

ASSEMBLY BILL

No. 1848

Introduced by Assembly Member Allen

February 19, 2014

An act to amend Section 55.56 of the Civil Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as introduced, Allen. Public accommodations: access: damages

Existing law provides that a plaintiff may recover statutory damages in a construction-related accessibility claim against a place of public accommodation only if a violation of construction-related accessibility standards denied the plaintiff full and equal access to that site on a particular occasion, as specified.

This bill would make a nonsubstantive change to these provisions.

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

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

- 1 SECTION 1. Section 55.56 of the Civil Code is amended to
- 2 read:
- 3 55.56. (a) Statutory damages under either subdivision (a) of
- 4 Section 52 or subdivision (a) of Section 54.3 may be recovered in
- 5 a construction-related accessibility claim against a place of public
- 6 accommodation only if a violation or violations of one or more
- 7 construction-related accessibility standards denied the plaintiff

1 full and equal access to the place of public accommodation on a
2 particular occasion.

3 (b) A plaintiff is denied full and equal access only if the plaintiff
4 personally encountered the violation on a particular occasion, or
5 the plaintiff was deterred from accessing a place of public
6 accommodation on a particular occasion.

7 (c) A violation personally encountered by a plaintiff may be
8 sufficient to cause a denial of full and equal access if the plaintiff
9 experienced difficulty, discomfort, or embarrassment because of
10 the violation.

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

14 (1) The plaintiff had actual knowledge of a violation or
15 violations that prevented or reasonably dissuaded the plaintiff from
16 accessing a place of public accommodation that the plaintiff
17 intended to use on a particular occasion.

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

21 (e) Statutory damages may be assessed pursuant to subdivision
22 (a) based on each particular occasion that the plaintiff was denied
23 full and equal access, and not upon the number of violations of
24 construction-related accessibility standards identified at the place
25 of public accommodation where the denial of full and equal access
26 occurred. If the place of public accommodation consists of distinct
27 facilities that offer distinct services, statutory damages may be
28 assessed based on each denial of full and equal access to the distinct
29 facility, and not upon the number of violations of
30 construction-related accessibility standards identified at the place
31 of public accommodation where the denial of full and equal access
32 occurred.

33 (f) (1) Notwithstanding any other law, a defendant's liability
34 for statutory damages in a construction-related accessibility claim
35 against a place of public accommodation is reduced to a minimum
36 of one thousand dollars (\$1,000) for each offense if the defendant
37 demonstrates that it has corrected all construction-related violations
38 that are the basis of a claim within 60 days of being served with
39 the complaint, and the defendant demonstrates any of the following:

1 (A) The structure or area of the alleged violation was determined
2 to be “CASp-inspected” or “meets applicable standards” and, to
3 the best of the defendant’s knowledge, there were no modifications
4 or alterations that impacted compliance with construction-related
5 accessibility standards with respect to the plaintiff’s claim that
6 were completed or commenced between the date of that
7 determination and the particular occasion on which the plaintiff
8 was allegedly denied full and equal access.

9 (B) The structure or area of the alleged violation was the subject
10 of an inspection report indicating “CASp determination pending”
11 or “Inspected by a CASp,” and the defendant has either
12 implemented reasonable measures to correct the alleged violation
13 before the particular occasion on which the plaintiff was allegedly
14 denied full and equal access, or the defendant was in the process
15 of correcting the alleged violation within a reasonable time and
16 manner before the particular occasion on which the plaintiff was
17 allegedly denied full and equal access.

18 (C) For a claim alleging a construction-related accessibility
19 violation filed before January 1, 2018, the structure or area of the
20 alleged violation was a new construction or an improvement that
21 was approved by, and passed inspection by, the local building
22 department permit and inspection process on or after January 1,
23 2008, and before January 1, 2016, and, to the best of the
24 defendant’s knowledge, there were no modifications or alterations
25 that impacted compliance with respect to the plaintiff’s claim that
26 were completed or commenced between the completion date of
27 the new construction or improvement and the particular occasion
28 on which the plaintiff was allegedly denied full and equal access.

29 (D) The structure or area of the alleged violation was new
30 construction or an improvement that was approved by, and passed
31 inspection by, a local building department official who is a certified
32 access specialist, and, to the best of the defendant’s knowledge,
33 there were no modifications or alterations that affected compliance
34 with respect to the plaintiff’s claim that were completed or
35 commenced between the completion date of the new construction
36 or improvement and the particular occasion on which the plaintiff
37 was allegedly denied full and equal access.

38 (2) Notwithstanding any other law, a defendant’s liability for
39 statutory damages in a construction-related accessibility claim
40 against a place of public accommodation is reduced to a minimum

1 of two thousand dollars (\$2,000) for each offense if the defendant
2 demonstrates both of the following:

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

6 (B) The defendant is a small business that has employed 25 or
7 fewer employees on average over the past three years, or for the
8 years it has been in existence if less than three years, as evidenced
9 by wage report forms filed with the Economic Development
10 Department, and has average annual gross receipts of less than
11 three million five hundred thousand dollars (\$3,500,000) over the
12 previous three years, or for the years it has been in existence if
13 less than three years, as evidenced by federal or state income tax
14 returns. The average annual gross receipts dollar amount shall be
15 adjusted biannually by the Department of General Services for
16 changes in the California Consumer Price Index for All Urban
17 Consumers, as compiled by the Department of Industrial Relations.
18 The Department of General Services shall post that adjusted
19 amount on its Internet Web site.

20 (3) This subdivision shall not be applicable to intentional
21 violations.

22 (4) Nothing in this subdivision affects the awarding of actual
23 damages, or affects the awarding of treble actual damages.

24 (5) This subdivision shall apply only to claims filed on or after
25 the effective date of Senate Bill 1186 of the 2011–12 Regular
26 Session of the Legislature. Nothing in this subdivision is intended
27 to affect a complaint filed before that date.

28 (g) This section does not alter the applicable law for the
29 awarding of injunctive or other equitable relief for a violation or
30 violations of one or more construction-related accessibility
31 ~~standards, nor standards~~ or alter any legal obligation of a party to
32 mitigate damages.

33 (h) In assessing liability under subdivision (d), in an action
34 alleging multiple claims for the same construction-related
35 accessibility violation on different particular occasions, the court
36 shall consider the reasonableness of the plaintiff’s conduct in light
37 of the plaintiff’s obligation, if any, to mitigate damages.

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