

AMENDED IN ASSEMBLY MAY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1521

Introduced by Committee on Judiciary (Assembly Members Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, Holden, and O'Donnell)

March 10, 2015

An act to amend Sections 17, 581d, 582, and 1003 of the Code of Civil Procedure, relating to civil procedure. *Section 55.3 of the Civil Code, relating to disability access.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1521, as amended, Committee on Judiciary. ~~Civil procedure: electronic signatures.~~ *Disability access: construction-related accessibility claims.*

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, public facilities, and other public places, and allows a person who is aggrieved or potentially aggrieved by a violation of specific provisions of law to bring an action to enjoin the violation. Existing law requires an attorney to provide a written advisory with each demand letter or complaint, as defined, sent to or served upon a defendant or potential defendant for any construction-related accessibility claim, as specified.

This bill would require the above-described advisory to include additional information regarding the rights and obligations of business owners and commercial tenants, as specified. In addition to the written advisory, the bill would require an attorney to provide a defendant or

potential defendant of a construction-related accessibility claim with an answer form developed by the Judicial Council, which would allow a defendant to respond in the event a complaint is filed, as specified. The bill would, on or before July 1, 2016, require the Judicial Council to update the advisory form and adopt the answer form, as specified.

~~(1) Existing law provides definitions for particular terms used within the Code of Civil Procedure, including the terms “signature” or “subscription,” which are defined to include a mark of a person, when the person cannot write, with his or her name being written near it by a person who writes his or her own name as a witness, as specified.~~

~~This bill would provide that the terms “signature” or “subscription” also include an electronic signature, defined as an electronic image or symbol of a person’s signature that is attached to, or logically associated with, a document and executed or adopted by the person with an intent to sign the document.~~

~~(2) Existing law provides, in a dismissal of an action by a court, that the court is required to sign a written order and file the order in the action, which constitutes a judgment that is effective for all purposes. In all other cases, existing law provides that a judgment is required to be rendered on the merits.~~

~~This bill would require all judgments to be signed by the court, and would provide that an electronic signature is as effective as an original signature.~~

The bill also would include technical changes to these provisions.

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

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

- 1 SECTION 1. Section 55.3 of the Civil Code is amended to read:
- 2 55.3. (a) For purposes of this section, the following shall apply:
- 3 (1) “Complaint” means a civil complaint that is filed or is to be
- 4 filed with a court and is sent to or served upon a defendant on the
- 5 basis of one or more construction-related accessibility claims, as
- 6 defined in this section.
- 7 (2) “Construction-related accessibility claim” means any claim
- 8 of a violation of any construction-related accessibility standard,
- 9 as defined by paragraph (6) of subdivision (a) of Section 55.52,
- 10 with respect to a place of public accommodation.
- 11 “Construction-related accessibility claim” does not include a claim

1 of interference with housing within the meaning of paragraph (2)
2 of subdivision (b) of Section 54.1, or any claim of interference
3 caused by something other than the construction-related
4 accessibility condition of the property, including, but not limited
5 to, the conduct of any person.

6 (3) “Demand for money” means a prelitigation written document
7 or oral statement that is provided or issued to a building owner or
8 tenant, or the owner’s or tenant’s agent or employee, that does all
9 of the following:

10 (A) Alleges that the site is in violation of one or more
11 construction-related accessibility standards, as defined in paragraph
12 (6) of subdivision (a) of Section 55.52, or alleges one or more
13 construction-related accessibility claims, as defined in paragraph
14 (2).

15 (B) Contains or makes a request or demand for money or an
16 offer or agreement to accept money.

17 (C) Is provided or issued whether or not the attorney intends to
18 file a complaint, or eventually files a complaint, in state or federal
19 court.

20 (4) “Demand letter” means a prelitigation written document that
21 is provided to a building owner or tenant, or the owner’s or tenant’s
22 agent or employee, that alleges the site is in violation of one or
23 more construction-related accessibility standards, as defined in
24 paragraph (6) of subdivision (a) of Section 55.52, or alleges one
25 or more construction-related accessibility claims, as defined in
26 paragraph (2), and is provided whether or not the attorney intends
27 to file a complaint, or eventually files a complaint, in state or
28 federal court.

