirements imposed by the Americans with Disabilities Act of
23 1990, state laws that govern access to public facilities, and federal
24 and state regulations adopted pursuant to those laws. Attorneys
25 serving in this capacity may also be utilized by the court for other
26 purposes not related to these proceedings.

27 (j) Nothing in this part shall be deemed to make any inspection
28 report, opinion, statement, or other finding or conclusion of a CASp
29 binding on the court, or to abrogate in any manner the ultimate
30 authority of the court to make all appropriate findings of fact and
31 law. The CASp inspection report and any opinion, statement,
32 finding, or conclusion therein shall be given the weight the trier
33 of fact finds that it deserves.

34 (k) Nothing in this part shall be construed to invalidate or limit
35 any California construction-related accessibility standard that
36 provides greater or equal protection for the rights of individuals
37 with disabilities than is afforded by the Americans with Disabilities
38 Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the
39 federal regulations adopted pursuant to that act.

1 (l) (1) The Judicial Council shall prepare and post on its Internet
2 Web site instructions and a form for a qualified defendant to use
3 to file an application for stay and early evaluation conference as
4 provided in subdivisions (b) and (c), and a form for the court's
5 notice of stay and early evaluation conference. Until those forms
6 are adopted, the Judicial Council shall post on its Internet Web
7 site the provisional forms set forth in subdivision (c).

8 (2) The Judicial Council shall also prepare and post on its
9 Internet Web site instructions and cover pages to assist plaintiffs
10 and defendants, respectively, to comply with their filing
11 responsibilities under subdivision (d). The cover pages shall also
12 provide for the party's declaration of proof of service of the
13 pertinent document served under the court order.

14 (m) The stay provisions shall not apply to any
15 construction-related accessibility claim in which the plaintiff has
16 been granted temporary injunctive relief that remains in place.

17 (n) This section shall not apply to any action brought by the
18 Attorney General, or by any district attorney, city attorney, or
19 county counsel.

20 (o) This part shall apply only to claims filed on or after January
21 1, 2009. Nothing in this part is intended to affect litigation filed
22 before that date.

23 (p) Nothing in this part is intended to affect existing law
24 regarding class action requirements.