

ASSEMBLY BILL

No. 357

Introduced by Assembly Member Garrick

February 10, 2011

An act to amend Section 55.3 of the Civil Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 357, as introduced, Garrick. Equal access rights: construction-related access claims.

The federal Americans with Disabilities Act of 1990 prohibits discrimination against an individual with a disability on the basis of that disability in specified situations, including employment opportunities and access to public accommodations, services, and transportation.

Existing state law prohibits any person, firm, or corporation from denying or interfering with a disabled person's admittance to or enjoyment of public facilities, or from otherwise interfering with the rights of an individual with a disability, as specified. Existing law requires an attorney to provide a written advisory to a building owner or tenant with each demand for money or complaint for any construction-related accessibility claim.

This bill would make technical, nonsubstantive changes to these provisions.

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

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

1 SECTION 1. Section 55.3 of the Civil Code is amended to
2 read:

3 55.3. (a) For purposes of this section, the following shall apply:

4 (1) “Complaint” means a civil complaint that is filed or is to be
5 filed with a court, and is sent to or served upon a defendant on the
6 basis of one or more construction-related accessibility claims, as
7 defined in this section.

8 (2) “Demand for money” means a written document that is
9 provided to a building owner or tenant, or an agent or employee
10 of a building owner or tenant, that contains a request for money
11 on the basis of one or more construction-related accessibility
12 claims, as defined in paragraph (3).

13 (3) “Construction-related accessibility claim” means any claim
14 of a violation of any construction-related accessibility standard,
15 as defined by paragraph (6) of subdivision (a) of Section 55.52,
16 with respect to a place of public accommodation.
17 “Construction-related accessibility claim” does not include a claim
18 of interference with housing *accommodations* within the meaning
19 of paragraph (2) of subdivision (b) of Section 54.1, or any claim
20 of interference caused by something other than the
21 construction-related accessibility condition of the property,
22 including, but not limited to, the conduct of any person.

23 (b) An attorney shall provide a written advisory with each
24 demand for money or complaint sent to or served by him or her
25 upon a defendant, in the form described in subdivision (c), and on
26 a page or pages that are separate and clearly distinguishable from
27 the demand for money or complaint, as follows:

28
29

30 IMPORTANT INFORMATION FOR BUILDING OWNERS
31 AND TENANTS

32

33 This form is available in English, Spanish, Chinese, Vietnamese,
34 and Korean through the Judicial Council of California. Persons
35 with visual impairments can get assistance in viewing this form
36 through the Judicial Council Internet Web site at
37 <http://www.courtinfo.ca.gov>.

1 Existing law requires that you receive this information because
2 the demand for money or complaint you received with this
3 document claims that your building or property does not comply
4 with one or more existing construction-related accessibility laws
5 or regulations protecting the civil rights of persons with disabilities
6 to access public places.

7 **YOU HAVE IMPORTANT LEGAL OBLIGATIONS.**
8 Compliance with disability access laws is a serious and significant
9 responsibility that applies to all California building owners and
10 tenants with buildings open for business to the public. You may
11 obtain information about your legal obligations and how to comply
12 with disability access laws through the Division of the State
13 Architect. Commencing September 1, 2009, information will also
14 be available from the California Commission on Disability Access
15 Internet Web site.

16 **YOU HAVE IMPORTANT LEGAL RIGHTS.** You are not
17 required to pay any money unless and until a court finds you liable.
18 Moreover, **RECEIPT OF THIS ADVISORY DOES NOT**
19 **NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR**
20 **ANYTHING.**

21 You may wish to promptly consult an attorney experienced in
22 this area of the law to get helpful legal advice or representation in
23 responding to the demand for money or complaint you received.
24 You may contact the local bar association in your county for
25 information on available attorneys in your area. If you have
26 insurance, you may also wish to contact your insurance provider.
27 You have the right to seek assistance or advice about this demand
28 for money or complaint from any person of your choice, and no
29 one may instruct you otherwise. Your best interest may be served
30 by seeking legal advice or representation from an attorney.

31 If a complaint has been filed and served on you and your property
32 has been inspected by a Certified Access Specialist (CASp; see
33 www.dsa.dgs.ca.gov/casp), you may have the right to a court stay
34 (temporary stoppage) and early evaluation conference to evaluate
35 the merits of the construction-related accessibility claim against
36 you pursuant to Civil Code Section 55.54. At your option, you
37 may be, but need not be, represented by an attorney to file a reply
38 and to file an application for a court stay and early evaluation
39 conference. If you choose not to hire an attorney to represent you,
40 you may obtain additional information about how to represent

1 yourself and how to file a reply without hiring an attorney through
2 the Judicial Council Internet Web site at
3 <http://www.courtinfo.ca.gov/selfhelp/>. You may also obtain a form
4 to file your reply to the lawsuit, as well as the form and information
5 for filing an application to request the court stay and early
6 evaluation conference at that same Web site.

7 If you choose to hire an attorney to represent you, the attorney
8 who sent you the demand for money or complaint is prohibited
9 from contacting you further unless your attorney has given the
10 other attorney permission to contact you. If the other attorney does
11 try to contact you, you should immediately notify your attorney.
12

13 (c) On or before July 1, 2009, the Judicial Council shall adopt
14 a form that may be used by attorneys to comply with the
15 requirements of subdivision (b). The form shall be in substantially
16 the same format and include all of the text set forth in subdivision
17 (b). The form shall be available in English, Spanish, Chinese,
18 Vietnamese, and Korean, and shall include a statement that the
19 form is available in additional languages, and the Judicial Council
20 Internet Web site address where the different versions of the form
21 may be located. The form shall include Internet Web site
22 information for the Division of the State Architect and, when
23 operational, the California Commission on Disability Access.

24 (d) Subdivision (b) shall apply only to a demand for money or
25 complaint made by an attorney. Nothing in this section is intended
26 to affect the right to file a civil complaint under any other law or
27 regulation protecting the physical access rights of persons with
28 disabilities. Additionally, nothing in this section requires a party
29 acting in propria persona to provide or send a demand for money
30 to another party before proceeding against that party with a civil
31 complaint.

32 (e) This section shall not apply to any action brought by the
33 Attorney General, or by any district attorney, city attorney, or
34 county counsel.