29 (b) An attorney shall provide ~~a~~ *the following items with each*
30 *demand letter or complaint sent to or served upon a defendant or*
31 *potential defendant alleging a construction-related accessibility*
32 *claim: written*

33 (1) A written advisory on the form described in ~~subdivision (c),~~
34 *subparagraph (B)*, or, until that form is available, on a separate
35 page or pages that are clearly distinguishable from the demand
36 letter or complaint, ~~with each demand letter or complaint sent to~~
37 ~~or served upon a defendant or potential defendant.~~ *complaint.* The
38 advisory shall not be required in subsequent communications
39 following the initial demand letter or initial complaint unless a

1 new construction-related accessibility claim is asserted in the
2 subsequent demand letter or amended complaint.~~The~~

3 (A) *The* advisory shall state as follows:

4

5 STATE LAW REQUIRES THAT YOU GET THIS
6 IMPORTANT ADVISORY INFORMATION FOR BUILDING
7 OWNERS AND TENANTS

8

9 This information is available in English, Spanish, Chinese,
10 Vietnamese, and Korean through the Judicial Council of California.
11 Persons with visual impairments can get assistance in viewing this
12 form through the Judicial Council Internet Web site at
13 www.courts.ca.gov.

14 California law requires that you receive this information because
15 the demand letter or court complaint you received with this
16 document claims that your building or property does not comply
17 with one or more existing construction-related accessibility laws
18 or regulations protecting the civil rights of persons with disabilities
19 to access public places.

20 YOU HAVE IMPORTANT LEGAL OBLIGATIONS.
21 Compliance with disability access laws is a serious and significant
22 responsibility that applies to all California building owners and
23 tenants with buildings open for business to the public. You may
24 obtain information about your legal obligations and how to comply
25 with disability access laws through the Division of the State
26 Architect at www.dgs.ca.gov. Information is also available from
27 the California Commission on Disability Access at
28 www.cdda.ca.gov/guide.htm.

29 YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations
30 made in the accompanying demand letter or court complaint do
31 not mean that you are required to pay any money unless and until
32 a court finds you liable. Moreover, RECEIPT OF A DEMAND
33 LETTER OR COURT COMPLAINT AND THIS ADVISORY
34 DOES NOT NECESSARILY MEAN YOU WILL BE FOUND
35 LIABLE FOR ANYTHING. You will have the right if you are
36 later sued to fully present your explanation why you believe you
37 have not in fact violated disability access laws or have corrected
38 the violation or violations giving rise to the claim.

39 You have the right to seek assistance or advice about this demand
40 letter or court complaint from any person of your choice. If you

1 have insurance, you may also wish to contact your insurance
2 provider. Your best interest may be served by seeking legal advice
3 or representation from an attorney, but you may also represent
4 yourself and file the necessary court papers to protect your interests
5 if you are served with a court complaint. If you have hired an
6 attorney to represent you, you should immediately notify your
7 attorney.

8 If a court complaint has been served on you, you will get a
9 separate advisory notice with the complaint advising you of special
10 options and procedures available to you under certain conditions.

11 **ADDITIONAL THINGS YOU SHOULD KNOW:**~~ff~~

12 *ATTORNEY MISCONDUCT. Except for limited circumstances,*
13 *state law generally requires that a prelitigation demand letter from*
14 *an attorney*~~the document accompanying this notice is a demand~~
15 ~~letter from a lawyer and not a formal court complaint, the lawyer~~
16 ~~is generally required by law to also provide a copy of it to the State~~
17 ~~Bar of California, until January 1, 2016, in order that the State Bar~~
18 ~~may determine whether the demand letter complies with legal~~
19 ~~requirements, INCLUDING THAT THE DEMAND LETTER~~
20 ~~MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY~~
21 ~~OR AN OFFER OR AGREEMENT TO ACCEPT MONEY. Any~~
22 ~~Moreover, a demand letter or court complaint must list the lawyer's~~
23 ~~State Bar license number on the document. from an attorney MUST~~
24 ~~INCLUDE THE ATTORNEY'S STATE BAR LICENSE NUMBER.~~

25 *If you believe the attorney who provided you with this notice*
26 *and prelitigation demand letter is not complying with state law,*
27 *you may send a copy of the demand letter you received from the*
28 *attorney to the State Bar of California by facsimile transmission*
29 *to 1-415-538-2171, or by mail to the State Bar of California, 180*
30 *Howard Street, San Francisco, CA, 94105, Attention: Professional*
31 *Competence.*

