

**ASSEMBLY BILL**

**No. 1468**

---

---

**Introduced by Assembly Member Baker  
(Coauthor: Assembly Member Wilk)**

February 27, 2015

---

---

An act to amend Section 55.52 of, and to add Section 54.26 to, the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1468, as introduced, Baker. Civil rights: disability access.

Existing law provides that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places. Existing law prescribes a process for prosecuting an action in this regard and provides that a person aggrieved or potentially aggrieved by a violation of these rights may bring an action for damages and that a prevailing party is entitled to recover reasonable attorney's fees.

This bill would except from the application of these provisions public buildings, public facilities, and other public places of a public entity that, on specified dates, met specified disability access design standards. The bill would provide that a public entity's possession of a close out letter from the State Architect certifying that the buildings, facilities, and other places to which the letter applies meet the applicable building and construction-related accessibility standards of the federal Americans with Disabilities Act serves as presumptive evidence that the public buildings, facilities, and places are in compliance with this part and the federal Americans with Disabilities Act.

Existing law prescribes a process in certain construction-related accessibility claims against a place of public accommodation. This process permits statutory damages to be awarded against a place of public accommodation only if the violation denied the plaintiff full and equal access to the place of public accommodation on a particular occasion. This process also reduces a defendant’s minimum statutory damage liability to \$1,000 if the defendant demonstrates that it has corrected all construction-related violations that are the basis of a claim within 60 days of being served with the complaint, and other select conditions are met.

This bill would apply the process described above to an action commenced on or after that January 1, 2016, or an action commenced prior to that date for which a final judgment has not been entered, to public buildings, public facilities, and other public places of a public entity by revising the definition of a place of public accommodation.

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

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

- 1 SECTION 1. Section 54.26 is added to the Civil Code, to read:
- 2 54.26. (a) For any action commenced on or after January 1,
- 3 2016, or for an action commenced prior to that date for which a
- 4 final judgment has not been entered, the following shall apply:
- 5 (1) New construction or alteration of a structure conducted by
- 6 a public entity on or before September 15, 2010, that complies
- 7 with the 1991 ADA Standards for Accessible Design or the
- 8 Uniform Federal Accessibility Standards are deemed not in
- 9 violation of this part.
- 10 (2) New construction or alteration of a structure conducted by
- 11 a public entity on or after September 15, 2010, and before March
- 12 15, 2012, that complies with either the 1991 ADA Standards for
- 13 Accessible Design or 2010 ADA Standards for Accessible Design
- 14 are deemed not in violation of this part.
- 15 (3) New construction or alteration of a structure conducted by
- 16 a public entity on or after March 15, 2012, that complies with the
- 17 2010 ADA Standards for Accessible Design or the applicable code
- 18 in place at the time of construction or alteration are deemed not in
- 19 violation of this part.

1 (4) Elements in existing facilities of a public entity that have  
2 not been altered on or before March 15, 2012, that comply with  
3 the 1991 ADA Standards for Accessible Design or 2010 ADA  
4 Standards for Accessible Design are deemed not in violation of  
5 this part.

6 (b) A public entity’s possession of a closeout letter from the  
7 State Architect certifying that the public buildings, public facilities,  
8 and other public places to which the letter applies meet the  
9 applicable building and construction-related accessibility standards  
10 of the federal Americans with Disabilities Act shall serve as  
11 presumptive evidence that the public buildings, facilities, and  
12 places are in compliance with this part and the federal Americans  
13 with Disabilities Act.

14 SEC. 2. Section 55.52 of the Civil Code is amended to read:

15 55.52. (a) For purposes of this part, the following definitions  
16 apply:

17 (1) “Construction-related accessibility claim” means any civil  
18 claim in a civil action with respect to a place of public  
19 accommodation, including, but not limited to, a claim brought  
20 under Section 51, 54, 54.1, or 55, based wholly or in part on an  
21 alleged violation of any construction-related accessibility standard,  
22 as defined in paragraph (6).

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

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

29 (4) “Meets applicable standards” means the site was inspected  
30 by a CASp and determined to meet all applicable  
31 construction-related accessibility standards pursuant to paragraph  
32 (1) of subdivision (a) of Section 55.53. A site that is “CASp  
33 inspected” on or before the effective date of the amendments made  
34 to this section by Senate Bill 1186 of the 2011–12 Regular Session  
35 of the Legislature means that the site “meets applicable standards.”

36 (5) “Inspected by a CASp” means the site was inspected by a  
37 CASp and is pending a determination by the CASp that the site  
38 meets applicable construction-related accessibility standards  
39 pursuant to paragraph (2) of subdivision (a) of Section 55.53. A  
40 site that is “CASp determination pending” on or before the effective

1 date of the amendments made to this section by Senate Bill 1186  
2 of the 2011–12 Regular Session of the Legislature means that the  
3 site was “inspected by a CASp.”

4 (6) “Construction-related accessibility standard” means a  
5 provision, standard, or regulation under state or federal law  
6 requiring compliance with standards for making new construction  
7 and existing facilities accessible to persons with disabilities,  
8 including, but not limited to, any provision, standard, or regulation  
9 set forth in Section 51, 54, 54.1, or 55 of this code, Section 19955.5  
10 of the Health and Safety Code, the California Building Standards  
11 Code (Title 24 of the California Code of Regulations), the federal  
12 Americans with Disabilities Act of 1990 (Public Law 101-336; 42  
13 U.S.C. Sec. 12101 et seq.), and the federal Americans with  
14 Disabilities Act Accessibility Guidelines (Appendix A to Part 36  
15 of Title 28 of the Code of Federal Regulations).

16 (7) (A) “Place of public accommodation” has the same meaning  
17 as “public accommodation,” as set forth in Section 12181(7) of  
18 Title 42 of the United States Code and the federal regulations  
19 adopted pursuant to that section.

20 (B) *For any action commenced on or after that January 1, 2016,*  
21 *or for an action commenced prior to that date for which a final*  
22 *judgment has not been entered, “place of public accommodation”*  
23 *also means public buildings, public facilities, and other public*  
24 *places of a public entity as defined in Section 12131(1) of Title 42*  
25 *of the United States Code and any related federal regulations.*

26 (8) “Qualified defendant” means a defendant in an action that  
27 includes a construction-related accessibility claim that is asserted  
28 against a place of public accommodation that met the requirements  
29 of “meets applicable standards” or “inspected by a CASp” prior  
30 to the date the defendant was served with the summons and  
31 complaint in that action. To be a qualified defendant, the defendant  
32 is not required to have been the party who hired any CASp, so  
33 long as the basis of the alleged liability of the defendant is a  
34 construction-related accessibility claim. To determine whether a  
35 defendant is a qualified defendant, the court need not make a  
36 finding that the place of public accommodation complies with all  
37 applicable construction-related accessibility standards as a matter  
38 of law. The court need only determine that the place of public  
39 accommodation has a status of “meets applicable standards” or  
40 “inspected by a CASp.”

- 1 (9) “Site” means a place of public accommodation.
- 2 (b) Unless otherwise indicated, terms used in this part relating
- 3 to civil procedure have the same meanings that those terms have
- 4 in the Code of Civil Procedure.

O