

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN SENATE MAY 16, 2012

AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1186

**Introduced by Senators Steinberg and Dutton
(Coauthors: Senators Cannella and Gaines)**

February 22, 2012

An act to amend Section 55.3 of, and to add Sections 55.31 and 1938 to, the Civil Code, and to amend Section 8299.05 of the Government Code, relating to disability access: amend, repeal, and add Section 6106.2 of the Business and Professions Code, to amend Sections 55.3, 55.52, 55.53, 55.54, and 55.56 of, to add Sections 55.31, 55.545, and 1938 to, and to add, repeal, and add Section 55.32 of, the Civil Code, to add Section 425.50 to the Code of Civil Procedure, and to amend Sections 4459.8 and 8299.05 of, to add Chapter 7.5 (commencing with Section 4465) to Division 5 of Title 1 of, and to repeal and add Sections 8299.06, 8299.07, and 8299.08 of, the Government Code, relating to disability access, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, as amended, Steinberg. Disability access: liability: access.
(1) 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. A violation of this requirement may subject the attorney to disciplinary action.

This bill would, instead, require an attorney to provide a written advisory with each demand letter or complaint, as defined, sent to or served upon a defendant or potential defendant for any construction-related accessibility claim, as specified. The bill would require the Judicial Council to update the form that may be used by attorneys to comply with this requirement on or before July 1, 2013. The bill would require an allegation of a construction-related accessibility claim in a demand letter; or any allegation of noncompliance with a construction-related accessibility standard in a complaint, to state facts sufficient to allow the defendant to identify the basis for the claim. The bill would prohibit a demand letter from including a request or demand for money or an offer or agreement to accept money. The bill also would prohibit an attorney or other person from issuing a demand for money to a building owner or tenant, or an authorized agent or employee of a building owner or tenant, on the basis of one or more construction-related accessibility violations, as specified. The bill would require an attorney to include his or her State Bar license number in a demand letter; and to submit copies of the demand letter to the California Commission on Disability Access and, until January 1, 2016, to the State Bar. The bill also would require, until January 1, 2016, an attorney to submit a copy of a complaint to the commission. The bill would provide that a violation of these requirements may subject the attorney to disciplinary action.

This bill would require the commission to review and report on the demand letters and complaints it receives until January 1, 2016. The bill also would require the State Bar, commencing July 31, 2013, and annually each July 31 thereafter, to report specified information to the Legislature regarding the demand letters that it receives.

(2) Existing law provides, upon being served with a summons and complaint asserting a construction-related accessibility claim, a qualified defendant, as defined, may file a request for a court stay and early evaluation conference in the proceedings, as specified. Existing law requires the Judicial Council to prepare and post on its Internet Web site instructions and a form for a qualified defendant to use to file an application for stay and early evaluation conference pursuant to this provision.

This bill would permit other defendants to file a request for a court stay and early evaluation conference pursuant to this provision, including (A) a defendant, until January 1, 2018, whose site's new construction or improvement on or after January 1, 2008, and before

January 1, 2016, was approved pursuant to the local building permit and inspection process, (B) a defendant whose site's new construction or improvement was approved by a local public building department inspector who is a certified access specialist, and (C) a defendant who is a small business, as described. The bill would require the Judicial Council to modify the form that may be used by these additional defendants to apply for a court stay and early evaluation, as specified. The bill also would authorize a defendant who does not qualify for an early evaluation conference pursuant to these provisions, or who forgoes those provisions, to request a mandatory evaluation conference, as specified. The bill would authorize a plaintiff to make that request if the defendant does not make that request.

(3) Existing law provides statutory damages in a construction-related accessibility claim against a place of public accommodation if a violation of construction-related accessibility standards denied the plaintiff full and equal access to that site on a particular occasion. A plaintiff is denied full and equal access only if, on a particular occasion, the plaintiff personally encountered the violation or was deterred from accessing the site. These statutory damages are in the amount of actual damages and any additional amount determined by a jury or the court up to a maximum of 3 times the amount of actual damages but not less than \$4,000, or, for certain violations, \$1,000.

This bill would require the court, in assessing liability in any action alleging multiple claims for the same construction-related accessibility violation on different particular occasions, to consider the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation, if any, to mitigate damages. The bill would reduce a defendant's minimum liability for statutory damages in a construction-related accessibility claim against a place of public accommodation to \$1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 60 days of being served with the complaint and other specified conditions apply, and would reduce that minimum liability to \$2,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 30 days of being served with the complaint and the defendant is a small business, as specified. The bill would require the Department of General Services to make a biannual adjustment to financial criteria defining a small business for these purposes, and to post those adjusted amounts on its Internet Web site.

(4) 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 executed on or after July 1, 2013, if the property being leased or rented has undergone inspection by a certified access specialist.

(5) 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 Division of the State Architect with responsibilities relating to architectural services, state buildings, and disability access. Existing law requires the State Architect to establish a certified access specialist program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. Existing law authorizes the State Architect to require applicants for certification and renewal of certification under the certified access specialist program to pay specified fees, including an application fee, a course fee, and an examination fee, at a level sufficient to meet the costs of administering the program, for deposit into the Certified Access Specialist Fund.

In administering the certified access specialist program, this bill would require the State Architect to periodically review its schedule of fees for certification under the program to ensure that the fees are not excessive. The bill would prohibit the State Architect from charging a California licensed architect, landscape architect, civil engineer, or structural engineer, an application fee for certification that exceeds \$250.

This bill would impose, on and after January 1, 2013, and until December 31, 2018, an additional state fee of \$1 on any applicant for a local business license or similar instrument or permit, or renewal thereof, for purposes of increasing disability access and compliance with construction-related accessibility requirements and developing educational resources for businesses to facilitate compliance with

federal and state disability laws, as specified. The bill would divide those moneys for the state between the local entity that collected the moneys and the Division of the State Architect, pursuant to specified percentages. The bill would create a continuously appropriated fund, the Disability Access and Education Revolving Fund, for the deposit of funds to be transferred to the Division of the State Architect, thereby making an appropriation. This bill would make an appropriation by authorizing local government entities to retain 70% of the fees imposed.

By adding to the duties of a local entity, this bill would impose a state-mandated local program.

(6) Existing law establishes the California Commission on Disability Access for purposes of developing recommendations to enable persons with disabilities to exercise their right to full and equal access to public facilities and facilitating business compliance with the laws and regulations to avoid unnecessary litigation. Existing law sets forth the powers and duties of the commission, as specified. Existing law requires the commission to study and make reports to the Legislature regarding disability access laws and compliance, as specified. Existing law requires the commission to act as an information center on the status of compliance with disability access laws, to publish a biennial report, and to coordinate with other state agencies and local building departments to ensure the uniformity of information provided to the public on disability access.

This bill would revise and recast those duties and powers, as specified, and eliminate the biennial reporting requirement. The bill would instead provide that a priority of the commission shall be the development and dissemination of educational materials and information to promote and facilitate disability access compliance, including a requirement that the commission work with the Division of the State Architect and the Department of Rehabilitation to develop educational materials for use by businesses. The bill would require the commission to post specified information on its Internet Web site, including, but not limited to, educational materials and information that will assist business owners. The bill would require the commission to report to the Legislature on its implementation by a specified date. The bill would require the commission to compile data with respect to any demand letter or complaint sent to the commission and post that information on its Internet Web site.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

~~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 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.~~

~~Existing law establishes the California Commission on Disability Access to develop recommendations that will enable persons with disabilities to exercise their right to full and equal access to public facilities, and that will facilitate business compliance with disability access laws and regulations to avoid unnecessary litigation. Existing law requires the commission to study specified disability access issues, and to make reports on those issues to the Legislature.~~

~~This bill would provide that the functions and responsibilities of the commission include the concurrent and prospective review of legislative measures, including this measure, and recommendations on any additional ideas or options to promote disability access and reduce unnecessary litigation.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~^{yes}. Fiscal committee: ~~no~~^{yes}. State-mandated local program: ~~no~~^{yes}.

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

1 *SECTION 1. Section 6106.2 of the Business and Professions*
2 *Code is amended to read:*

3 6106.2. (a) It shall constitute cause for the imposition of
4 discipline of an attorney within the meaning of this chapter for an
5 attorney to engage in any conduct in violation of Section 55.3,
6 subdivision (b) or (c) of Section 55.31, or paragraph (3) of
7 subdivision (a) or subdivision (b) of Section 55.32 of the Civil
8 Code, or paragraph (2) of subdivision (a) of Section 55.32 of the
9 Civil Code as provided in subdivision (c) of that section.

10 (b) This section shall remain in effect only until January 1, 2016,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2016, deletes or extends that date.

13 *SEC. 2. Section 6106.2 is added to the Business and Professions*
14 *Code, to read:*

15 6106.2. (a) It shall constitute cause for the imposition of
16 discipline of an attorney within the meaning of this chapter for an
17 attorney to engage in any conduct in violation of Section 55.3,
18 subdivision (b) or (c) of Section 55.31, or paragraph (2) of
19 subdivision (a) of Section 55.32 of the Civil Code.

20 (b) This section shall become operative on January 1, 2016.

1 *SEC. 3. 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” means a written document that is
8 provided to a building owner or tenant, or an agent or employee
9 of a building owner or tenant, that contains a request for money
10 on the basis of one or more construction-related accessibility
11 claims, as defined in paragraph (3), whether or not the attorney
12 intends to file a complaint or eventually files a complaint in state
13 or federal court.~~

14 ~~(3)~~

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

25 (3) “Demand for money” means a prelitigation written
26 document or oral statement that is provided or issued to a building
27 owner or tenant, or the owner’s or tenant’s authorized agent or
28 employee, that does all of the following:

29 (A) Alleges that the site is in violation of one or more
30 construction-related accessibility standards, as defined in
31 paragraph (6) of subdivision (a) of Section 55.52, or alleges one
32 or more construction-related accessibility claims, as defined in
33 paragraph (2), against the recipient of the demand.

34 (B) Contains or makes a request or demand for money or an
35 offer or agreement to accept money.

36 (C) Is provided or issued whether or not the attorney intends
37 to file a complaint, or eventually files a complaint, in state or
38 federal court.

39 (4) “Demand letter” means a written document that is provided
40 to a building owner or tenant, or the owner’s or tenant’s authorized

1 agent or employee, that alleges the site is in violation of one or
 2 more construction-related accessibility standards, as defined in
 3 paragraph (6) of subdivision (a) of Section 55.52, or alleges one
 4 or more construction-related accessibility claims, as defined in
 5 paragraph (2), and is provided whether or not the attorney intends
 6 to file a complaint, or eventually files a complaint, in state or
 7 federal court.

8 (b) An attorney shall provide a written advisory on the form
 9 described in subdivision (c), or, until that form is available, on a
 10 separate page or pages that are clearly distinguishable from the
 11 demand letter or complaint, with each demand for money letter
 12 or complaint sent to or served by him or her upon a defendant, in
 13 the form described in subdivision (c), and on a page or pages that
 14 are separate and clearly distinguishable from the demand for money
 15 or complaint, upon a defendant or potential defendant. The
 16 advisory shall not be required in responsive communications
 17 following the initial demand letter unless a new
 18 construction-related accessibility claim is asserted. The advisory
 19 shall state as follows:

20

21 **STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT**
 22 **ADVISORY INFORMATION FOR BUILDING OWNERS AND**
 23 **TENANTS**

24

25 This ~~form~~ information is available in English, Spanish, Chinese,
 26 Vietnamese, and Korean through the Judicial Council of California.
 27 Persons with visual impairments can get assistance in viewing this
 28 form through the Judicial Council Internet Web site at
 29 <http://www.courtinfo.ca.gov> www.courts.ca.gov.

30

Existing

31 California law requires that you receive this information because
 32 the demand for money or letter or court complaint you received
 33 with this document claims that your building or property does not
 34 comply with one or more existing construction-related accessibility
 35 laws or regulations protecting the civil rights of persons with
 36 disabilities to access public places.

37

YOU HAVE IMPORTANT LEGAL OBLIGATIONS.

38 Compliance with disability access laws is a serious and significant
 39 responsibility that applies to all California building owners and
 40 tenants with buildings open for business to the public. You may

1 obtain information about your legal obligations and how to comply
2 with disability access laws through the Division of the State
3 Architect. Commencing September 1, 2009, information will also
4 be at www.dgs.ca.gov. Information is also available from the
5 California Commission on Disability Access Internet Web site at
6 www.cdda.ca.gov/guide.htm.