32 ~~You are encouraged, but are not required, to provide the State~~
33 ~~Bar with a copy of the demand letter so the State Bar is aware that~~
34 ~~you received this demand letter and may determine whether it is~~
35 ~~in compliance with specified legal requirements. A copy of the~~
36 ~~letter can be sent to the State Bar by facsimile transmission to~~
37 ~~1-415-538-2171, or by mail to the State Bar of California, 180~~
38 ~~Howard Street, San Francisco, CA, 94105, Attention: Professional~~
39 ~~Competence.~~

1 *REDUCING YOUR DAMAGES. If you are a small business*
 2 *owner and correct all of the construction-related violations that*
 3 *are the basis of the complaint against you within 30 days of being*
 4 *served with the complaint, you may qualify for reduced damages*
 5 *if the matter results in a court judgment. If you believe you qualify*
 6 *for reduced damages, you may wish to consult an attorney to obtain*
 7 *legal advice, or contact the California Commission on Disability*
 8 *Access for additional information about the rights and obligations*
 9 *of business owners.*

10 *COMMERCIAL TENANT. If you are a commercial tenant, you*
 11 *may not be responsible for ensuring that some or all portions of*
 12 *the premises you lease for your business, including common areas*
 13 *such as parking lots, are accessible to the public because those*
 14 *areas may be the responsibility of your landlord. You may want*
 15 *to refer to your lease agreement and consult with an attorney or*
 16 *contact your landlord, to determine if your landlord is responsible*
 17 *under the terms of your lease for maintaining and improving some*
 18 *or all of the areas you lease to operate your business.*

19
 20 (e)

21 (B) On or before July 1, ~~2013~~, 2016, the Judicial Council shall
 22 update the *advisory* form that may be used by ~~attorneys~~ *an attorney*
 23 to comply with the requirements of ~~subdivision (b)~~. *subparagraph*
 24 (A). The *advisory* form shall be in substantially the same format
 25 and include all of the text set forth in ~~subdivision (b)~~. *subparagraph*
 26 (A). The *advisory* form shall be available in English, Spanish,
 27 Chinese, Vietnamese, and Korean, and shall include a statement
 28 that the *advisory* form is available in additional languages, and the
 29 Judicial Council Internet Web site address where the different
 30 versions of the *advisory* form ~~may be~~ *are* located. The *advisory*
 31 form shall include Internet Web site information for the Division
 32 of the State Architect and the California Commission on Disability
 33 Access.

34 (2) *An answer form developed by the Judicial Council, which*
 35 *allows a defendant to respond to the complaint in the event a*
 36 *complaint is filed.*

37 (A) *The answer form shall be written in plain language and*
 38 *allow the defendant to state any relevant information affecting the*
 39 *defendant's liability or damages including, but not limited to, the*
 40 *following:*

1 (i) Specific denials of the allegations in the complaint, including
2 whether the plaintiff has demonstrated that he or she was denied
3 full and equal access to the place of public accommodation on a
4 particular occasion pursuant to Section 55.56.

5 (ii) Potential affirmative defenses available to the defendant,
6 including:

7 (I) An assertion that the defendant qualifies for reduced damages
8 pursuant to paragraph (1) or (2) of subdivision (f) of Section 55.56,
9 and facts supporting that assertion.

10 (II) An assertion that the defendant's landlord is responsible
11 for ensuring that some or all of the property leased by the
12 defendant, including the areas at issue in the complaint, are
13 accessible to the public. The defendant shall provide facts
14 supporting that assertion, and the name and contact information
15 of the defendant's landlord.

16 (III) Any other affirmative defense the defendant wishes to
17 assert.

18 (iii) Whether the defendant made a written settlement offer that
19 was rejected by the plaintiff, or met with the plaintiff in a good
20 faith effort to negotiate a settlement of the complaint.

21 (iv) Any other information that the defendant believes is relevant
22 to his or her potential liability or damages.

23 (B) The answer form shall provide instructions to a defendant
24 who wishes to file the form as an answer to the complaint. The
25 form shall also notify the defendant that he or she may use the
26 completed form as an informal response to a demand letter or for
27 settlement discussion purposes.

28 (C) On or before July 1, 2016, the Judicial Council shall adopt
29 the answer form that may be used by an attorney to comply with
30 the requirements of this paragraph, and shall post the answer form
31 on the Judicial Council Internet web site.

32 ~~(d)~~

33 (c) Subdivision (b) ~~shall apply~~ applies only to a demand letter
34 or complaint made by an attorney. ~~Nothing in this~~ This section is
35 ~~intended to~~ does not affect the right to file a civil complaint under
36 any other law or regulation protecting the physical access rights
37 of persons with disabilities. Additionally, ~~nothing in~~ this section
38 ~~requires~~ does not require a party to provide or send a demand letter
39 to another party before proceeding against that party with a civil
40 complaint.

