

Assembly Bill No. 54

Passed the Assembly August 22, 2016

Chief Clerk of the Assembly

Passed the Senate August 16, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 55.32 of the Civil Code, and to add Section 8299.08.1 of the Government Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 54, Olsen. Disability access: construction-related accessibility claims: demand letters.

Existing law prohibits discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards. Existing law requires that a copy of the demand letter and the complaint be sent to the California Commission on Disability Access.

This bill would, in addition, require that information about the demand letter and the complaint be submitted to the commission in a standard format specified by the commission on the commission's Internet Web site. The bill would require the commission to post a new standard format on its Internet Web site at least 30 days before requiring information be in the new standard format.

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

SECTION 1. Section 55.32 of the Civil Code, as amended by Section 2 of Chapter 755 of the Statutes of 2015, is amended to read:

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

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

(2) Contemporaneously with providing the demand letter, send a copy of the demand letter to the State Bar of California by facsimile transmission at 1-415-538-2171, or by mail to 180

Howard Street, San Francisco, CA, 94105, Attention: Professional Competence.

(3) Within five business days of providing the demand letter, send a copy of the demand letter, and submit information about the demand letter in a standard format specified by the California Commission on Disability Access on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code, to the commission.

(b) An attorney who sends or serves a complaint, as defined in subdivision (a) of Section 55.3, shall do both of the following:

(1) Send a copy of the complaint and submit information about the complaint in a standard format specified by the California Commission on Disability Access on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code to the commission within five business days of sending or serving the complaint.

(2) Notify the California Commission on Disability Access within five business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of the following information in a standard format specified by the commission on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code:

(A) The date of the judgment, settlement, or dismissal.

(B) Whether or not the construction-related accessibility violations alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3.

(C) If the construction-related accessibility violations alleged in the complaint were not remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3, whether or not another favorable result was achieved after the plaintiff filed the complaint or provided the demand letter.

(D) Whether or not the defendant submitted an application for an early evaluation conference and stay pursuant to Section 55.54, whether the defendant requested a site inspection, the date of any early evaluation conference, and the date of any site inspection.

(c) A violation of paragraph (2) or (3) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney where a copy of the complaint, demand

letter, or notification of a case outcome is not sent to the California Commission on Disability Access in the standard format specified on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code within five business days, or a copy of the demand letter is not sent to the State Bar within five business days. In the event the State Bar receives information indicating that an attorney has failed to send a copy of the complaint, demand letter, or notification of a case outcome to the California Commission on Disability Access in the standard format specified on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code within five business days, the State Bar shall investigate to determine whether paragraph (3) of subdivision (a) or subdivision (b) has been violated.

(d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the State Bar of California or the California Commission on Disability Access a copy of any subsequent demand letter or amended complaint in the same dispute following the initial demand letter or complaint, unless that subsequent demand letter or amended complaint alleges a new construction-related accessibility claim.

(e) A demand letter, complaint, or notification of a case outcome sent to the California Commission on Disability Access shall be for the informational purposes of Section 8299.08 of the Government Code. A demand letter received by the State Bar from either the sender or recipient of the demand letter shall be reviewed by the State Bar to determine whether subdivision (b) or (c) of Section 55.31 has been violated.

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

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

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

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

(g) The California Commission on Disability Access shall review and report on the demand letters, complaints, and notifications of case outcomes it receives as provided in Section 8299.08 of the Government Code.

(h) Paragraphs (2) and (3) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

(i) This section shall become operative on January 1, 2013.

(j) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 2. Section 55.32 of the Civil Code, as amended by Section 3 of Chapter 755 of the Statutes of 2015, is amended to read:

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

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

(2) Within five business days of providing the demand letter, send a copy of the demand letter, and submit information about the demand letter in a standard format specified by the California Commission on Disability Access on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code, to the commission.

(b) An attorney who sends or serves a complaint, as defined in subdivision (a) of Section 55.3, shall do both of the following:

(1) Send a copy of the complaint and submit information about the complaint in a standard format specified by the California Commission on Disability Access on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code to the commission within five business days of sending or serving the complaint.

(2) Notify the California Commission on Disability Access within five business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of the following information in a standard format specified by the commission on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code:

(A) The date of the judgment, settlement, or dismissal.

(B) Whether or not the construction-related accessibility violations alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3.

(C) If the construction-related accessibility violations alleged in the complaint were not remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3, whether or not another favorable result was achieved after the plaintiff filed the complaint or provided the demand letter.

(D) Whether or not the defendant submitted an application for an early evaluation conference and stay pursuant to Section 55.54, whether the defendant requested a site inspection, the date of any early evaluation conference, and the date of any site inspection.

(c) A violation of paragraph (2) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney if a copy of the demand letter, complaint, or notification of a case outcome is not sent to the California Commission on Disability Access in the standard format specified on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code within five business days. In the event the State Bar receives information indicating that an attorney has failed to send a copy of the demand letter, complaint, or notification of a case outcome to the California Commission on Disability Access in the standard format specified on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code within five business days, the State Bar shall investigate to determine

whether paragraph (2) of subdivision (a) or subdivision (b) has been violated.

(d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the California Commission on Disability Access a copy of any subsequent demand letter or amended complaint in the same dispute following the initial demand letter or complaint, unless that subsequent demand letter or amended complaint alleges a new construction-related accessibility claim.

(e) A demand letter or notification of a case outcome sent to the California Commission on Disability Access shall be for the informational purposes of Section 8299.08 of the Government Code. A demand letter received by the State Bar from the recipient of the demand letter shall be reviewed by the State Bar to determine whether subdivision (b) or (c) of Section 55.31 has been violated.

(f) (1) Notwithstanding Section 10231.5 of the Government Code, on or before July 31, 2019, and annually thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Judiciary Committees, both of the following with respect to demand letters received by the State Bar:

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

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

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

(g) The California Commission on Disability Access shall review and report on the demand letters, complaints, and notifications of case outcomes it receives as provided in Section 8299.08 of the Government Code.

(h) The expiration of any ground for discipline of an attorney shall not affect the imposition of discipline for any act prior to the expiration. An act or omission that constituted cause for imposition of discipline of an attorney when committed or omitted prior to January 1, 2019, shall continue to constitute cause for the imposition of discipline of that attorney on and after January 1, 2019.

(i) Paragraph (2) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project

or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

(j) This section shall become operative on January 1, 2019.

SEC. 3. Section 8299.08.1 is added to the Government Code, to read:

8299.08.1. At least thirty days before requiring a new standard format of the information to be sent to the commission pursuant to Section 55.32 of the Civil Code, the commission shall post on its Internet Web site the new standard format and the date by when the commission will begin requiring that information sent to the commission pursuant to Section 55.32 of the Civil Code be in the new standard format.

Approved _____, 2016

Governor