

AMENDED IN ASSEMBLY JULY 2, 2009

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~~ *involved in the evaluation and* 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

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

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

21 You may file the application form without the assistance of
22 an attorney, but it may be in your best interest to immediately
23 seek the assistance of an attorney experienced in disability
24 access laws when you receive a summons and complaint. You
25 may make an offer to settle the case, and it may be in your
26 interest to put that offer in writing so that it may be considered
27 under Civil Code Section 55.55.
28

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

38 (b) (1) Notwithstanding any other provision of law, upon being
39 served with a summons and complaint asserting a
40 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):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	
CASE NUMBER:	

(Information about this application and the filing instructions may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.)

1. Defendant (name) _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code Section 55.52(a)(1).
3. The claim concerns a site that (check the box if the statement is true):
 - a. _____ Has been inspected by a Certified Access Specialist (CASP) and determined to be CASp-inspected or CASp determination pending and, if CASp-inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
 - b. _____ An inspection report by a Certified Access Specialist (CASP) relating to the site has been issued.
(Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
4. I am requesting the court to:
 - a. Stay the proceedings relating to the construction-related accessibility claim.
 - b. Schedule an Early Evaluation Conference.
 - c. Order Defendant to file a confidential copy of the Certified Access Specialist (CASP) report with the court and serve a copy of the report on the Plaintiff at least fifteen (15) days before the Early Evaluation Conference date, which shall be subject to a protective order.
 - d. Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(6)(A)-(D) with the court and serve a copy of the statement on the Defendant at least fifteen (15) days before the date of the Early Evaluation Conference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

(TITLE OF DECLARANT)

DEFENDANT'S APPLICATION FOR EARLY EVALUATION CONFERENCE AND STAY OF PROCEEDINGS
(Construction-related Accessibility Claim) Provisional Form

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
NOTICE OF STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	
	CASE NUMBER:

Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

Notice of Early Evaluation Conference

1. This action includes a construction-related accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.
2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.
3. The early evaluation conference is scheduled as follows:

a. Date: Time: Dept: Room:

b. The conference will be held at _____ the court address shown above, or _____ at:

4. The plaintiff and defendant shall attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant that requested the conference and stay of proceedings must file with the court and serve on all parties a copy of the CASp report for the site that is the subject of the construction-related accessibility claim at least fifteen (15) days before the date set for the early evaluation conference, which shall be subject to a protective order to maintain its confidentiality. The CASp report is confidential and only available as set forth below and in Civil Code Section 55.54(d)(4).
6. The CASp report shall be marked "CONFIDENTIAL" and may be disclosed only to counsel, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others necessary to the settlement of the case.
7. The plaintiff shall file with the court and serve on all parties at least fifteen (15) days before the date set for the early evaluation conference a statement of, to the extent known, all of the following:
 - a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;
 - b. The amount of damages claimed;
 - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
 - d. Any demand for settlement of the case in its entirety.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	
CASE NUMBER:	

(Information about this application and the filing instructions may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.)

1. Defendant (name) _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code Section 55.52(a)(1).
3. The claim concerns a site that (check the box if the statement is true):
 - a. _____ Has been inspected by a Certified Access Specialist (CASP) and determined to be CASp inspected or CASp determination pending and, if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
 - b. _____ An inspection report by a Certified Access Specialist (CASP) relating to the site has been issued.
 (Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
4. I am requesting the court to:
 - a. Stay the proceedings relating to the construction-related accessibility claim.
 - b. Schedule an Early Evaluation Conference.
 - c. Order Defendant to file a confidential copy of the Certified Access Specialist (CASP) report with the court and serve a copy of the report on the Plaintiff at least fifteen (15) days before the Early Evaluation Conference date.
 - d. Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(6)(A)–(D) with the court and serve a copy of the statement on the Defendant at least fifteen (15) days before the date of the Early Evaluation Conference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

(TITLE OF DECLARANT)

DEFENDANT'S APPLICATION FOR EARLY EVALUATION CONFERENCE AND STAY OF PROCEEDINGS
(Construction-related Accessibility Claim) *Provisional Form*

8. A copy of this Notice and Order and the Defendant's Application shall be served on the plaintiff or plaintiff's attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

Date:

Clerk, by _____, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.

Requests for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

Proof of Service

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant's Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

_____ On the Plaintiff's attorney

_____ On the Plaintiff who is not represented by an attorney

By hand delivering it or mailing it to the address listed on the complaint on the day the Court issued this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: _____

Type or Print Name

Signature

Address of named person

NOTICE OF STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE
(Construction-related Accessibility Claim) Provisional Form

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~~ and 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~~ *involved in the evaluation and* settlement of the
35 case.

36 (6) Directs the plaintiff to file with the court and serve on the
37 defendant at least 15 days before the date of the conference a
38 statement that includes, to the extent reasonably known, for use
39 solely for the purpose of the early evaluation conference, all of the
40 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 *filed and served pursuant to*
22 *subdivision (d)* shall remain confidential throughout the stay and
23 shall continue to be confidential ~~for the duration of the litigation;~~
24 until the conclusion of the claim, whether by dismissal, settlement,
25 or final judgment, unless there is a showing of good cause by any
26 party. Good cause may include the defendant's failure to make
27 reasonably timely progress toward completion of corrections noted
28 by a CASp. The confidentiality of the inspection report shall
29 terminate upon the conclusion of the claim, unless the owner of
30 the report obtains a court order pursuant to the California Rules
31 of Court to seal the record.

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

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

38 (2) The current condition of the site and the status of any plan
39 of corrections, including whether the qualified defendant has

1 corrected or is willing to correct the alleged violations, and the
2 timeline for doing so.

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

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

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

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

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

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

36 (k) Nothing in this part shall be construed to invalidate or limit
37 any California construction-related accessibility standard that
38 provides greater or equal protection for the rights of individuals
39 with disabilities than is afforded by the Americans with Disabilities

1 Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the
2 federal regulations adopted pursuant to that act.

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

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

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

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

22 (o) This part shall apply only to claims filed on or after January
23 1, 2009. Nothing in this part is intended to affect litigation filed
24 before that date.

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