1 (e)

2 (d) This section ~~shall~~ *does* not apply to ~~any~~ *an* action brought
3 by the Attorney General, or by any district attorney, city attorney,
4 or county counsel.

5 SECTION 1. ~~Section 17 of the Code of Civil Procedure is~~
6 ~~amended to read:~~

7 17. ~~(a) Words used in this code in the present tense include~~
8 ~~the future as well as the present. Words used in the masculine~~
9 ~~gender include the feminine and neuter. The singular number~~
10 ~~includes the plural and the plural number includes the singular.~~

11 (b) ~~As used in this code, the following words have the following~~
12 ~~meanings, unless otherwise apparent from the context:~~

13 (1) ~~“Affinity,” when applied to the marriage relation, signifies~~
14 ~~the connection existing in consequence of marriage between each~~
15 ~~of the married persons and the blood relatives of the other.~~

16 (2) ~~“County” includes “city and county.”~~

17 (3) ~~“Month” means a calendar month, unless otherwise~~
18 ~~expressed.~~

19 (4) ~~“Oath” includes an affirmation or declaration.~~

20 (A) ~~“Depose” includes any written statement made under oath~~
21 ~~or affirmation.~~

22 (B) ~~“Testify” includes any mode of oral statement made under~~
23 ~~oath.~~

24 (5) ~~“Person” includes a corporation as well as a natural person.~~

25 (6) ~~“Process” means a writ or summons issued in the course of~~
26 ~~a judicial proceeding.~~

27 (7) ~~“Property” includes both personal and real property.~~

28 (A) ~~“Personal property” includes money, goods, chattels, things~~
29 ~~in action, and evidences of debt.~~

30 (B) ~~“Real property” is coextensive with lands, tenements, and~~
31 ~~hereditaments.~~

32 (8) ~~“Section” means to a section of this code, unless some other~~
33 ~~code or statute is expressly mentioned.~~

34 (9) ~~“Sheriff” includes marshal.~~

35 (10) ~~“Signature” is synonymous with “subscription,” and~~
36 ~~includes both of the following:~~

37 (A) ~~An electronic signature, which is an electronic image or~~
38 ~~symbol of a person’s signature that is attached to, or logically~~
39 ~~associated with, a document and executed or adopted by the person~~
40 ~~with an intent to sign the document.~~

1 (B) A mark of a person's name, if the person cannot write, with
2 his or her name being written near it by a person who writes his
3 or her own name as a witness. In order that a mark may be
4 acknowledged or serve as the signature to any sworn statement, it
5 shall be witnessed by two persons who shall subscribe their own
6 names as witnesses thereto.

7 (11) "State," when applied to the different parts of the United
8 States, includes the District of Columbia and the territories of the
9 United States.

10 (12) "United States" may include the District of Columbia and
11 the territories of the United States.

12 (13) "Will" includes codicil.

13 (14) "Writ" means an order or precept in writing, issued in the
14 name of the people or of a court or judicial officer.

15 (15) "Writing" includes printing and typewriting.

16 SEC. 2. Section 581d of the Code of Civil Procedure is
17 amended to read:

18 581d. (a) A written dismissal of an action shall be entered in
19 the clerk's register and is effective for all purposes when so entered.

20 (b) A dismissal ordered by the court shall be in the form of a
21 written order signed by the court and filed in the action, and, once
22 filed, shall constitute a judgment, which is effective for all
23 purposes. An electronic signature, as defined in subdivision (b) of
24 Section 17, of the court shall be effective as an original signature.
25 The clerk shall note judgments in the register of actions in the case.

26 SEC. 3. Section 582 of the Code of Civil Procedure is amended
27 to read:

28 582. In all other cases, a judgment shall be rendered on the
29 merits. The judgment shall be signed by the court. An electronic
30 signature, as defined in subdivision (b) of Section 17, of the court
31 shall be effective as an original signature.

32 SEC. 4. Section 1003 of the Code of Civil Procedure is
33 amended to read:

34 1003. (a) Every direction of a court or judge, made or entered
35 in writing, and not included in a judgment, is denominated an
36 order. An application for an order is a motion.

37 (b) If any provision of this code requires the court to sign an
38 order, an electronic signature, as defined in subdivision (b) of

- 1 ~~Section 17, of the court shall be as effective as an original~~
- 2 ~~signature.~~

O