7 **YOU HAVE IMPORTANT LEGAL RIGHTS.** ~~You are not~~ *The*
8 *allegations made in the accompanying demand letter or court*
9 *complaint do not mean that you are required to pay any money*
10 *unless and until a court finds you liable. Moreover, RECEIPT OF*
11 *A DEMAND LETTER OR COURT COMPLAINT AND THIS*
12 *ADVISORY DOES NOT NECESSARILY MEAN YOU WILL*
13 *BE FOUND LIABLE FOR ANYTHING. You will have the right*
14 *if you are later sued to fully present your explanation why you*
15 *believe you have not in fact violated disability access laws or have*
16 *corrected the violation or violations giving rise to the claim.*

17 ~~You may wish to promptly consult an attorney experienced in~~
18 ~~this area of the law to get helpful legal advice or representation in~~
19 ~~responding to the demand for money or complaint you received.~~
20 ~~You may contact the local bar association in your county for~~
21 ~~information on available attorneys in your area. If you have~~
22 ~~insurance, you may also wish to contact your insurance provider.~~
23 ~~You have the right to seek assistance or advice about this demand~~
24 ~~for money or letter or court complaint from any person of your~~
25 ~~choice, and no one may instruct you otherwise. If you have~~
26 ~~insurance, you may also wish to contact your insurance provider.~~
27 *Your best interest may be served by seeking legal advice or*
28 *representation from an attorney, but you may also represent*
29 *yourself and file the necessary court papers to protect your*
30 *interests if you are served with a court complaint. If you choose*
31 *to hire an attorney to represent you, the attorney who sent you the*
32 *demand letter or complaint is prohibited from contacting you*
33 *further unless your attorney has given the other attorney*
34 *permission to contact you. If the other attorney does try to contact*
35 *you, you should immediately notify your attorney.*

36 ~~If a complaint has been filed and served on you and your property~~
37 ~~has been inspected by a Certified Access Specialist (CASp; see~~
38 ~~www.dsa.dgs.ca.gov/casp), you may have the right to a court stay~~
39 ~~(temporary stoppage) and early evaluation conference to evaluate~~
40 ~~the merits of the construction-related accessibility claim against~~

1 you pursuant to Civil Code Section 55.54. At your option, you
2 may be, but need not be, represented by an attorney to file a reply
3 and to file an application for a court stay and early evaluation
4 conference. If you choose not to hire an attorney to represent you,
5 you may obtain additional information about how to represent
6 yourself and how to file a reply without hiring an attorney through
7 the Judicial Council Internet Web site at
8 <http://www.courtinfo.ca.gov/selfhelp/>. You may also obtain a form
9 to file your reply to the lawsuit, as well as the form and information
10 for filing an application to request the court stay and early
11 evaluation conference at that same Web site.

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

17 *If a court complaint has been filed and served on you, you will
18 get a separate advisory notice with the complaint advising you of
19 special options and procedures available to you if your property
20 has been inspected by a Certified Access Specialist (an individual
21 with specialized expertise to assist in compliance with disability
22 access laws, known as a CASp; see
23 www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx). In
24 addition, you may also be entitled to a court stay and early
25 evaluation conference if your business is a small business that
26 meets specified financial criteria and employs 25 or fewer
27 employees on average over a certain time period and you did not
28 make any modification or alteration that created the condition
29 constituting the violation, or, alternatively, if the site's new
30 construction or improvement was approved pursuant to the local
31 building permit and inspection process on or after January 1,
32 2008, and before January 1, 2016, and to the best of your
33 knowledge there have been no modifications or alterations that
34 impacted compliance with construction-related accessibility
35 standards with respect to the plaintiff's claim.*

36 **ADDITIONAL THINGS YOU SHOULD KNOW:** *If the document
37 accompanying this notice is a demand letter from a lawyer and
38 not a formal court complaint, the lawyer is required by law to also
39 provide a copy of it to the State Bar of California in order that the
40 State Bar may determine whether the demand letter complies with*

1 *legal requirements, INCLUDING THAT THE DEMAND LETTER*
2 *MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY OR*
3 *AN OFFER OR AGREEMENT TO ACCEPT MONEY. Any demand*
4 *letter or court complaint must list the lawyer's State Bar license*
5 *number on the document.*

6 *You are encouraged, but are not required, to provide the State*
7 *Bar with a copy of the demand letter so the State Bar is aware that*
8 *you received this demand letter and may determine whether it is*
9 *in compliance with specified legal requirements. A copy of the*
10 *letter can be sent to the State Bar by facsimile transmission to*
11 *1-415-538-2171, or by mail to the State Bar of California, 180*
12 *Howard Street, San Francisco, CA, 94105, Attention: Professional*
13 *Competence.*

14
15 (c) On or before July 1, ~~2009~~ 2013, the Judicial Council shall
16 ~~adopt a~~ *update the* form that may be used by attorneys to comply
17 with the requirements of subdivision (b). The form shall be in
18 substantially the same format and include all of the text set forth
19 in subdivision (b). The form shall be available in English, Spanish,
20 Chinese, Vietnamese, and Korean, and shall include a statement
21 that the form is available in additional languages, and the Judicial
22 Council Internet Web site address where the different versions of
23 the form may be located. The form shall include Internet Web site
24 information for the Division of the State Architect and, ~~when~~
25 ~~operational~~, the California Commission on Disability Access.

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

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

37 *SEC. 4. Section 55.31 is added to the Civil Code, to read:*

38 *55.31. (a) An allegation of a construction-related accessibility*
39 *claim in a demand letter, as defined in subdivision (a) of Section*
40 *55.3, shall state facts sufficient to allow the defendant to identify*

1 *the basis for the violation or violations supporting the claim,*
2 *including all of the following:*

3 *(1) An explanation of the specific access barrier or barriers the*
4 *individual encountered, or by which the individual alleges he or*
5 *she was deterred, with sufficient information about the location*
6 *of the barrier to reasonably enable the defendant to identify the*
7 *access barrier.*

8 *(2) The manner in which the barrier was encountered, or in*
9 *which it deterred the individual.*

10 *(3) The date or dates on which the individual encountered the*
11 *specific access barrier, or on which he or she was deterred.*

12 *(b) A demand letter may offer prelitigation settlement*
13 *negotiations, but shall not include a request or demand for money*
14 *or an offer or agreement to accept money.*

15 *(1) With respect to potential monetary damages for an alleged*
16 *construction-related accessibility claim or claims, a demand letter*
17 *shall not state any specific potential monetary liability for any*
18 *asserted claim or claims, and may only state: “The property owner*
19 *or tenant, or both, may be civilly liable for actual and statutory*
20 *damages for a violation of a construction-related accessibility*
21 *requirement.”*

22 *(2) A demand letter meeting the requirements of this section*
23 *shall be deemed to satisfy the requirements for prelitigation notice*
24 *of a potential claim when prelitigation notice is required by statute*
25 *or common law for an award of attorney’s fees.*

26 *(3) This subdivision and subdivision (a) do not apply to a*
27 *demand for money, which is governed by subdivision (c).*

28 *(c) An attorney or person shall not issue a demand for money*
29 *as defined in subdivision (a) of Section 55.3. This subdivision does*
30 *not apply to a demand letter as defined in subdivision (a) of Section*
31 *55.3.*

32 *(d) A violation of subdivision (b) or (c) constitutes cause for the*
33 *imposition of discipline of an attorney. Subdivisions (b) and (c)*
34 *do not prohibit an attorney from presenting a settlement figure or*
35 *specification of damages in response to a request from the building*
36 *owner or tenant, or the owner’s or tenant’s authorized agent or*
37 *employee, following a demand letter provided pursuant to Section*
38 *55.3.*

39 *(e) Subdivision (c) does not prohibit any prelitigation settlement*
40 *discussion of liability for damages and attorney’s fees that occurs*

1 *after a written or oral agreement is reached between the parties*
2 *for the repair or correction of the alleged violation or violations*
3 *of a construction-related accessibility standard.*

4 *(f) Subdivision (c) shall not apply to a claim involving physical*
5 *injury and resulting special damages, but a demand for money*
6 *relating to that claim that is sent shall otherwise comply with the*
7 *requirements of subdivision (a) and Section 55.32.*

8 *(g) Nothing in this section shall apply to a demand or statement*
9 *of alleged damages made in a prelitigation claim presented to a*
10 *governmental entity as required by state or federal law, including,*
11 *but not limited to, claims made under Part 3 (commencing with*
12 *Section 900) of Division 3.6 of the Government Code.*

13 *(h) If subdivision (c) is not operative or becomes inoperative*
14 *for any reason, the requirements of subdivision (a) and Section*
15 *55.32 shall apply to any written demand for money.*

16 *SEC. 5. Section 55.32 is added to the Civil Code, to read:*

17 *55.32. (a) An attorney who provides a demand letter, as*
18 *defined in subdivision (a) of Section 55.3, shall do all of the*
19 *following:*

20 *(1) Include the attorney's State Bar license number in the*
21 *demand letter.*

22 *(2) Contemporaneously with providing the demand letter, send*
23 *a copy of the demand letter to the State Bar of California by*
24 *facsimile transmission at 1-415-538-2171, or by mail to 180*
25 *Howard Street, San Francisco, CA, 94105, Attention: Professional*
26 *Competence.*

27 *(3) Within five business days of providing the demand letter,*
28 *send a copy of the demand letter to the California Commission on*
29 *Disability Access.*

30 *(b) An attorney who sends or serves a complaint, as defined in*
31 *subdivision (a) of Section 55.3, shall send a copy of the complaint*
32 *to the California Commission on Disability Access within five*
33 *business days of sending or serving the complaint.*

34 *(c) A violation of paragraph (2) or (3) of subdivision (a) or*
35 *subdivision (b) shall constitute cause for the imposition of*
36 *discipline of an attorney where a copy of the complaint or demand*
37 *letter is not sent to the California Commission on Disability Access*
38 *within five business days, or a copy of the demand letter is not sent*
39 *to the State Bar within five business days. In the event the State*
40 *Bar receives information indicating that an attorney has failed to*

1 *send a copy of the complaint or demand letter to the California*
2 *Commission on Disability Access within five business days, the*
3 *State Bar shall investigate to determine whether paragraph (3) of*
4 *subdivision (a) or subdivision (b) has been violated.*

5 *(d) A demand letter or complaint sent to the California*
6 *Commission on Disability Access shall be for the informational*
7 *purposes of Section 8299.08 of the Government Code. A demand*
8 *letter received by the State Bar from either the sender or recipient*
9 *of the demand letter shall be reviewed by the State Bar to determine*
10 *whether subdivision (b) or (c) of Section 55.31 has been violated.*

11 *(e) (1) Commencing July 31, 2013, and annually each July 31*
12 *thereafter, the State Bar shall report to the Legislature and the*
13 *Chairs of the Senate and Assembly Committees on Judiciary, both*
14 *of the following with respect to demand letters received by the*
15 *State Bar:*

16 *(A) The number of investigations opened to date on a suspected*
17 *violation of subdivision (b) or (c) of Section 55.31.*

18 *(B) Whether any disciplinary action resulted from the*
19 *investigation, and the results of that disciplinary action.*

20 *(2) A report to be submitted pursuant to this subdivision shall*
21 *be submitted in compliance with Section 9795 of the Government*
22 *Code.*

23 *(f) The California Commission on Disability Access shall review*
24 *and report on the demand letters and complaints it receives as*
25 *provided in Section 8299.08 of the Government Code.*

26 *(g) This section shall remain in effect only until January 1, 2016,*
27 *and as of that date is repealed, unless a later enacted statute, that*
28 *is enacted before January 1, 2016, deletes or extends that date.*

29 *SEC. 6. Section 55.32 is added to the Civil Code, to read:*

30 *55.32. (a) An attorney who provides a demand letter, as*
31 *defined in subdivision (a) of Section 55.3, shall do all of the*
32 *following:*

33 *(1) Include the attorney's State Bar license number in the*
34 *demand letter.*

35 *(2) Within five business days of providing the demand letter,*
36 *send a copy of the demand letter to the California Commission on*
37 *Disability Access.*

38 *(b) A violation of paragraph (2) of subdivision (a) shall*
39 *constitute cause for the imposition of discipline of an attorney if*
40 *a copy of the demand letter is not sent to the California*

1 *Commission on Disability Access within five business days. In the*
2 *event the State Bar receives information indicating that an attorney*
3 *has failed to send a copy of the demand letter to the California*
4 *Commission on Disability Access within five business days, the*
5 *State Bar shall investigate to determine whether paragraph (2) of*
6 *subdivision (a) has been violated.*

7 *(c) A demand letter sent to the California Commission on*
8 *Disability Access shall be for the informational purposes of Section*
9 *8299.08 of the Government Code. A demand letter received by the*
10 *State Bar from the recipient of the demand letter shall be reviewed*
11 *by the State Bar to determine whether subdivision (b) or (c) of*
12 *Section 55.31 has been violated.*

13 *(d) (1) Notwithstanding Section 10231.5 of the Government*
14 *Code, on or before July 31, 2016, and annually thereafter, the*
15 *State Bar shall report to the Legislature and the Chairs of the*
16 *Senate and Assembly Judiciary Committees, both of the following*
17 *with respect to demand letters received by the State Bar:*

18 *(A) The number of investigations opened to date on a suspected*
19 *violation of subdivision (b) or (c) of Section 55.31.*

20 *(B) Whether any disciplinary action resulted from the*
21 *investigation, and the results of that disciplinary action.*

22 *(2) A report to be submitted pursuant to this subdivision shall*
23 *be submitted in compliance with Section 9795 of the Government*
24 *Code.*

25 *(e) Any conduct prior to January 1, 2016, that constituted cause*
26 *for imposition of discipline of an attorney under a former version*
27 *of this section shall continue to constitute cause for the imposition*
28 *of discipline of an attorney on and after that date.*

29 *(f) This section shall become operative on January 1, 2016.*

30 *SEC. 7. Section 55.52 of the Civil Code is amended to read:*

31 *55.52. (a) For purposes of this part, the following definitions*
32 *apply:*

33 *(1) "Construction-related accessibility claim" means any civil*
34 *claim in a civil action with respect to a place of public*
35 *accommodation, including, but not limited to, a claim brought*
36 *under Section 51, 54, 54.1, or 55, based wholly or in part on an*
37 *alleged violation of any construction-related accessibility standard,*
38 *as defined in paragraph (6).*

1 (2) “Application for stay and early evaluation conference” means
2 an application to be filed with the court that meets the requirements
3 of subdivision (c) of Section 55.54.

