

AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1186

Introduced by ~~Senator~~ *Senators Steinberg and Dutton*

February 22, 2012

~~An act to add Sections 55.4 and 55.41 to the Civil Code, and to amend Section 4452 of the Government Code, relating to special access, and declaring the urgency thereof, to take effect immediately. An act to amend Section 55.3 of, and to add Sections 55.31 and 1938 to, the Civil Code, relating to disability access.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, as amended, ~~Dutton~~ *Steinberg*. ~~Special-Disability~~ access: liability.

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, as specified. The requirement to provide the written advisory applies whether or not the attorney intends to file a complaint or eventually files a complaint in state or federal court. A violation of this requirement may subject the attorney to disciplinary action.

This bill would, instead, require an attorney to provide a written advisory to a building owner or tenant with each complaint or settlement demand for any construction-related accessibility claim, as specified. The requirement to provide the written advisory would apply where the attorney or party has filed a complaint in state or federal court on the basis of one or more construction-related accessibility claims.

This bill also would prohibit an attorney or other person from issuing a demand for money to a building owner or tenant, or an agent or employee of a building owner or tenant, or from receiving any payment,

settlement, compensation, or other remuneration pursuant to a demand for money that is provided or issued without or prior to the filing of a complaint on the basis of one or more construction-related accessibility violations, as specified. The bill would require an attorney to provide to a building owner or tenant, or an agent or employee of a building owner or tenant, a document that notifies the recipient of any alleged construction-related accessibility violation that may be a basis for a damages claim at least 30 days prior to filing any claim for damages based on an alleged construction-related accessibility violation or violations, except in a case solely seeking injunctive relief. The bill would provide that a violation of these requirements may subject the attorney to disciplinary action.

Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified. Existing law provides for the inspection of places of public accommodation by certified access specialists to determine if the sites meet all applicable construction-related accessibility standards, and the provision of specified certificates and reports regarding those inspections. Existing law regulates the hiring of real property.

This bill would require a commercial property owner to state on a lease form or rental agreement if the property being leased or rented has been inspected by a certified access specialist.

~~Under existing law, a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000. Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified.~~

~~This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. The bill would require that owner, agent, or other responsible party to respond within 30 days with a description of the improvements to be made or with a rebuttal to the allegations, as specified. If that~~

~~owner, agent, or other responsible party elects to fix the alleged violation, the bill would provide 90 days to do so. The bill would provide that its provisions do not apply to claims for recovery of special damages for an injury in fact, and would authorize the court to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury. The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ -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 read:*

2 55.3. (a) For purposes of this section, the following shall apply:

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

7 (2) ~~“Demand for money”~~ “Settlement demand” means a written
8 document *or oral statement* that is provided to a building owner
9 or tenant, or an agent or employee of a building owner or tenant,
10 that contains a request for money on the basis of one or more
11 construction-related accessibility claims, as defined in paragraph
12 (3), ~~whether or not the attorney intends to file where the attorney~~
13 *or party has filed* a complaint or eventually files a complaint in
14 state or federal court *on the basis of one or more*
15 *construction-related accessibility claims.*

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

1 (b) An attorney shall provide a written advisory with each
 2 ~~demand for money or~~ complaint *or settlement demand* sent to or
 3 served by him or her upon a defendant, in the form described in
 4 subdivision (c), and on a page or pages that are separate and clearly
 5 distinguishable from the ~~demand for money or~~ complaint *or*
 6 *settlement demand*, as follows:

7

8 IMPORTANT INFORMATION FOR BUILDING OWNERS
 9 AND TENANTS

10

11 This form is available in English, Spanish, Chinese, Vietnamese,
 12 and Korean through the Judicial Council of California. Persons
 13 with visual impairments can get assistance in viewing this form
 14 through the Judicial Council Internet Web site at
 15 ~~http://www.courtinfo.ca.gov~~ *www.courts.ca.gov*.

