

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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 *an educational institution* 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. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *Existing law provides that individuals with disabilities or*
- 4 *medical conditions have the same right as the general public to*
- 5 *the full and free use of streets, highways, sidewalks, walkways,*
- 6 *public buildings, medical facilities, public facilities, and other*
- 7 *public places.*
- 8 (b) *Existing law prescribes a process for bringing an action to*
- 9 *remedy issues of accessibility and provides that a person aggrieved*
- 10 *or potentially aggrieved by a violation of these rights may bring*
- 11 *an action for damages.*
- 12 (c) *Legislation enacted in 2012 requires an attorney to provide*
- 13 *a written advisory with each demand letter or complaint to a*
- 14 *defendant or potential defendant for any construction-related*
- 15 *accessibility claim. Certain basic review requirements are also*
- 16 *required prior to sending a demand letter. This legislation did not*
- 17 *and does not apply to public facilities.*

1 (d) *It is the mission of community colleges and school districts*
2 *to provide quality educational programs and services that address*
3 *the diverse needs of students and communities throughout the state.*

4 (e) *California’s community colleges place a heavy importance*
5 *on providing quality educational facilities that are accessible to*
6 *all members of the community.*

7 (f) *Community colleges and local educational agencies, as well*
8 *as other public agencies, are subject to design and construction*
9 *oversight by the Division of the State Architect. The Division of*
10 *the State Architect evaluates compliance with building code and*
11 *Education Code requirements for accessibility, structural safety,*
12 *and fire and life safety on new construction projects and on*
13 *modernization projects.*

14 (g) *As part of its responsibilities, the Division of the State*
15 *Architect performs a project closeout to determine that the project*
16 *complies with codes and regulations governing school construction,*
17 *including accessibility. This process examines facilities for specific*
18 *requirements before, during, and after construction to ensure any*
19 *outstanding issues have been resolved. At the end of construction,*
20 *the Division of the State Architect issues a closeout letter for the*
21 *project that indicates compliance with applicable rules and*
22 *regulations.*

23 (h) *In light of the participation of the Division of the State*
24 *Architect in the design and construction of facilities of community*
25 *colleges and local educational agencies, it is appropriate that*
26 *these facilities receive additional protections already extended to*
27 *private defendants in construction-accessibility actions.*

28 **SECTION 4.**

29 **SEC. 2.** Section 54.26 is added to the Civil Code, to read:

30 54.26. (a) For any action commenced on or after January 1,
31 2016, or for an action commenced prior to that date for which a
32 final judgment has not been entered, the following shall apply:

33 (1) New construction or alteration of a structure conducted by
34 a public entity on or before September 15, 2010, that complies
35 with the 1991 ADA Standards for Accessible Design or the
36 Uniform Federal Accessibility Standards are deemed not in
37 violation of this part.

38 (2) New construction or alteration of a structure conducted by
39 a public entity on or after September 15, 2010, and before March
40 15, 2012, that complies with either the 1991 ADA Standards for

1 Accessible Design or 2010 ADA Standards for Accessible Design
2 are deemed not in violation of this part.

3 (3) New construction or alteration of a structure conducted by
4 a public entity on or after March 15, 2012, that complies with the
5 2010 ADA Standards for Accessible Design or the applicable code
6 in place at the time of construction or alteration are deemed not in
7 violation of this part.

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

13 (b) A public entity’s possession of a closeout letter from the
14 State Architect certifying that the public buildings, public facilities,
15 and other public places to which the letter applies meet the
16 applicable building and construction-related accessibility standards
17 of the federal Americans with Disabilities Act shall serve as
18 presumptive evidence that the public buildings, facilities, and
19 places are in compliance with this part and the federal Americans
20 with Disabilities Act.

21 ~~SEC. 2.~~

22 *SEC. 3.* Section 55.52 of the Civil Code is amended to read:

23 55.52. (a) For purposes of this part, the following definitions
24 apply:

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

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

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

37 (4) “Meets applicable standards” means the site was inspected
38 by a CASp and determined to meet all applicable
39 construction-related accessibility standards pursuant to paragraph
40 (1) of subdivision (a) of Section 55.53. A site that is “CASp

1 inspected” on or before the effective date of the amendments made
2 to this section by Senate Bill 1186 of the 2011–12 Regular Session
3 of the Legislature means that the site “meets applicable standards.”

4 (5) “Inspected by a CASp” means the site was inspected by a
5 CASp and is pending a determination by the CASp that the site
6 meets applicable construction-related accessibility standards
7 pursuant to paragraph (2) of subdivision (a) of Section 55.53. A
8 site that is “CASp determination pending” on or before the effective
9 date of the amendments made to this section by Senate Bill 1186
10 of the 2011–12 Regular Session of the Legislature means that the
11 site was “inspected by a CASp.”

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

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

28 (B) For any action commenced on or after that January 1, 2016,
29 or for an action commenced prior to that date for which a final
30 judgment has not been entered, “place of public accommodation”
31 also means public buildings, public facilities, and other public
32 places of *an educational institution* of a public entity as defined
33 in Section 12131(1) of Title 42 of the United States Code and any
34 related federal regulations.

35 (8) “Qualified defendant” means a defendant in an action that
36 includes a construction-related accessibility claim that is asserted
37 against a place of public accommodation that met the requirements
38 of “meets applicable standards” or “inspected by a CASp” prior
39 to the date the defendant was served with the summons and
40 complaint in that action. To be a qualified defendant, the defendant

1 is not required to have been the party who hired any CASp, so
2 long as the basis of the alleged liability of the defendant is a
3 construction-related accessibility claim. To determine whether a
4 defendant is a qualified defendant, the court need not make a
5 finding that the place of public accommodation complies with all
6 applicable construction-related accessibility standards as a matter
7 of law. The court need only determine that the place of public
8 accommodation has a status of “meets applicable standards” or
9 “inspected by a CASp.”

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

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