4 (3) “Certified access specialist” or “CASp” means any person
5 who has been certified pursuant to Section 4459.5 of the
6 Government Code.

7 ~~“(CASp inspected)”~~ “*Meets applicable standards*” means
8 the site was inspected by a CASp and determined to meet all
9 applicable construction-related accessibility standards pursuant to
10 paragraph (1) of subdivision (a) of Section 55.53. *A site that is*
11 *“(CASp inspected)” on or before the effective date of the*
12 *amendments made to this section by Senate Bill 1186 of the*
13 *2011–12 Regular Session of the Legislature means that the site*
14 *“meets applicable standards.”*

15 ~~“(CASp determination pending)”~~ “*Inspected by a CASp*”
16 means the site was inspected by a CASp and is pending a
17 determination by the CASp that the site meets applicable
18 construction-related accessibility standards pursuant to paragraph
19 (2) of subdivision (a) of Section 55.53. *A site that is “CASp*
20 *determination pending” on or before the effective date of the*
21 *amendments made to this section by Senate Bill 1186 of the*
22 *2011–12 Regular Session of the Legislature means that the site*
23 *was “inspected by a CASp.”*

24 (6) “Construction-related accessibility standard” means a
25 provision, standard, or regulation under state or federal law
26 requiring compliance with standards for making new construction
27 and existing facilities accessible to persons with disabilities,
28 including, but not limited to, any ~~such~~ provision, standard, or
29 regulation set forth in Section 51, 54, 54.1, or 55 of this code,
30 Section 19955.5 of the Health and Safety Code, the California
31 Building Standards Code (Title 24 of the California Code of
32 Regulations), the *federal* Americans with Disabilities Act of 1990
33 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the
34 *federal* Americans with Disabilities Act Accessibility Guidelines
35 (Appendix A to Part 36; of Title 28; of the Code of Federal
36 Regulations).

37 (7) “Place of public accommodation” has the same meaning as
38 “public accommodation,” as set forth in Section 12181(7) of Title
39 42 of the United States Code and the federal regulations adopted
40 pursuant to that section.

1 (8) “Qualified defendant” means a defendant in an action that
 2 includes a construction-related accessibility claim that is asserted
 3 against a place of public accommodation that met the requirements
 4 of ~~“CASp-inspected” or “CASp determination pending”~~ “*meets*
 5 *applicable standards*” or “*inspected by a CASp*” prior to the date
 6 the defendant was served with the summons and complaint in that
 7 action. To be a qualified defendant, the defendant is not required
 8 to have been the party who hired any CASp, so long as the basis
 9 of the alleged liability of the defendant is a construction-related
 10 accessibility claim. To determine whether a defendant is a qualified
 11 defendant, the court need not make a finding that the place of
 12 public accommodation complies with all applicable
 13 construction-related accessibility standards as a matter of law. The
 14 court need only determine that the place of public accommodation
 15 has a status of ~~“CASp-inspected” or “CASp determination~~
 16 ~~pending.”~~ “*meets applicable standards*” or “*inspected by a CASp.*”

17 (9) “Site” means a place of public accommodation.

18 (b) Unless otherwise indicated, terms used in this part relating
 19 to civil procedure have the same meanings that those terms have
 20 in the Code of Civil Procedure.

21 *SEC. 8. Section 55.53 of the Civil Code is amended to read:*

22 55.53. (a) For purposes of this part, a certified access specialist
 23 shall, upon completion of the inspection of a site, comply with the
 24 following:

25 (1) For a ~~CASp-inspected~~ *meets applicable standards* site, if
 26 the CASp determines the site meets all applicable
 27 construction-related accessibility standards, the CASp shall provide
 28 a written inspection report to the requesting party that includes
 29 both of the following:

30 (A) An identification and description of the inspected structures
 31 and areas of the site.

32 (B) A signed and dated statement of compliance that includes
 33 both of the following:

34 (i) A statement that, in the opinion of the CASp, the inspected
 35 structures and areas of the site meet construction-related
 36 accessibility standards. The statement shall clearly indicate whether
 37 the determination of the CASp includes an assessment of readily
 38 achievable barrier removal.

39 (ii) If corrections were made as a result of the CASp inspection,
 40 an itemized list of all corrections and dates of completion.

1 (2) For a CASp determination pending an inspection by a CASp
2 site, if the CASp determines that corrections are needed to the site
3 in order for the site to meet all applicable construction-related
4 accessibility standards, the CASp shall provide a signed and dated
5 written inspection report to the requesting party that includes all
6 of the following:

7 (A) An identification and description of the inspected structures
8 and areas of the site.

9 (B) A statement that, in the opinion of the CASp, the inspected
10 structures and areas of the site need correction to meet
11 construction-related accessibility standards. This statement shall
12 clearly indicate whether the determination of the CASp includes
13 an assessment of readily achievable barrier removal.

14 (C) An identification and description of the structures or areas
15 of the site that need correction and the correction needed.

16 (D) A schedule of completion for each of the corrections within
17 a reasonable timeframe.

18 (b) For purposes of this section, in determining whether the site
19 meets applicable construction-related accessibility standards when
20 there is a conflict or difference between a state and federal
21 provision, standard, or regulation, the state provision, standard, or
22 regulation shall apply unless the federal provision, standard, or
23 regulation is more protective of accessibility rights.

24 (c) Every CASp who conducts an inspection of a place of public
25 accommodation shall, upon completing the inspection of the site,
26 provide the building owner or tenant who requested the inspection
27 with the following notice, which the State Architect shall make
28 available as a form on the State Architect's Internet Web site:

29

30 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

31

32 YOU ARE ADVISED TO KEEP IN YOUR RECORDS ANY
33 WRITTEN INSPECTION REPORT AND ANY OTHER
34 DOCUMENTATION CONCERNING YOUR PROPERTY SITE
35 THAT IS GIVEN TO YOU BY A CERTIFIED ACCESS
36 SPECIALIST.

37 IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT
38 INCLUDES A CLAIM CONCERNING A SITE INSPECTED
39 BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE
40 ENTITLED TO A ~~STAY (TEMPORARY STOPPAGE)~~ COURT

1 *STAY (AN ORDER TEMPORARILY STOPPING ANY LAWSUIT)*
2 OF THE CLAIM AND AN EARLY EVALUATION
3 CONFERENCE.

4 IN ORDER TO REQUEST THE STAY AND EARLY
5 EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY
6 THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED
7 THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU
8 WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND
9 THE PLAINTIFF WITH THE COPY OF A WRITTEN
10 INSPECTION REPORT BY THE CERTIFIED ACCESS
11 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION
12 55.54. THE APPLICATION FORM AND INFORMATION ON
13 HOW TO REQUEST A STAY AND EARLY EVALUATION
14 CONFERENCE MAY BE OBTAINED AT
15 [http://www.courtinfo.ca.gov/selfhelp/
16 www.courts.ca.gov/selfhelp-start.htm](http://www.courtinfo.ca.gov/selfhelp/www.courts.ca.gov/selfhelp-start.htm).

17 YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED
18 ACCESS SPECIALIST WHO HAS CONDUCTED AN
19 INSPECTION OF YOUR PROPERTY, A WRITTEN
20 INSPECTION REPORT AND OTHER DOCUMENTATION AS
21 SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO
22 ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY
23 ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY
24 POST ON YOUR PROPERTY.

25 (d) (1) Commencing July 1, 2010, a local agency shall employ
26 or retain at least one building inspector who is a certified access
27 specialist. The certified access specialist shall provide consultation
28 to the local agency, permit applicants, and members of the public
29 on compliance with state construction-related accessibility
30 standards with respect to inspections of a place of public
31 accommodation that relate to permitting, plan checks, or new
32 construction, including, but not limited to, inspections relating to
33 tenant improvements that may impact access. If a local agency
34 employs or retains two or more certified access specialists to
35 comply with this subdivision, at least one-half of the certified
36 access specialists shall be building inspectors who are certified
37 access specialists.

38 (2) Commencing January 1, 2014, a local agency shall employ
39 or retain a sufficient number of building inspectors who are
40 certified access specialists to conduct permitting and plan check

1 services to review for compliance with state construction-related
2 accessibility standards by a place of public accommodation with
3 respect to new construction, including, but not limited to, projects
4 relating to tenant improvements that may impact access. If a local
5 agency employs or retains two or more certified access specialists
6 to comply with this subdivision, at least one-half of the certified
7 access specialists shall be building inspectors who are certified
8 access specialists.

9 (3) If a permit applicant or member of the public requests
10 consultation from a certified access specialist, the local agency
11 may charge an amount limited to a reasonable hourly rate, an
12 estimate of which shall be provided upon request in advance of
13 the consultation. A local government may additionally charge or
14 increase permitting, plan check, or inspection fees to the extent
15 necessary to offset the costs of complying with this subdivision.
16 Any revenues generated from an hourly or other charge or fee
17 increase under this subdivision shall be used solely to offset the
18 costs incurred to comply with this subdivision. A CASp inspection
19 pursuant to subdivision (a) by a building inspector who is a
20 certified access specialist shall be treated equally for legal and
21 evidentiary purposes as an inspection conducted by a private CASp.
22 Nothing in this subdivision shall preclude permit applicants or any
23 other person with a legal interest in the property from retaining a
24 private CASp at any time.

25 (e) (1) Every CASp who completes an inspection of a place of
26 public accommodation shall, upon a determination that the site
27 ~~either meets applicable construction-related accessibility~~ *meets*
28 *applicable* standards pursuant to paragraph (1) of subdivision (a)
29 or is ~~“CASp determination pending”~~ *inspected by a CASp* pursuant
30 to paragraph (2) of subdivision (a), provide the building owner or
31 tenant requesting the inspection with a numbered disability access
32 inspection certificate indicating that the site ~~has been inspected~~
33 *undergone inspection* by a certified access specialist. The disability
34 access inspection certificate shall be dated and signed by the CASp
35 inspector, and shall contain the inspector’s name and license
36 number. Upon issuance of a certificate, the CASp shall record the
37 issuance of the numbered certificate, the name and address of the
38 recipient, and the type of report issued pursuant to subdivision (a)
39 in a record book the CASp shall maintain for that purpose.

1 (2) Beginning March 1, 2009, the State Architect shall make
2 available for purchase by any local building department or CASp
3 sequentially numbered disability access inspection certificates that
4 are printed with a watermark or other feature to deter forgery and
5 that comply with the information requirements specified in
6 subdivision (a). ~~The certificate shall be in substantially the~~
7 ~~following form:~~

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

1 (3) The disability access inspection certificate may be posted
 2 on the premises of the place of public accommodation, unless,
 3 following the date of inspection, the inspected site has been
 4 modified or construction has commenced to modify the inspected
 5 site in a way that may impact compliance with construction-related
 6 accessibility standards.

7 (f) Nothing in this section or any other ~~provision~~ of law is
 8 intended to require a property owner or tenant to hire a CASp. A
 9 property owner’s or tenant’s election not to hire a CASp shall not
 10 be admissible to prove that person’s lack of intent to comply with
 11 the law.