16 Existing law requires that you receive this information because
 17 the ~~demand for money or~~ complaint *or settlement demand* you
 18 received with this document claims that your building or property
 19 does not comply with one or more existing construction-related
 20 accessibility laws or regulations protecting the civil rights of
 21 persons with disabilities to access public places.

22 YOU HAVE IMPORTANT LEGAL OBLIGATIONS.
 23 Compliance with disability access laws is a serious and significant
 24 responsibility that applies to all California building owners and
 25 tenants with buildings open for business to the public. You may
 26 obtain information about your legal obligations and how to comply
 27 with disability access laws through the Division of the State
 28 Architect. ~~Commencing September 1, 2009, information will also~~
 29 ~~be available from the California Commission on Disability Access~~
 30 ~~Internet Web site. Information is also available from the California~~
 31 ~~Commission on Disability Access at *www.ccda.ca.gov/guide.htm*.~~

32 YOU HAVE IMPORTANT LEGAL RIGHTS. You are not
 33 required to pay any money unless and until a court finds you liable.
 34 Moreover, RECEIPT OF THIS ADVISORY DOES NOT
 35 NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR
 36 ANYTHING.

37 You may wish to promptly consult an attorney experienced in
 38 this area of the law to get helpful legal advice or representation in
 39 responding to the ~~demand for money or~~ complaint *or settlement*
 40 *demand* you received. You may contact the local bar association

1 in your county for information on available attorneys in your area.
2 If you have insurance, you may also wish to contact your insurance
3 provider. You have the right to seek assistance or advice about
4 this ~~demand for money or~~ complaint *or settlement demand* from
5 any person of your choice, and no one may instruct you otherwise.
6 Your best interest may be served by seeking legal advice or
7 representation from an attorney.

8 If a complaint has been filed and served on you and your property
9 has been inspected by a Certified Access Specialist (CASp; see
10 ~~w w w . d s a . d g s . c a . g o v / e a s p)~~
11 www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx, you may
12 have the right to a court stay (temporary stoppage) and early
13 evaluation conference to evaluate the merits of the
14 construction-related accessibility claim against you pursuant to
15 Civil Code Section 55.54. At your option, you may be, but need
16 not be, represented by an attorney to file a reply and to file an
17 application for a court stay and early evaluation conference. If you
18 choose not to hire an attorney to represent you, you may obtain
19 additional information about how to represent yourself and how
20 to file a reply without hiring an attorney through the Judicial
21 Council Internet Web site at ~~http://www.courtinfo.ca.gov/selfhelp/~~
22 www.courts.ca.gov/selfhelp-start.htm. You may also obtain a form
23 to file your reply to the lawsuit, as well as the form and information
24 for filing an application to request the court stay and early
25 evaluation conference at that same Web site.

26 If you choose to hire an attorney to represent you, the attorney
27 who sent you the ~~demand for money or~~ complaint *or settlement*
28 *demand* is prohibited from contacting you further unless your
29 attorney has given the other attorney permission to contact you.
30 If the other attorney does try to contact you, you should
31 immediately notify your attorney.

32
33 (c) On or before July 1, 2009, the Judicial Council shall adopt
34 a form that may be used by attorneys to comply with the
35 requirements of subdivision (b). The form shall be in substantially
36 the same format and include all of the text set forth in subdivision
37 (b). The form shall be available in English, Spanish, Chinese,
38 Vietnamese, and Korean, and shall include a statement that the
39 form is available in additional languages, and the Judicial Council
40 Internet Web site address where the different versions of the form

1 may be located. The form shall include Internet Web site
2 information for the Division of the State Architect and, ~~when~~
3 ~~operational~~, the California Commission on Disability Access.

