

ASSEMBLY BILL

No. 52

Introduced by Assembly Member Gray
(Coauthors: Assembly Members Olsen, Perea, and Salas)
(Coauthors: Senators Cannella and Galgiani)

December 1, 2014

An act to amend Section 55.56 of, and to add Section 55.565 to, the Civil Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

AB 52, as introduced, Gray. Public accommodations: construction-related accessibility claims.

Existing law allows a plaintiff to collect statutory damages in a construction-related accessibility claim against a place of public accommodation only if the plaintiff was denied full and equal access to the place of public accommodation on a particular occasion, as specified. Existing law imposes a minimum liability of \$1,000 on these statutory damages for each offense when a defendant demonstrates that the defendant has corrected the construction-related accessibility violation within 60 days of being served with a complaint and the defendant demonstrates that the structure or area of the alleged violation was determined to meet standards or was subjected to an inspection, as specified. Existing law also imposes a minimum liability of \$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.

This bill would instead provide that a defendant's maximum liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is \$1,000 for each offense if the

defendant has corrected all construction-related violations that are the basis of the claim within 180 days of being served with the complaint and the defendant demonstrates that the structure or area of the alleged violation was determined to meet standards or was subjected to an inspection, as specified. The bill would reduce that maximum liability to \$1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 180 days of being served with the complaint and the defendant is a small business, as revised. The bill would also provide that specified statutory damages in a construction-related accessibility claim against a place of public accommodation that is a small business, as defined, may only be recovered if the place of public accommodation is granted a 180-day stay of court proceedings to meet specified requirements.

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
8 full and equal access to the place of public accommodation on a
9 particular occasion.

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

14 (c) A violation personally encountered by a plaintiff may be
15 sufficient to cause a denial of full and equal access if the plaintiff
16 experienced difficulty, discomfort, or embarrassment because of
17 the violation.

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

21 (1) The plaintiff had actual knowledge of a violation or
22 violations that prevented or reasonably dissuaded the plaintiff from

1 accessing a place of public accommodation that the plaintiff
2 intended to use on a particular occasion.

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

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

18 (f) (1) Notwithstanding any other law, a defendant's liability
19 for statutory damages in a construction-related accessibility claim
20 against a place of public accommodation is reduced to a ~~minimum~~
21 *maximum* of one thousand dollars (\$1,000) for each offense if the
22 defendant demonstrates that it has corrected all construction-related
23 violations that are the basis of a claim within ~~60~~ 180 days of being
24 served with the complaint, and the defendant demonstrates any of
25 the following:

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

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

1 manner before the particular occasion on which the plaintiff was
 2 allegedly denied full and equal access.

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

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

24 (2) Notwithstanding any other law, a defendant’s liability for
 25 statutory damages in a construction-related accessibility claim
 26 against a place of public accommodation is reduced to a ~~minimum~~
 27 ~~of two thousand dollars (\$2,000)~~ *maximum of one thousand dollars*
 28 *(\$1,000)* for each offense if the defendant *has corrected all*
 29 *construction-related violations that are the basis of the claim*
 30 *within 180 days of being served with the complaint and*
 31 ~~demonstrates both~~ *either* of the following:

32 ~~(A) The defendant has corrected all construction-related~~
 33 ~~violations that are the basis of a claim within 30 days of being~~
 34 ~~served with the complaint.~~

35 ~~(B)~~

36 (A) The defendant is a small business that has employed 25 or
 37 fewer employees on average over the past three years, or for the
 38 years it has been in existence if less than three years, as evidenced
 39 by wage report forms filed with the Economic Development
 40 Department, and has average annual gross receipts of less than

1 three million five hundred thousand dollars (\$3,500,000) over the
2 previous three years, or for the years it has been in existence if
3 less than three years, as evidenced by federal or state income tax
4 returns. The average annual gross receipts dollar amount shall be
5 adjusted biannually by the Department of General Services for
6 changes in the California Consumer Price Index for All Urban
7 Consumers, as compiled by the Department of Industrial Relations.
8 The Department of General Services shall post that adjusted
9 amount on its Internet Web site.

10 (B) *The defendant is a small business as defined in Section*
11 *14837 of the Government Code.*

12 (3) This subdivision shall not be applicable to intentional
13 violations.

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

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

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

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

30 SEC. 2. Section 55.565 is added to the Civil Code, to read:

31 55.565. When a plaintiff brings a construction-related
32 accessibility claim alleging a violation of a construction-related
33 accessibility standard by a place of public accommodation that is
34 a small business as defined in Section 14837 of the Government
35 Code, statutory damages under subdivision (a) of Section 52 or
36 subdivision (a) of Section 54.3 may be recovered against a place
37 of public accommodation only if the place of public
38 accommodation where the alleged violation occurred is granted a
39 180-day stay of court proceedings from the day the claim is filed
40 during which time the place of public accommodation may meet

- 1 the requirements of a qualified defendant as defined by paragraph
- 2 (8) of subdivision (a) of Section 55.52.

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