12 *SEC. 9. Section 55.54 of the Civil Code is amended to read:*

13 55.54. (a) (1) An attorney who causes a summons and
 14 complaint to be served in an action 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, shall, at the
 17 same time, cause to be served a copy of the application form
 18 specified in subdivision (c) and a copy of the following notice to
 19 the defendant on separate papers that shall be served with the
 20 summons and complaint:

21
 22 *ADVISORY NOTICE TO DEFENDANT*

23
 24 *YOU MAY BE ENTITLED TO ASK FOR A ~~STAY~~*
 25 *(~~TEMPORARY STOPPAGE~~) COURT STAY (AN ORDER*
 26 *TEMPORARILY STOPPING ANY LAWSUIT) AND EARLY*
 27 *EVALUATION CONFERENCE IN THIS LAWSUIT AND*
 28 *MAY BE ASSESSED REDUCED STATUTORY DAMAGES*
 29 *IF YOU MEET CERTAIN CONDITIONS.*

30 If the construction-related accessibility claim pertains to a
 31 site that has ~~been inspected by~~ a Certified Access Specialist
 32 (CASp) ~~and you have an~~ inspection report for that site, *or for*
 33 *claims filed until January 1, 2018, if the new construction or*
 34 *improvement after January 1, 2008, and before January 1,*
 35 *2016, was approved by the local building permit and*
 36 *inspection process, you may make an immediate request for*
 37 *a court stay and early evaluation conference in the*
 38 *construction-related accessibility claim by filing the attached*
 39 *application form with the court. You may be entitled to the*
 40 *court stay and early evaluation conference regarding the*

1 accessibility claim only if ALL of the statements in the
2 application form are true.

3 *FURTHER, if you are a defendant described above (with a*
4 *CASp inspection report or with new construction after January*
5 *1, 2008), and, to the best of your knowledge, there have been*
6 *no modifications or alterations completed or commenced since*
7 *the CASp report or building department approval of the new*
8 *construction that impacted compliance with*
9 *construction-related accessibility standards with respect to*
10 *the plaintiff's claim, your liability for minimum statutory*
11 *damages may be reduced to \$1,000 for each claim if all*
12 *construction-related accessibility violations giving rise to the*
13 *claim are corrected within 60 days of being served with this*
14 *complaint.*

15 *IN ADDITION, if your business is a small business that,*
16 *over the previous three years, or the existence of the business*
17 *if less than three years, employs 25 or fewer employees on*
18 *average over that time period and meets specified financial*
19 *criteria, you may also be entitled to the court stay and early*
20 *evaluation conference and your minimum statutory damages*
21 *for each claim may be reduced to \$2,000 if all the alleged*
22 *construction-related accessibility violations are corrected*
23 *within 30 days of being served with the complaint so long as*
24 *the violation or violations were not caused by any*
25 *modifications or alterations made by you.*

26 *If you plan to correct the violations giving rise to the claim,*
27 *you should take pictures and measurements or similar action*
28 *to document the condition of the physical barrier asserted to*
29 *be the basis for a violation before undertaking any corrective*
30 *action in case a court needs to see the condition of a barrier*
31 *before it was corrected.*

32 *The court will schedule the conference to be held within 50*
33 *65 days after you file the attached application form. ~~The~~ If you*
34 *are not a defendant with a CASp inspection report, you may*
35 *still use the attached form if you modify the form and*
36 *supplement it with your declaration stating any one of the*
37 *following:*

38 *(1) Until January 1, 2018, that the site's new construction*
39 *or improvement on or after January 1, 2008, and before*
40 *January 1, 2016, was approved pursuant to the local building*

1 *permit and inspection process, that, to the best of your*
2 *knowledge, there have been no modifications or alterations*
3 *completed or commenced since the building department*
4 *approval that impacted compliance with construction-related*
5 *accessibility standards with respect to the plaintiff's claim,*
6 *and that all violations giving rise to the claim have been, or*
7 *will be, corrected within 60 days of the complaint being served.*

8 (2) *That the site's new construction or improvement passed*
9 *inspection by a local building department inspector who is a*
10 *certified access specialist, that, to the best of your knowledge,*
11 *there have been no modifications or alterations completed or*
12 *commenced since that inspection approval that impacted*
13 *compliance with construction-related accessibility standards with*
14 *respect to the plaintiff's claim, and that all violations giving rise*
15 *to the claim have been or will be corrected within 60 days of the*
16 *complaint being served.*

17 (3) *That your business is a small business with 25 or fewer*
18 *employees and meets the financial criteria set out in Section*
19 *55.56 of the Civil Code, and that all violations giving rise to*
20 *the claim have been, or will be, corrected within 30 days of*
21 *being served with the complaint.*

22 *The court will also issue an immediate stay of the*
23 *proceedings unless the plaintiff has obtained a temporary*
24 *restraining order in the construction-related accessibility claim.*
25 *At your option, you may be, but need not be, represented by*
26 *an attorney to file the application to request the early*
27 *evaluation conference. You may obtain a copy of the*
28 *application form, filing instructions, and additional information*
29 *about the stay and early evaluation conference through the*
30 *Judicial Council Internet Web site at*
31 *<http://www.courtinfo.ca.gov/selfhelp/>*
32 *www.courts.ca.gov/selfhelp-start.htm.*

33 *You may file the application after you are served with a*
34 *summons and complaint, but no later than your first court*
35 *pleading or appearance in this case, which is due within 30*
36 *days after you receive the summons and complaint. ~~If you do~~*
37 *~~not have an attorney, you will need to file the application~~*
38 *~~within 30 days after you receive the summons and complaint~~*
39 *~~to request the stay and early evaluation conference. If you do~~*
40 *not file the application, you will still need to file your reply*

1 to the lawsuit within 30 days after you receive the summons
2 and complaint to contest it. You may obtain more information
3 about how to represent yourself and how to file a reply without
4 hiring an attorney at <http://www.courtinfo.ca.gov/selfhelp/>. If
5 a plaintiff representing himself or herself hires an attorney
6 after the case is filed, you will have 30 days to file an
7 application for a court stay and early evaluation conference
8 after you receive a Notice of Substitution of Counsel, unless
9 an early evaluation conference or settlement conference has
10 already been held www.courts.ca.gov/selfhelp-start.htm.

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

18
19 (2)

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

29 (b) (1) Notwithstanding any other ~~provision of~~ law, upon being
30 served with a summons and complaint asserting a
31 construction-related accessibility claim, including, but not limited
32 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
33 defendant, *or other defendant as defined in paragraph (2)*, may
34 file a request for a court stay and early evaluation conference in
35 the proceedings of that claim prior to or simultaneous with the
36 ~~qualified~~ *that* defendant's responsive pleading or other initial
37 appearance in the action that includes the claim. If the ~~qualified~~
38 *that* defendant filed a timely request for stay and early evaluation
39 conference before a responsive pleading was due, the period for
40 filing a responsive pleading shall be tolled until the stay is lifted.

1 Any responsive pleading filed simultaneously with a request for
2 stay and early evaluation conference may be amended without
3 prejudice, and the period for filing that amendment shall be tolled
4 until the stay is lifted.

5 (2) *This subdivision shall also apply to a defendant if any of the*
6 *following apply:*

7 (A) *Until January 1, 2018, the site's new construction or*
8 *improvement on or after January 1, 2008, and before January 1,*
9 *2016, was approved pursuant to the local building permit and*
10 *inspection process, and the defendant declares with the application*
11 *that, to the best of the defendant's knowledge, there have been no*
12 *modifications or alterations completed or commenced since that*
13 *approval that impacted compliance with construction-related*
14 *accessibility standards with respect to the plaintiff's claim, and*
15 *that all violations have been, or will be, corrected within 60 days*
16 *of being served with the complaint.*

17 (B) *The site's new construction or improvement was approved*
18 *by a local public building department inspector who is a certified*
19 *access specialist, and the defendant declares with the application*
20 *that, to the best of the defendant's knowledge, there have been no*
21 *modifications or alterations completed or commenced since that*
22 *approval that impacted compliance with construction-related*
23 *accessibility standards with respect to the plaintiff's claim, and*
24 *that all violations have been, or will be, corrected within 60 days*
25 *of being served with the complaint.*

26 (C) *The defendant is a small business described in subdivision*
27 *(f) of Section 55.56, and the defendant declares with the application*
28 *that, to the best of the defendant's knowledge, there have been no*
29 *modifications or alterations completed or commenced since that*
30 *approved that impacted compliance with construction-related*
31 *accessibility standards with respect to the plaintiff's claim, and*
32 *that all violations have been, or will be, corrected within 30 days*
33 *of being served with the complaint.*

34 (3) ~~Notwithstanding any other provision of law, if the plaintiff~~
35 ~~had acted in *propria propria* persona in filing a complaint that~~
36 ~~includes a construction-related accessibility claim, including, but~~
37 ~~not limited to, a claim brought under Section 51, 54, 54.1, or 55,~~
38 ~~a qualified defendant, *or a defendant described by paragraph (2),*~~
39 ~~who is served with a Notice of Substitution of Counsel shall have~~
40 30 days to file an application for a stay and an early evaluation

1 conference. The application may be filed prior to or after the
2 defendant's filing of a responsive pleading or other initial
3 appearance in the action that includes the claim, except that an
4 application may not be filed in a claim in which an early evaluation
5 conference or settlement conference has already been held on the
6 claim.

7 (c) (1) An application for an early evaluation conference and
8 stay *by a qualified defendant* shall include a signed declaration
9 that ~~declares states~~ both of the following:

10 (A) The site identified in the complaint has been
11 CASp-inspected or is CASp-determination pending and, if the site
12 is ~~CASp-inspected~~ *meets applicable standards, or is CASp*
13 *determination pending or has been inspected by a CASp, and if*
14 *the site is CASp-inspected or meets applicable standards,* there
15 have been no modifications completed or commenced since the
16 date of inspection that may impact compliance with
17 construction-related accessibility standards to the best of the
18 defendant's knowledge.

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

23 (2) *An application for an early evaluation conference and stay*
24 *by a defendant described by subparagraph (A) of paragraph (2)*
25 *of subdivision (b), which may be filed until January 1, 2018, shall*
26 *include a signed declaration that states all of the following:*

27 (A) *The site's new construction or improvement was approved*
28 *pursuant to the local building permit and inspection process on*
29 *or after January 1, 2008, and before January 1, 2016.*

30 (B) *To the best of the defendant's knowledge there have been*
31 *no modifications or alterations completed or commenced since*
32 *that approval that impacted compliance with construction-related*
33 *accessibility standards with respect to the plaintiff's claim.*

34 (C) *All construction-related violations giving rise to the claim*
35 *have been, or will be, corrected within 60 days of the complaint*
36 *being served upon the defendant.*

37 (3) *An application for an early evaluation conference and stay*
38 *by a defendant described in subparagraph (B) of paragraph (2)*
39 *of subdivision (b) shall include a signed declaration that states all*
40 *the of the following:*

1 (A) *The site's new construction or improvement was approved*
2 *by a local building department inspector who is a certified access*
3 *specialist.*

4 (B) *To the best of the defendant's knowledge there have been*
5 *no modifications or alterations completed or commenced since*
6 *that approval that impacted compliance with construction-related*
7 *accessibility standards with respect to the plaintiff's claim.*

8 (C) *All construction related violations giving rise to the claim*
9 *have been, or will be, corrected within 60 days of the complaint*
10 *being served upon the defendant.*

11 (4) *An application for an early evaluation conference and stay*
12 *by a defendant described by subparagraph (C) of paragraph (2)*
13 *of subdivision (b) shall include the materials listed in paragraphs*
14 *(5) and (6) of this subdivision, and shall include a signed*
15 *declaration that states all of the following:*

16 (A) *The defendant is a small business that employs 25 or fewer*
17 *employees and meets the financial eligibility criteria provided in*
18 *paragraph (2) of subdivision (f) of Section 55.56.*

19 (B) *The condition constituting the alleged violation was not*
20 *caused by any modification or alteration by the defendant.*

21 (C) *All construction-related violations giving rise to the claim*
22 *have been, or will be, corrected within 30 days of the complaint*
23 *being served upon the defendant.*

24 (5) *An application for an early evaluation conference and stay*
25 *by a small business defendant under paragraph (4) shall include*
26 *evidence showing correction of all violations within 30 days of*
27 *the service of the complaint and served upon the plaintiff unless*
28 *the application is filed prior to completion of the corrections. In*
29 *that event, the evidence shall be provided to the court and served*
30 *upon the plaintiff within five days of the court order as provided*
31 *in paragraph (4) of subdivision (d). This paragraph shall not be*
32 *construed to extend the permissible time under subdivision (f) of*
33 *Section 55.56 to make the corrections.*

34 (6) *An application for an early evaluation conference and stay*
35 *by a small business defendant under paragraph (4) shall also*
36 *include both of the following, which shall be confidential*
37 *documents filed only with the court and not served upon or*
38 *available to the plaintiff:*

1 (A) Proof of the defendant's number of employees, as shown by
2 workers' compensation insurance records or by wage report forms
3 filed with the Employment Development Department.