4 (d) Subdivision (b) shall apply ~~only to a demand for money or~~
5 ~~complaint or settlement demand~~ made by an attorney. Nothing in
6 this section is intended to affect the right to file a civil complaint
7 under any other law or regulation protecting the physical access
8 rights of persons with disabilities. ~~Additionally, nothing in this~~
9 ~~section requires a party acting in propria persona to provide or~~
10 ~~send a demand for money to another party before proceeding~~
11 ~~against that party with a civil complaint.~~

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

15 *SEC. 2. Section 55.31 is added to the Civil Code, to read:*

16 55.31. (a) “Demand for money” means a written document
17 or oral statement that is provided or issued to a building owner
18 or tenant, or an agent or employee of a building owner or tenant,
19 that meets all of the following requirements:

20 (1) *Alleges one or more construction-related accessibility*
21 *violations as the basis of one or more construction-related*
22 *accessibility claims, as defined in paragraph (3) of subdivision*
23 *(a) of Section 55.3.*

24 (2) *Contains or makes a request for money, or states or implies*
25 *that the building owner or tenant is liable for damages or*
26 *attorney’s fees, or both, on the basis of one or more*
27 *construction-related accessibility violations.*

28 (3) *Is provided or issued without or prior to the filing of a*
29 *complaint in state or federal court on the basis of one or more*
30 *construction-related accessibility violations.*

31 (b) *An attorney or person shall not issue a demand for money*
32 *to a building owner or tenant, or an agent or employee of a*
33 *building owner or tenant, or receive any payment, settlement,*
34 *compensation or other remuneration pursuant to a demand for*
35 *money, as defined in subdivision (a).*

36 (c) *An attorney shall provide to a building owner or tenant, or*
37 *an agent or employee of a building owner or tenant, a document*
38 *that notifies the recipient of any alleged construction-related*
39 *accessibility violation that may be a basis for a damages claim at*
40 *least 30 days prior to filing any claim for damages based on an*

1 *alleged construction-related accessibility violation or violations.*
2 *Nothing in this document or any document accompanying the*
3 *document shall demand or request any money to settle or forgo a*
4 *claim or potential claim for damages based upon an alleged*
5 *violation or violations, or state or imply the building owner's or*
6 *tenant's liability for damages or attorney's fees, or both, on the*
7 *basis of the alleged construction-related accessibility violation or*
8 *violations identified in the notice. This requirement shall apply*
9 *whether the attorney intends to file in state or federal court. This*
10 *subdivision shall not apply in a case solely seeking injunctive*
11 *relief.*

12 *(d) A violation of subdivision (b) or (c) shall be cause for the*
13 *imposition of disciplinary action against an attorney.*

14 *SEC. 3. Section 1938 is added to the Civil Code, to read:*

15 *1938. A commercial property owner shall state on the lease*
16 *form or rental agreement if the property being leased or rented*
17 *"is CASp-Inspected" or "is not CASp-inspected." For the purpose*
18 *of this section, "CASp-inspected" is defined in paragraph (4) of*
19 *subdivision (a) of Section 55.52.*

20 *SEC. 4. It is the intent of the Legislature to do all of the*
21 *following:*

22 *(a) Examine the federal and state laws that provide persons*
23 *with disabilities the right to full and equal access to places of*
24 *public accommodation, and to address any conflict between those*
25 *laws in construction-related accessibility standards that may lead*
26 *to unnecessary litigation.*

27 *(b) Facilitate compliance by increased education regarding the*
28 *accessibility laws, including requiring the California Commission*
29 *on Disability Access to develop tools for use by businesses and*
30 *building inspectors, and to post those tools on its public Internet*
31 *Web site to facilitate greater compliance.*

32 *(c) Examine measures that would lead to greater compliance,*
33 *to the benefit of both business and the disability community through*
34 *reducing litigation and improving access for the disabled, without*
35 *discouraging early compliance efforts and without affecting the*
36 *right to sue for uncorrected and other violations. This effort shall*
37 *examine and address issues many small businesses face from*
38 *litigation and tactics pursued primarily for private gain under the*
39 *state and federal disability access laws, rather than to rectify a*
40 *disability access violation.*

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All matter omitted in this version of the bill appears in the bill as introduced in the Senate, February 22, 2012. (JR11)

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