4 (B) Proof of the defendant's average gross receipts for the
5 previous three years, or for the existence of the business if less
6 than three years, as shown by a federal or state tax document.

7 ~~(2)~~

8 (7) The following provisional request and notice forms may be
9 used and filed by a qualified defendant until forms are adopted by
10 the Judicial Council for those purposes pursuant to subdivision ~~(k)~~

11 (l):

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

1

1 ~~(3)~~

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

6 (d) Upon the filing of an application for stay and early evaluation
7 conference by a qualified defendant, *or a defendant described by*
8 *paragraph (2) of subdivision (b)*, the court shall immediately issue
9 an order that does all of the following:

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

14 (2) Schedules a mandatory early evaluation conference for a
15 date as soon as possible from the date of the order, but in no event
16 later than ~~50~~ 65 days after issuance of the order, and in no event
17 earlier than ~~21~~ 45 days after the filing of the request.

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

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

33 (B) *Directs a defendant described by subparagraph (A) or (B)*
34 *of paragraph (2) of subdivision (b) who has filed a declaration*
35 *stating that the violation or violations have been, or will be,*
36 *corrected within 60 days of service of the complaint to file with*
37 *the court and serve on the plaintiff evidence of correction of the*
38 *violation or violations within five calendar days after the*
39 *completion of the corrections.*

1 (C) Directs a defendant described by subparagraph (C) of
2 paragraph (2) of subdivision (b) who has filed a declaration stating
3 that the violation or violations have been, or will be, corrected
4 within 30 days of service of the complaint to file with the court
5 and serve on the plaintiff within five days after issuance of the
6 court order evidence of correction of the violation or violations,
7 if that evidence of correction was not filed previously with the
8 application and served on the plaintiff.

9 (5) Directs the parties that the CASp inspection report may be
10 disclosed only to the court, the parties to the action, the parties'
11 attorneys, those individuals employed or retained by the attorneys
12 to assist in the litigation, and insurance representatives or others
13 involved in the evaluation and settlement of the case.

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

19 (A) An itemized list of specific conditions on the subject
20 premises that are the basis of the claimed violations of
21 construction-related accessibility standards in the plaintiff's
22 complaint.

23 (B) The amount of damages claimed.

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

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

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

29 (2) (A) The court shall lift the stay when the defendant has
30 failed to file and serve the CASp inspection report prior to the
31 early evaluation conference and has failed also to produce the
32 report at the time of the early evaluation conference, unless the
33 defendant shows good cause for that failure.

34 (B) *The court shall lift the stay when a defendant described by*
35 *paragraph (2) of subdivision (b) has failed to file and serve the*
36 *evidence of correction of the violation or violations as required*
37 *by law.*

38 (3) The court may lift the stay at the conclusion of the early
39 evaluation conference upon a showing of good cause by the
40 plaintiff. Good cause may include the defendant's failure to make

1 reasonably timely progress toward completion of corrections noted
2 by a CASp.

3 (4) The CASp inspection report filed and served pursuant to
4 subdivision (d) shall remain confidential throughout the stay and
5 shall continue to be confidential until the conclusion of the claim,
6 whether by dismissal, settlement, or final judgment, unless there
7 is a showing of good cause by any party. Good cause may include
8 the defendant's failure to make reasonably timely progress toward
9 completion of corrections noted by a CASp. The confidentiality
10 of the inspection report shall terminate upon the conclusion of the
11 claim, unless the owner of the report obtains a court order pursuant
12 to the California Rules of Court to seal the record.

13 (f) All discussions at the early evaluation conference shall be
14 subject to Section 1152 of the Evidence Code. It is the intent of
15 the Legislature that the purpose of the evaluation conference shall
16 include, but not be limited to, evaluation of all of the following,
17 *as applicable*:

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

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

24 (3) *Whether subdivision (f) of Section 55.56 is applicable to the*
25 *case, and whether all violations giving rise to the claim have been*
26 *corrected within the specified time periods.*

27 ~~(3)~~

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

30 ~~(4)~~

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

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

36 ~~(h) The~~ *For a claim involving a qualified defendant, as provided*
37 *in paragraph (1) of subdivision (b), the court may schedule*
38 *additional conferences and may extend the 90-day stay for good*
39 *cause shown, but not to exceed one additional 90-day extension.*

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

18 (j) Nothing in this part shall be deemed to make any inspection
19 report, opinion, statement, or other finding or conclusion of a CASp
20 binding on the court, or to abrogate in any manner the ultimate
21 authority of the court to make all appropriate findings of fact and
22 law. The CASp inspection report and any opinion, statement,
23 finding, or conclusion therein shall be given the weight the trier
24 of fact finds that it deserves.

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

31 (l) (1) The Judicial Council shall prepare and post on its Internet
32 Web site instructions and a form for *use by* a qualified defendant
33 ~~to use, or other defendant described by paragraph (2) of~~
34 *subdivision (b)*, to file an application for stay and early evaluation
35 conference as provided in subdivisions (b) and (c), and a form for
36 the court’s notice of stay and early evaluation conference. Until
37 those forms are adopted, the Judicial Council shall post on its
38 Internet Web site the provisional forms set forth in subdivision
39 (c).

1 (2) *The application form described in paragraph (1) may be*
2 *used by a defendant described by paragraph (2) of subdivision*
3 *(b).*

4 (3) *In lieu of the provisions specified in number 3 of page 1 of*
5 *the application form set forth in paragraph (7) of subdivision (c),*
6 *the application shall include one of the following declarations of*
7 *the defendant as to the basis for the application, as follows:*

8 (A) *That all of the following apply to a defendant described by*
9 *subparagraph (A) of paragraph (2) of subdivision (b):*

10 (i) *The site's new construction or improvement was approved*
11 *pursuant to the local building permit and inspection process on*
12 *or after January 1, 2008, and before January 1, 2016.*

13 (ii) *To the best of the defendant's knowledge there have been*
14 *no modifications or alterations completed or commenced since*
15 *that approval that impacted compliance with construction-related*
16 *accessibility standards with respect to the plaintiff's claim.*

17 (iii) *All the violations giving rise to the claim have been, or will*
18 *be, corrected within 60 days of the complaint being served.*

19 (B) *That all of the following apply to a defendant described by*
20 *subparagraph (B) of paragraph (2) of subdivision (b):*

21 (i) *The site's new construction or improvement was approved*
22 *by a local public building department inspector who is a certified*
23 *access specialist.*

24 (ii) *To the best of the defendant's knowledge there have been*
25 *no modifications or alterations completed or commenced since*
26 *that approval that impacted compliance with construction-related*
27 *accessibility standards with respect to the plaintiff's claim.*

28 (iii) *All the violations giving rise to the claim have been, or will*
29 *be, corrected within 60 days of the complaint being served.*

30 (C) *That all of the following apply to a defendant described by*
31 *subparagraph (C) of paragraph (2) of subdivision (b):*

32 (i) *The defendant is a small business described in paragraph*
33 *(2) of subdivision (f) of Section 55.56.*

34 (ii) *The violation or violations giving rise to the claim were not*
35 *caused by any modification or alteration of the property by the*
36 *defendant.*

37 (iii) *The violation or violations giving rise to the claim have*
38 *been, or will be, corrected within 30 days of the complaint being*
39 *served.*

1 (4) *In lieu of the provision specified in number 4(c) of page 1*
2 *of the application form set forth in paragraph (7) of subdivision*
3 *(c), the application shall include a request that the court order the*
4 *defendant to do either of the following:*

5 (A) *For a defendant who has filed a declaration stating that all*
6 *violations have been, or will be, corrected within 60 days of service*
7 *of the complaint, file with the court and serve on the plaintiff*
8 *evidence of correction of the violation or violations within five*
9 *calendar days before the completion of the corrections.*

10 (B) *For a defendant who is a small business that has filed a*
11 *declaration stating that all the violations have been, or will be,*
12 *corrected within 30 days of the service of the complaint, file with*
13 *the court and serve on the plaintiff evidence of correction of the*
14 *violation or violations within five calendar days after issuance of*
15 *the court order, if that evidence of correction was not filed*
16 *previously with the application and served on the plaintiff.*

17 (2)

18 (5) The Judicial Council shall also prepare and post on its
19 Internet Web site instructions and cover pages to assist plaintiffs
20 and defendants, respectively, to comply with their filing
21 responsibilities under subdivision (d). The cover pages shall also
22 provide for the party's declaration of proof of service of the
23 pertinent document served under the court order.

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

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

30 (o) ~~This part shall apply only to claims filed on or after January~~
31 ~~1, 2009. The amendments to this section made by Senate Bill 1186~~
32 ~~of the 2011–12 Regular Session of the Legislature shall apply only~~
33 ~~to claims filed on or after the operative date of that act. Nothing~~
34 ~~in this part is intended to affect litigation filed before that date.~~

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

37 SEC. 10. Section 55.545 is added to the Civil Code, to read:

38 55.545. (a) A defendant who does not qualify for an early
39 evaluation conference pursuant Section 55.54, or who forgoes the
40 provisions of Section 55.54, may request a mandatory evaluation

1 conference. A plaintiff may, if the defendant does not make the
2 request with the filing of the responsive pleadings, request a
3 mandatory evaluation conference by filing an application within
4 15 days of the defendant's filing of responsive pleadings.

5 (b) Upon being served with a summons and complaint asserting
6 a construction-related accessibility claim, including, but not limited
7 to, a claim brought under Section 51, 54, 54.1, or 55, a defendant
8 may file an application for a mandatory evaluation conference in
9 the proceedings of that claim simultaneous with the defendant's
10 responsive pleading or other initial appearance in the action that
11 includes the claim. Until the application form for the mandatory
12 evaluation conference is developed by the Judicial Council and
13 posted on its Internet Web site pursuant to subdivision (j), a
14 defendant may request the calendaring of the mandatory evaluation
15 conference in a separate application filed with the defendant's
16 responsive pleadings.

17 (c) Upon the filing of a request or application for a mandatory
18 evaluation conference by a defendant or plaintiff, the court shall
19 schedule a mandatory evaluation conference for a date as soon
20 as possible from the date of the request or application, but in no
21 event later than 120 days after the date of request or application,
22 or earlier than 90 days after the filing of the request or application.
23 Upon mutual stipulation for an extension of the conference date,
24 the mandatory evaluation conference may be extended for up to
25 30 days. The court notice of conference shall also do all of the
26 following:

27 (1) Direct the parties, and any other person whose authority is
28 required to negotiate and enter into settlement, to appear in person
29 at the time set for the conference. Appearance by counsel shall
30 not satisfy the requirement that the parties, or those with
31 negotiation and settlement authority, personally appear. However,
32 the court may allow a party who is unable to attend in person due
33 to his or her disability to participate in the hearing by telephone
34 or other alternative means, or through a representative authorized
35 to settle the case.

36 (2) Direct the plaintiff to file with the court and serve on the
37 defendant, at least 30 days before the date of mandatory evaluation
38 conference, a statement that includes, to the extent reasonably
39 known, for use solely for the purpose of the mandatory evaluation
40 conference, all of the following:

- 1 (A) An itemized list of specific conditions on the site that are
2 the basis of the claimed violations of construction-related
3 accessibility standards in the plaintiff's complaint.
- 4 (B) The amount of damages claimed.
- 5 (C) The amount of attorney's fees and costs incurred to date,
6 if any, that are being claimed.
- 7 (D) Any demand for settlement of the case in its entirety.
- 8 (3) Direct the defendant to file with the court and serve on the
9 plaintiff, at least 30 days before the date of the mandatory
10 evaluation conference, a statement of the defendant detailing any
11 remedial action or remedial correction plan undertaken, or to be
12 undertaken, by the defendant to correct the alleged violations.
- 13 (d) A party failing to comply with any court order is subject to
14 court sanction at the court's discretion.
- 15 (e) All discussions at the mandatory evaluation conference shall
16 be subject to Section 1152 of the Evidence Code. It is the intent of
17 the Legislature that the purpose of the evaluation conference shall
18 include, but not be limited to, evaluation of all of the following:
- 19 (1) The current condition of the site and the status of any plan
20 of correction, including whether the defendant has corrected, or
21 is willing to correct, the alleged violations, and the timeline for
22 doing so.
- 23 (2) Whether the case, including any claim for damages or
24 injunctive relief, can be settled in whole or in part.
- 25 (3) Whether the parties should share other information that may
26 facilitate evaluation and resolution of the dispute.
- 27 (f) Nothing in this section precludes any party from making an
28 offer to compromise pursuant to Section 998 of the Code of Civil
29 Procedure.
- 30 (g) The court may schedule additional conferences.
- 31 (h) Mandatory evaluation conferences shall be conducted by a
32 superior court judge or commissioner, or by a court early
33 evaluation conference officer as provided in subdivision (i) of
34 Section 55.54.
- 35 (i) If an inspection report by a certified access specialist is
36 offered by the defendant, the provisions of Section 55.54 relating
37 to the use and confidentiality of that report shall apply.
- 38 (j) (1) The Judicial Council shall prepare and post on its
39 Internet Web site instructions and a form for a party to use to file
40 an application for a mandatory evaluation conference and a form

1 *for the court's notice of the mandatory evaluation conference.*
2 *Until those forms are adopted, a party and the court may use an*
3 *ad hoc form that complies with the requirements of this section.*

4 *(2) The Judicial Council shall also prepare and post on its*
5 *Internet Web site instructions and cover pages to assist plaintiffs*
6 *and defendants, respectively, to comply with their filing*
7 *responsibilities under subdivision (c).*

8 *(k) The mandatory evaluation conference may be in lieu of any*
9 *initial case management conference required by the court rules*
10 *where the mandatory evaluation conference satisfies the duty of*
11 *the parties to meet and confer under the court rules.*

12 *(l) 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 *(m) This section shall apply only to claims filed on or after*
16 *January 1, 2013. Nothing in this section is intended to any*
17 *compliant filed before that date.*

18 *SEC. 11. Section 55.56 of the Civil Code is amended to read:*

19 *55.56. (a) Statutory damages under either subdivision (a) of*
20 *Section 52 or subdivision (a) of Section 54.3 may be recovered in*
21 *a construction-related accessibility claim against a place of public*
22 *accommodation only if a violation or violations of one or more*
23 *construction-related accessibility standards denied the plaintiff*
24 *full and equal access to the place of public accommodation on a*
25 *particular occasion.*

26 *(b) A plaintiff is denied full and equal access only if the plaintiff*
27 *personally encountered the violation on a particular occasion, or*
28 *the plaintiff was deterred from accessing a place of public*
29 *accommodation on a particular occasion.*

30 *(c) A violation personally encountered by a plaintiff may be*
31 *sufficient to cause a denial of full and equal access if the plaintiff*
32 *experienced difficulty, discomfort, or embarrassment because of*
33 *the violation.*

34 *(d) A plaintiff demonstrates that he or she was deterred from*
35 *accessing a place of public accommodation on a particular occasion*
36 *only if both of the following apply:*

37 *(1) The plaintiff had actual knowledge of a violation or*
38 *violations that prevented or reasonably dissuaded the plaintiff from*
39 *accessing a place of public accommodation that the plaintiff*
40 *intended to use on a particular occasion.*

1 (2) The violation or violations would have actually denied the
2 plaintiff full and equal access if the plaintiff had accessed the place
3 of public accommodation on that particular occasion.

4 (e) Statutory damages may be assessed pursuant to subdivision
5 (a) based on each particular occasion that the plaintiff was denied
6 full and equal access, and not upon the number of violations of
7 construction-related accessibility standards identified at the place
8 of public accommodation where the denial of full and equal access
9 occurred. If the place of public accommodation consists of distinct
10 facilities that offer distinct services, statutory damages may be
11 assessed based on each denial of full and equal access to the distinct
12 facility, and not upon the number of violations of
13 construction-related accessibility standards identified at the place
14 of public accommodation where the denial of full and equal access
15 occurred.

16 (f) (1) *Notwithstanding any other law, a defendant's liability*
17 *for statutory damages in a construction-related accessibility claim*
18 *against a place of public accommodation is reduced to a minimum*
19 *of one thousand dollars (\$1,000) for each offense if the defendant*
20 *has corrected all construction-related violations that are the basis*
21 *of a claim within 60 days of being served with the complaint, and*
22 *the defendant demonstrates any of the following:*

23 (A) *The structure or area of the alleged violation was determined*
24 *to be "CASp-inspected" or "meets applicable standards" and, to*
25 *the best of the defendant's knowledge, there were no modifications*
26 *or alterations that impacted compliance with construction-related*
27 *accessibility standards with respect to the plaintiff that were*
28 *completed or commenced between the date of that determination*
29 *and the particular occasion on which the plaintiff was allegedly*
30 *denied full and equal access.*

31 (B) *The structure or area of the alleged violation was the subject*
32 *of an inspection report indicating "CASp determination pending"*
33 *or "Inspected by a CASp," and the defendant has either*
34 *implemented reasonable measures to correct the alleged violation*
35 *prior to the particular occasion on which the plaintiff was allegedly*
36 *denied full and equal access, or the defendant was in the process*
37 *of correcting the alleged violation within a reasonable time and*
38 *manner prior to the particular occasion on which the plaintiff was*
39 *allegedly denied full and equal access.*

1 (C) For a claim alleging a construction-related accessibility
2 violation filed before January 1, 2018, the structure or area of the
3 alleged violation was a new construction or an improvement that
4 was approved by, and passed inspection by, the local building
5 department permit and inspection process on or after January 1,
6 2008, and before January 1, 2016, and, to the best of the
7 defendant's knowledge, there were no modifications or alterations
8 that impacted compliance with respect to the plaintiff that were
9 completed or commenced between the completion date of the new
10 construction or improvement and the particular occasion on which
11 the plaintiff was allegedly denied full and equal access.

12 (D) The structure or area of the alleged violation was newly
13 constructed or improved and passed inspection by a local building
14 department official who is a certified access specialist, and, to the
15 best of the defendant's knowledge, there were no modifications or
16 alterations that affected compliance with respect to the plaintiff
17 that were completed or commenced between the completion date
18 of the new construction or improvement and the particular
19 occasion on which the plaintiff was allegedly denied full and equal
20 access.

21 (2) Notwithstanding any other law, a defendant's liability for
22 statutory damages in a construction-related accessibility claim
23 against a place of public accommodation is reduced to a minimum
24 of two thousand dollars (\$2,000) for each offense if both of the
25 following apply:

26 (A) The defendant has corrected all construction-related
27 violations that are the basis of a claim within 30 days of being
28 served with the complaint.

29 (B) The defendant is a small business that has employed 25 or
30 fewer employees on average over the past three years, or for the
31 years it has been in existence if less than three years, as evidenced
32 by wage report forms filed with the Economic Development
33 Department, and has average annual gross receipts of less than
34 three million five hundred thousand dollars (\$3,500,000) over the
35 previous three years, or for the years it has been in existence if
36 less than three years, as evidenced by federal or state income tax
37 returns. The average annual gross receipts dollar amount shall
38 be adjusted biannually by the Department of General Services for
39 changes in the California Consumer Price Index for All Urban
40 Consumers, as compiled by the Department of Industrial Relations.

1 *The Department of General Services shall post that adjusted*
2 *amount on its Internet Web site.*

3 *(3) Paragraph (2) shall not apply if the defendant made*
4 *modifications or alterations to the property that created the*
5 *condition constituting the violation.*

6 *(4) This subdivision shall not be applicable to intentional*
7 *violations, including, but not limited to, where the defendant had*
8 *knowledge of the alleged violation from a prior notice or demand*
9 *letter from the plaintiff or plaintiff's attorney, but failed to act in*
10 *a reasonable time and manner.*

11 *(5) Nothing in this subdivision affects the awarding of actual*
12 *damages, or affects the awarding of treble actual damages.*

13 *(6) This subdivision shall apply only to claims filed on or after*
14 *the effective date of Senate Bill 1186 of the 2011–12 Regular*
15 *Session of the Legislature. Nothing in this subdivision is intended*
16 *to affect litigation filed before that date.*

17 ~~(f)~~

18 *(g) This section does not alter the applicable law for the*
19 *awarding of injunctive or other equitable relief for a violation or*
20 *violations of one or more construction-related accessibility*
21 *standards, nor alter any legal obligation of a party to mitigate*
22 *damages.*

23 *(h) In assessing liability under subdivision (d), in any action*
24 *alleging multiple claims for the same construction-related*
25 *accessibility violation on different particular occasions, the court*
26 *shall consider the reasonableness of the plaintiff's conduct in light*
27 *of the plaintiff's obligation, if any, to mitigate damages.*

28 *SEC. 12. Section 1938 is added to the Civil Code, to read:*

29 *1938. A commercial property owner or lessor shall state on*
30 *every lease form or rental agreement executed on or after July 1,*
31 *2013, whether the property being leased or rented has undergone*
32 *inspection by a Certified Access Specialist (CAsp), and, if so,*
33 *whether the property has or has not been determined to meet all*
34 *applicable construction-related accessibility standards pursuant*
35 *to Section 55.53.*

36 *SEC. 13. Section 425.50 is added to the Code of Civil*
37 *Procedure, to read:*

38 *425.50. Any allegation of noncompliance with a*
39 *construction-related accessibility standard in a complaint, as*
40 *defined in subdivision (a) of Section 55.3 of the Civil Code, shall*

1 *state facts sufficient to allow the defendant to identify the basis*
2 *for the claim, including following:*

3 *(a) An explanation of the specific access barrier or barriers the*
4 *individual encountered, or by which the individual alleges he or*
5 *she was deterred, with sufficient information about the location*
6 *of the alleged barrier to reasonably enable the defendant to identify*
7 *the access barrier.*

8 *(b) The manner in which the barrier was encountered, or in*
9 *which it deterred the individual.*

10 *(c) The date or dates on which the claimant encountered the*
11 *specific access barrier, or on which he or she was deterred.*

12 *SEC. 14. Section 4459.8 of the Government Code is amended*
13 *to read:*

14 4459.8. (a) The certification authorized by Section 4459.5 is
15 effective for three years from the date of initial certification and
16 expires if not renewed. The State Architect, upon consideration of
17 any factual complaints regarding the work of a certified access
18 specialist or of other relevant information, may suspend
19 certification or deny renewal of certification.

20 (b) (1) The State Architect shall require each applicant for
21 certification as a certified access specialist to pay fees, including
22 an application and course fee and an examination fee, at a level
23 sufficient to meet the costs of application processing, registration,
24 publishing a list, and other activities that are reasonably necessary
25 to implement and administer the certified access specialist program.
26 The State Architect shall require each applicant for renewal of
27 certification to pay a fee sufficient to cover the reasonable costs
28 of reassessing qualifications of renewal applicants.

29 (2) *The State Architect shall periodically review its schedule of*
30 *fees to ensure that its fees for certification are not excessive while*
31 *covering the costs to administer the certified access specialist*
32 *program. The application fee for a California licensed architect,*
33 *landscape architect, civil engineer, or structural engineer shall*
34 *not exceed two hundred fifty dollars (\$250).*

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

1 *SEC. 15. Chapter 7.5 (commencing with Section 4465) is added*
2 *to Division 5 of Title 1 of the Government Code, to read:*

3
4 *CHAPTER 7.5. DISABILITY ACCESS AND EDUCATION*
5

6 4465. (a) *There is hereby established in the Division of the*
7 *State Architect a Disability Access and Education Revolving Fund,*
8 *as set forth in Section 4470, for the purpose of increasing disability*
9 *access and compliance with construction-related accessibility*
10 *requirements by the following means:*

11 (1) *Increasing the number of private and public certified access*
12 *specialists available to assist building owners and tenants to*
13 *understand and comply with construction-related accessibility*
14 *requirements by using some of the funds to moderate some of the*
15 *costs of certification and testing.*

16 (2) *Establishing and maintaining oversight of the certified access*
17 *specialist program, including, but not limited to, adopting best*
18 *practices guidelines for certified access specialists, providing*
19 *continuing education on construction-related accessibility*
20 *requirements, and performing its audit and discipline functions*
21 *under Sections 4459.7 and 4459.8.*

22 (3) *Increasing outreach efforts and developing educational*
23 *resources for persons with disabilities and businesses to facilitate*
24 *compliance with the federal Americans with Disabilities Act of*
25 *1990 (42 U.S.C. Sec. 12101 et seq.), the Unruh Civil Rights Act*
26 *(Section 51 of the Civil Code), and Title 24 of the California Code*
27 *of Regulations, as they relate to providing full and equal access*
28 *to public facilities for persons with disabilities.*

29 (b) *In developing educational resources with this fund, emphasis*
30 *shall be placed on the development and dissemination of*
31 *educational materials, such as toolkits, modules, and checklists,*
32 *as appropriate, to facilitate a commercial property owner's or*
33 *tenant's understanding of, and compliance with, the*
34 *construction-related accessibility requirements.*

35 (c) *In developing and disseminating educational resources with*
36 *this fund, the Division of the State Architect shall consult and work*
37 *with the Department of Rehabilitation and the California*
38 *Commission on Disability Access, and may contract with those*
39 *agencies to develop educational resources. It is the intent of the*
40 *Legislature that any development or dissemination of educational*

1 resources under this section shall be coordinated with educational
2 efforts by other state agencies so as to expand the reach and
3 effectiveness of each effort or the combined efforts.

4 4467. (a) On and after January 1, 2013, and until December
5 31, 2018, any applicant for a local business license or similar
6 instrument or permit, and from any applicant for the renewal of
7 a business license or similar instrument or permit, shall pay an
8 additional fee of one dollar (\$1) for that license, instrument, or
9 permit, which shall be collected by the city, county, or city and
10 county that issued the license, instrument, or permit.

11 (b) The city, county, or city and county shall retain 70 percent
12 of the fees collected under this section, of which up to 5 percent
13 of the retained moneys may be used for related administrative
14 costs of this chapter. The remaining moneys shall be used to fund
15 increased certified access specialist (CASp) services in that
16 jurisdiction to the public and to facilitate compliance with
17 construction-related accessibility requirements. The highest
18 priority shall be given to the training and retention of certified
19 access specialists to meet the needs of the public in the jurisdiction
20 as provided in Section 55.53 of the Civil Code.

21 (c) The remaining 30 percent of all fees collected under this
22 section shall be transmitted on a quarterly basis to the Division
23 of the State Architect for deposit in the Disability Access and
24 Education Revolving Fund established under Sections 4465 and
25 4470. The funds shall be transmitted within 15 days of the last day
26 of the fiscal quarter. The Division of the State Architect shall
27 develop and post on its Internet Web site a standard reporting
28 form for use by all local jurisdictions. Up to 75 percent of the
29 collected funds in the Disability Access and Education Revolving
30 Fund shall be used to establish and maintain oversight of the CASp
31 program and to moderate the expense of CASp certification and
32 testing.

33 (d) Each city, county, or city and county shall make an annual
34 report, commencing March 1, 2014, to the Legislature and to the
35 Chairs of the Senate and Assembly Committees on Judiciary, and
36 the Chair of the Senate Committee on Budget and Fiscal Review
37 and the Chair of the Assembly Committee on Budget, of the total
38 fees collected in the previous calendar year and of its distribution,
39 including the moneys spent on administrative services, the moneys
40 spent to increase CASp services, the moneys spent to fund

1 *programs to facilitate compliance, and the moneys transmitted to*
2 *the Disability Access and Education Revolving Fund. A report to*
3 *be submitted pursuant to this subdivision shall be submitted in*
4 *compliance with Section 9795.*

5 *4469. (a) On and after January 1, 2013, each city, county, or*
6 *city and county shall provide to an applicant for a business license*
7 *or similar instrument or permit and to an applicant for the renewal*
8 *of a business license or similar instrument or permit, the following*
9 *information:*

10
11 *“Under federal and state law, compliance with disability access*
12 *laws is a serious and significant responsibility that applies to all*
13 *California building owners and tenants with buildings open to the*
14 *public. You may obtain information about your legal obligations*
15 *and how to comply with disability access laws at the following*
16 *agencies:*

17 *The Division of the State Architect at*
18 *www.dgs.ca.gov/dsa/Home.aspx.*

19 *The Department of Rehabilitation at www.rehab.cahwnet.gov.*

20 *The California Commission on Disability Access at*
21 *www.cdda.ca.gov.”*

22
23 *(b) If the addresses of the Internet Web sites in subdivision (a)*
24 *are modified, the city, county, or city and county shall provide to*
25 *an applicant the most updated addresses of the Internet Web sites*
26 *of those entities.*

27 *4470. (a) All funds received by the Division of the State*
28 *Architect under this chapter shall be deposited in the Disability*
29 *Access and Education Revolving Fund, which is hereby established*
30 *in the State Treasury.*

31 *(b) Notwithstanding Section 13340, moneys deposited in the*
32 *fund are hereby continuously appropriated without regard to fiscal*
33 *years to the Division of the State Architect for purposes of this*
34 *chapter.*

35 *(c) Notwithstanding Section 10231.5, the State Architect shall*
36 *make an annual report, commencing March 1, 2014, to the*
37 *Legislature and to the Chairs of the Senate and Assembly*
38 *Committees on Judiciary, and the Chair of the Senate Committee*
39 *on Budget and Fiscal Review and the Chair of the Assembly*
40 *Committee on Budget, of the total fees transmitted to the fund in*

1 the previous calendar year and of its distribution, including the
2 moneys spent on administrative services, the moneys spent to
3 moderate certification and examination fees for the certified access
4 specialist program, the moneys spent on establishing and
5 maintaining oversight of the certified access specialist program,
6 and the moneys spent on developing and disseminating educational
7 materials to facilitate compliance. A report to be submitted
8 pursuant to this subdivision, shall be submitted in compliance with
9 Section 9795.

10 SEC. 16. Section 8299.05 of the Government Code is amended
11 to read:

12 ~~8299.05.—(a) The commission shall study and make reports to~~
13 ~~the Legislature on the following:~~

14 ~~(1) Issues regarding compliance with state laws and regulations~~
15 ~~that are raised by either persons with disabilities or businesses,~~
16 ~~and any recommendations that would promote compliance.~~

17 ~~(2) Whether public and private inspection programs, including~~
18 ~~the Certified Access Specialist Program, are meeting the needs of~~
19 ~~both the business community and the disability community,~~
20 ~~including by the provision of timely, competent inspections that~~
21 ~~properly identify violations and recommend appropriate remedial~~
22 ~~measures.~~

23 ~~(3) Whether existing training and continuing education~~
24 ~~requirements for personnel involved in designing, plan checking,~~
25 ~~building, or inspecting a structure are sufficient to provide the~~
26 ~~personnel with sufficient knowledge of the state and federal~~
27 ~~disability access laws and regulations.~~

28 ~~(4) Whether training and continuing education requirements~~
29 ~~should be enacted for landscape architects, professional engineers,~~
30 ~~and contractors to provide these professionals with sufficient~~
31 ~~knowledge of the state and federal disability access laws and~~
32 ~~regulations. This study and report shall be completed and delivered~~
33 ~~to the Legislature no later than January 1, 2011.~~

34 ~~(b) (1) The commission shall act as an information center on~~
35 ~~the status of compliance in California with state laws and~~
36 ~~regulations providing persons with disabilities full and equal access~~
37 ~~to public facilities. To this end, it shall publish a biennial report,~~
38 ~~which may be combined with the biennial report required in~~
39 ~~odd-numbered years pursuant to subdivision (c), on the state of~~
40 ~~disability access compliance by both the public and private sector.~~

1 The report shall be written in general terms and shall not identify
2 any particular violators.

3 ~~(2) The commission shall, to the extent feasible, coordinate with~~
4 ~~other state agencies and local building departments to ensure that~~
5 ~~information provided to the public on disability access requirements~~
6 ~~is uniform and complete.~~

7 (e)

8 8299.05. (a) The commission may recommend, develop,
9 prepare, or coordinate materials, projects, or other activities, as
10 appropriate, relating to any subject within its jurisdiction.

11 ~~(d)~~

12 (b) The commission shall provide, within its resources, ~~technical~~
13 information regarding any of the following:

14 (1) Preventing or minimizing problems of compliance by
15 California businesses by ~~engaging in educational outreach efforts~~
16 *providing educational services, including outreach efforts*, and by
17 preparing and hosting on its Internet Web site a Guide to
18 Compliance with State Laws and Regulations Regarding Disability
19 Access Requirements.

20 (2) Recommending programs to enable persons with disabilities
21 to obtain full and equal access to public facilities.

22 ~~(e) The commission shall make reports on its activities, findings,~~
23 ~~and recommendations to the Legislature from time to time, but not~~
24 ~~less often than once during every odd-numbered year, on or before~~
25 ~~May 1 of that year, commencing in 2011.~~

26 (3) *Providing information as requested by the Legislature on*
27 *disability access issues and compliance.*

28 *SEC. 17. Section 8299.06 of the Government Code is repealed.*

29 ~~8299.06. The commission, as soon as practicable, but in no~~
30 ~~event later than July 1, 2010, shall develop, in consultation with~~
31 ~~the staff of the California Building Standards Commission, a master~~
32 ~~checklist for disability access compliance that may be used by~~
33 ~~building inspectors.~~

34 *SEC. 18. Section 8299.06 is added to the Government Code,*
35 *to read:*

36 8299.06. (a) *A priority of the commission shall be the*
37 *development and dissemination of educational materials and*
38 *information to promote and facilitate disability access compliance.*

39 (b) *The commission shall work with other state agencies,*
40 *including the Division of the State Architect and the Department*

1 *of Rehabilitation, to develop educational materials and information*
2 *for use by businesses to understand its obligations to provide*
3 *disability access and to facilitate compliance with*
4 *construction-related accessibility standards.*

5 *(c) The commission shall develop and make available on its*
6 *Internet Web site, or make available on its Internet Web site if*
7 *developed by another governmental agency, including Americans*
8 *with Disabilities Act centers, toolkits or educational modules to*
9 *assist a California business to understand its obligations under*
10 *the law and to facilitate compliance with respect to the top 10*
11 *alleged construction-related violations, by type, as specified in*
12 *subdivision (a) of Section 8299.08. Upon completion of this*
13 *requirement, the commission shall develop and make available on*
14 *its Internet Web site, or work with another agency to develop,*
15 *other toolkits or educational modules that would educate*
16 *businesses of the accessibility requirements and to facilitate*
17 *compliance with that requirement.*

18 *(d) The commission shall post on its Internet Web site*
19 *educational materials and information that will assist building*
20 *owners, tenants, building officials, and building inspectors to*
21 *understand the disability accessibility requirements and to facilitate*
22 *compliance with disability access laws. The commission shall at*
23 *least annually review the educational materials and information*
24 *on disability access requirements and compliance available on*
25 *the Internet Web site of other local, state, or federal agencies,*
26 *including Americans with Disabilities Act centers, to augment the*
27 *educational materials and information developed by the*
28 *commission.*

29 *(e) The commission shall, to the extent feasible, coordinate with*
30 *other state agencies and local building departments to ensure that*
31 *information provided to the public on disability access*
32 *requirements is uniform and complete.*

33 *SEC. 19. Section 8299.07 of the Government Code is repealed.*

34 ~~8299.07. The commission shall study the operation of Section~~
35 ~~55.54 of the Civil Code to assess whether it is operating to achieve~~
36 ~~its desired goal of reducing unnecessary civil actions that seek~~
37 ~~attorney's fees and damages but that do not facilitate compliance~~
38 ~~with state laws and regulations governing disability access, and~~
39 ~~whether that section is unduly impacting claims brought to facilitate~~
40 ~~compliance. The commission shall report its findings and any~~

1 recommendations to the Legislature no earlier than July 1, 2013,
2 and no later than July 1, 2014.

3 *SEC. 20. Section 8299.07 is added to the Government Code,*
4 *to read:*

5 *8299.07. (a) On or before April 15, 2013, the commission*
6 *shall report to the Legislature, and to the Chairs of the Senate and*
7 *Assembly Committees on Judiciary, of its activities and efforts*
8 *since the commission was established to implement Sections*
9 *8299.05 and 8299.06, including the provisions that were law prior*
10 *to amendment or repeal in the 2011–12 Regular Session.*
11 *Commencing in 2014, and notwithstanding Section 10231.5, the*
12 *commission shall report on or before January 31 and annually*
13 *thereafter to the Legislature, and to the Chairs of the Senate and*
14 *Assembly Committees on Judiciary, of its ongoing efforts to*
15 *implement Sections 8299.05 and 8299.06, as amended in the*
16 *2011–12 Regular Session.*

17 *(b) A report to be submitted pursuant to subdivision (a) shall*
18 *be submitted in compliance with Section 9795.*

19 *SEC. 21. Section 8299.08 of the Government Code is repealed.*

20 ~~*8299.08. (a) The commission, within its purview, is expressly*~~
21 ~~*authorized to inform the Legislature of its position on any*~~
22 ~~*legislative proposal pending before the Legislature and to urge the*~~
23 ~~*introduction of legislative proposals.*~~

24 ~~*(b) The commission is expressly authorized to state its position*~~
25 ~~*and viewpoint on issues developed in the performance of its duties*~~
26 ~~*and responsibilities as specified in this chapter.*~~

27 *SEC. 22. Section 8299.08 is added to the Government Code,*
28 *to read:*

29 *8299.08. The commission shall compile the following data with*
30 *respect to any demand letter or complaint sent to the commission*
31 *pursuant to Section 53.32 of the Civil Code and post the*
32 *information on its Internet Web site, pursuant to the following:*

33 *(a) The commission shall identify the various types of*
34 *construction-related physical access violations alleged in the*
35 *demand letters and in the complaints, respectively, and shall*
36 *tabulate the number of claims alleged for each type of violation*
37 *in the demand letters and complaints, respectively. For purposes*
38 *of this subdivision, all types of demand letters shall be grouped*
39 *as demand letters.*

1 (b) Periodically, but not less than every six months beginning
2 July 31, 2013, the commission shall post on its Internet Web site
3 a list, by type, of the 10 most frequent types of accessibility
4 violations alleged in the demand letters and in the complaints,
5 respectively, and the numbers of alleged violations for each listed
6 type of violation for the prior two quarters.

7 (c) The commission shall, on a quarterly basis, identify and
8 tabulate the number of demand letters and complaints received by
9 the commission. The commission shall further ascertain whether
10 a complaint was filed in state or federal court and tabulate the
11 number of complaints filed in state or federal court, respectively.
12 This data shall be posted on the commission's Internet Web site
13 periodically, but not less than every six months beginning July 31,
14 2013.

15 (d) Commencing in 2014, and notwithstanding Section 10231.5,
16 the commission shall make an annual report to the Legislature
17 and the Chairs of the Senate and Assembly Committees on
18 Judiciary by January 31 of each year of the tabulated data for the
19 preceding calendar year as set forth in subdivisions (a) to (c),
20 inclusive. A report to be submitted pursuant to this subdivision
21 shall be submitted in compliance with Section 9795.

22 SEC. 23. The Legislature finds and declares that a very small
23 number of plaintiffs' attorneys have been abusing the right of
24 petition under Sections 52 and 54 of the Civil Code by issuing a
25 demand for money to a California business owner that demands
26 the owner pay a quick settlement of the attorney's alleged claim
27 under those laws or else incur greater liability and legal costs if
28 a lawsuit is filed. These demands for money allege one or more,
29 but frequently multiple, claims for asserted violations of a
30 construction-related accessibility standard and often demand a
31 quick money settlement based on the alleged multiple claims
32 without seeking and obtaining actual repair or correction of the
33 alleged violations on the site. These "pay me now or pay me more"
34 demands are used to scare businesses into paying quick settlements
35 that only financially enrich the attorney and claimant and do not
36 promote accessibility either for the claimant or the disability
37 community as a whole. These practices, often involving a series
38 of demand for money letters sent to numerous businesses, do not
39 promote compliance with the accessibility requirements and erode
40 public support for and confidence in our laws. Therefore, the

1 *Legislature finds and declares that it is necessary and appropriate*
2 *to enact Sections 55.31 and 55.32 of the Civil Code, and Section*
3 *425.50 of the Code of Civil Procedure to protect the public’s*
4 *confidence and support of the right to petition under Sections 52*
5 *and 54 of the Civil Code.*

6 *SEC. 24. The Legislature finds and declares all of the*
7 *following:*

8 *(a) Subdivision (h) of Section 55.56 of the Civil Code, as added*
9 *by Section 11 of this act, is intended to address the misuse of*
10 *Sections 52 and 54.3 of the Civil Code by a small minority of*
11 *disability rights lawyers and plaintiffs. These lawyers and plaintiffs*
12 *have alleged in demand letters and complaints that they were*
13 *deterred on repeated occasions by the same violation of a*
14 *construction-related accessibility standard and thereby assert*
15 *multiple claims for the same violation without a reasonable*
16 *explanation for the repeated conduct in light of the obligation to*
17 *mitigate damages. Their assertions of these “stacked” multiple*
18 *claims for the same construction-related accessibility violation on*
19 *different occasions are made to substantially increase the*
20 *purported statutory liability of a defendant in order to intimidate*
21 *and pressure the defendant into making a quick monetary*
22 *settlement. The provisions of subdivision (h) of Section 55.56 of*
23 *the Civil Code reiterate that where multiple claims for the same*
24 *construction-related accessibility violation on separate particular*
25 *occasions are alleged, a plaintiff’s conduct must have a reasonable*
26 *explanation for the asserted need for multiple visits to a site where*
27 *a known barrier violation would deny full and equal access, in*
28 *light of the obligation to mitigate damages.*

29 *(b) Correspondingly, if there is a reasonable explanation in*
30 *light of the obligation to mitigate damages for the need to make*
31 *multiple visits to a site where a known barrier violation would*
32 *deny full and equal access, a multiple claim for repeated violations*
33 *of the same construction-related accessibility standard may*
34 *properly lie. In addition, there are clear instances when the needs*
35 *of a person with a disability and circumstances may make*
36 *mitigation efforts impossible or futile in cases involving multiple*
37 *instances of deterrence on separate particular occasions.*

38 *(c) Further, nothing in subdivision (h) of Section 55.56 of the*
39 *Civil Code is intended to change existing law with respect to the*

1 fact that an alleged failure to mitigate damages is pled and proven
2 as an affirmative defense.

3 SEC. 25. The Legislature finds and declares that promoting
4 uniform statewide compliance with construction-related
5 accessibility requirements set forth in the federal Americans with
6 Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and the
7 California Building Standards Code is a matter of statewide
8 concern and is not a municipal affair as that term is used in Section
9 5 of Article XI of the California Constitution. Therefore, this act
10 shall apply to all cities, including charter cities.

11 SEC. 26. If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.

16 SEC. 27. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety within
18 the meaning of Article IV of the Constitution and shall go into
19 immediate effect. The facts constituting the necessity are:

20 In order to avoid unnecessary litigation and to facilitate
21 compliance with the disability access law, it is necessary that this
22 act take effect immediately.

23 SECTION 1. ~~Section 55.3 of the Civil Code is amended to~~
24 ~~read:~~

25 ~~55.3. (a) For purposes of this section, the following shall apply:~~

26 ~~(1) "Complaint" means a civil complaint that is filed with a~~
27 ~~court and is sent to or served upon a defendant on the basis of one~~
28 ~~or more construction-related accessibility claims, as defined in~~
29 ~~this section.~~

30 ~~(2) "Settlement demand" means a written document or oral~~
31 ~~statement that is provided to a building owner or tenant, or an agent~~
32 ~~or employee of a building owner or tenant, that contains a request~~
33 ~~for money on the basis of one or more construction-related~~
34 ~~accessibility claims, as defined in paragraph (3), where the attorney~~
35 ~~or party has filed a complaint or eventually files a complaint in~~
36 ~~state or federal court on the basis of one or more~~
37 ~~construction-related accessibility claims.~~

38 ~~(3) "Construction-related accessibility claim" means any claim~~
39 ~~of a violation of any construction-related accessibility standard,~~
40 ~~as defined by paragraph (6) of subdivision (a) of Section 55.52,~~

1 with respect to a place of public accommodation.
2 “Construction-related accessibility claim” does not include a claim
3 of interference with housing within the meaning of paragraph (2)
4 of subdivision (b) of Section 54.1, or any claim of interference
5 caused by something other than the construction-related
6 accessibility condition of the property, including, but not limited
7 to, the conduct of any person.

8 (b) An attorney shall provide a written advisory with each
9 complaint or settlement demand sent to or served by him or her
10 upon a defendant, in the form described in subdivision (c), and on
11 a page or pages that are separate and clearly distinguishable from
12 the complaint or settlement demand, as follows:

13
14 **IMPORTANT INFORMATION FOR BUILDING OWNERS**
15 **AND TENANTS**
16

17 This form is available in English, Spanish, Chinese, Vietnamese,
18 and Korean through the Judicial Council of California. Persons
19 with visual impairments can get assistance in viewing this form
20 through the Judicial Council Internet Web site at
21 www.courts.ca.gov.

22 Existing law requires that you receive this information because
23 the complaint or settlement demand you received with this
24 document claims that your building or property does not comply
25 with one or more existing construction-related accessibility laws
26 or regulations protecting the civil rights of persons with disabilities
27 to access public places.

28 ~~YOU HAVE IMPORTANT LEGAL OBLIGATIONS.~~
29 Compliance with disability access laws is a serious and significant
30 responsibility that applies to all California building owners and
31 tenants with buildings open for business to the public. You may
32 obtain information about your legal obligations and how to comply
33 with disability access laws through the Division of the State
34 Architect. Information is also available from the California
35 Commission on Disability Access at www.ceda.ca.gov/guide.htm.

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

1 You may wish to promptly consult an attorney experienced in
2 this area of the law to get helpful legal advice or representation in
3 responding to the complaint or settlement demand you received.
4 You may contact the local bar association in your county for
5 information on available attorneys in your area. If you have
6 insurance, you may also wish to contact your insurance provider.
7 You have the right to seek assistance or advice about this complaint
8 or settlement demand from any person of your choice, and no one
9 may instruct you otherwise. Your best interest may be served by
10 seeking legal advice or representation from an attorney.

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

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

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

1 Internet Web site address where the different versions of the form
2 may be located. The form shall include Internet Web site
3 information for the Division of the State Architect and the
4 California Commission on Disability Access.

5 (d) Subdivision (b) shall apply to a complaint or settlement
6 demand made by an attorney. Nothing in this section is intended
7 to affect the right to file a civil complaint under any other law or
8 regulation protecting the physical access rights of persons with
9 disabilities.

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

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

14 55.31. (a) “Demand for money” means a written document or
15 oral statement that is provided or issued to a building owner or
16 tenant, or an agent or employee of a building owner or tenant, that
17 meets all of the following requirements:

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

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

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

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

34 (c) A violation of subdivision (b) shall be cause for the
35 imposition of disciplinary action against an attorney.

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

37 1938. A commercial property owner shall state on the lease
38 form or rental agreement if the property being leased or rented “is
39 CASp-inspected” or “is not CASp-inspected.” For the purpose of

1 this section, “CASp-inspected” is defined in paragraph (4) of
2 subdivision (a) of Section 55.52.

3 SEC. 4. Section 8299.05 of the Government Code is amended
4 to read:

5 8299.05. (a) The commission shall study and make reports to
6 the Legislature on the following:

7 (1) Issues regarding compliance with state laws and regulations
8 that are raised by either persons with disabilities or businesses,
9 and any recommendations that would promote compliance.

10 (2) Whether public and private inspection programs, including
11 the Certified Access Specialist Program, are meeting the needs of
12 both the business community and the disability community,
13 including by the provision of timely, competent inspections that
14 properly identify violations and recommend appropriate remedial
15 measures.

16 (3) Whether existing training and continuing education
17 requirements for personnel involved in designing, plan checking,
18 building, or inspecting a structure are sufficient to provide the
19 personnel with sufficient knowledge of the state and federal
20 disability access laws and regulations.

21 (4) Whether training and continuing education requirements
22 should be enacted for landscape architects, professional engineers,
23 and contractors to provide these professionals with sufficient
24 knowledge of the state and federal disability access laws and
25 regulations. This study and report shall be completed and delivered
26 to the Legislature no later than January 1, 2011.

27 (b) (1) The commission shall act as an information center on
28 the status of compliance in California with state laws and
29 regulations providing persons with disabilities full and equal access
30 to public facilities. To this end, it shall publish a biennial report,
31 which may be combined with the biennial report required in
32 odd-numbered years pursuant to subdivision (c), on the state of
33 disability access compliance by both the public and private sector.
34 The report shall be written in general terms and shall not identify
35 any particular violators.

36 (2) The commission shall, to the extent feasible, coordinate with
37 other state agencies and local building departments to ensure that
38 information provided to the public on disability access requirements
39 is uniform and complete.

1 (e) ~~The functions and responsibilities of the commission include~~
2 ~~the concurrent and prospective review of legislative measures,~~
3 ~~including Senate Bill 1186 of the 2011–12 Regular Session of the~~
4 ~~Legislature, and recommendations on any additional ideas or~~
5 ~~options to promote disability access and reduce unnecessary~~
6 ~~litigation.~~

7 (d) ~~The commission may recommend, develop, prepare, or~~
8 ~~coordinate materials, projects, or other activities, as appropriate,~~
9 ~~relating to any subject within its jurisdiction.~~

10 (e) ~~The commission shall provide, within its resources, technical~~
11 ~~information regarding any of the following:~~

12 (1) ~~Preventing or minimizing problems of compliance by~~
13 ~~California businesses by engaging in educational outreach efforts~~
14 ~~and by preparing and hosting on its Internet Web site a Guide to~~
15 ~~Compliance with State Laws and Regulations Regarding Disability~~
16 ~~Access Requirements.~~

17 (2) ~~Recommending programs to enable persons with disabilities~~
18 ~~to obtain full and equal access to public facilities.~~

19 (f) ~~The commission shall make reports on its activities, findings,~~
20 ~~and recommendations to the Legislature from time to time, but not~~
21 ~~less often than once during every odd-numbered year, on or before~~
22 ~~May 1 of that year, commencing in 2011.~~

23 ~~SEC. 5. It is the intent of the Legislature to do all of the~~
24 ~~following:~~

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

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

35 (c) ~~Examine measures that would lead to greater compliance,~~
36 ~~to the benefit of both business and the disability community~~
37 ~~through reducing litigation and improving access for the disabled,~~
38 ~~without discouraging early compliance efforts and without affecting~~
39 ~~the right to sue for uncorrected and other violations. This effort~~
40 ~~shall examine and address issues many small businesses face from~~

- 1 ~~litigation and tactics pursued primarily for private gain under the~~
- 2 ~~state and federal disability access laws, rather than to rectify a~~
- 3 ~~disability access violation.~~

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