

AMENDED IN ASSEMBLY MAY 21, 2015

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~~ and Holden)**

March 10, 2015

An act to amend Section 55.3 of the Civil Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 1521, as amended, Committee on Judiciary. 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.

The bill also would include technical changes to these provisions.

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 55.3 of the Civil Code is amended to
2 read:

3 55.3. (a) For purposes of this section, the following apply:

4 (1) "Complaint" means a civil complaint that is filed or is to be
5 filed with a court and is sent to or served upon a defendant on the
6 basis of one or more construction-related accessibility claims, as
7 defined in this section.

8 (2) "Construction-related accessibility claim" means any claim
9 of a violation of any construction-related accessibility standard,
10 as defined by paragraph (6) of subdivision (a) of Section 55.52,
11 with respect to a place of public accommodation.
12 "Construction-related accessibility claim" does not include a claim
13 of interference with housing within the meaning of paragraph (2)
14 of subdivision (b) of Section 54.1, or any claim of interference
15 caused by something other than the construction-related
16 accessibility condition of the property, including, but not limited
17 to, the conduct of any person.

18 (3) "Demand for money" means a prelitigation written document
19 or oral statement that is provided or issued to a building owner or
20 tenant, or the owner's or tenant's agent or employee, that does all
21 of the following:

22 (A) Alleges that the site is in violation of one or more
23 construction-related accessibility standards, as defined in paragraph
24 (6) of subdivision (a) of Section 55.52, or alleges one or more
25 construction-related accessibility claims, as defined in paragraph
26 (2).

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

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

4 (4) “Demand letter” means a prelitigation written document that
5 is provided to a building owner or tenant, or the owner’s or tenant’s
6 agent or employee, that alleges the site is in violation of one or
7 more construction-related accessibility standards, as defined in
8 paragraph (6) of subdivision (a) of Section 55.52, or alleges one
9 or more construction-related accessibility claims, as defined in
10 paragraph (2), and is provided whether or not the attorney intends
11 to file a complaint, or eventually files a complaint, in state or
12 federal court.

13 (b) An attorney shall provide the following items with each
14 demand letter or complaint sent to or served upon a defendant or
15 potential defendant alleging a construction-related accessibility
16 claim:

17 (1) A written advisory on the form described in subparagraph
18 (B), or, until that form is available, on a separate page or pages
19 that are clearly distinguishable from the demand letter or complaint.
20 The advisory shall not be required in subsequent communications
21 following the initial demand letter or initial complaint unless a
22 new construction-related accessibility claim is asserted in the
23 subsequent demand letter or amended complaint.

24 (A) The advisory shall state as follows:

25
26 **STATE LAW REQUIRES THAT YOU GET THIS**
27 **IMPORTANT ADVISORY INFORMATION FOR BUILDING**
28 **OWNERS AND TENANTS**
29

30 This information is available in English, Spanish, Chinese,
31 Vietnamese, and Korean through the Judicial Council of California.
32 Persons with visual impairments can get assistance in viewing this
33 form through the Judicial Council Internet Web site at
34 www.courts.ca.gov.

35 California law requires that you receive this information because
36 the demand letter or court complaint you received with this
37 document claims that your building or property does not comply
38 with one or more existing construction-related accessibility laws
39 or regulations protecting the civil rights of persons with disabilities
40 to access public places.

1 YOU HAVE IMPORTANT LEGAL OBLIGATIONS.
 2 Compliance with disability access laws is a serious and significant
 3 responsibility that applies to all California building owners and
 4 tenants with buildings open for business to the public. You may
 5 obtain information about your legal obligations and how to comply
 6 with disability access laws through the Division of the State
 7 Architect at www.dgs.ca.gov. Information is also available from
 8 the California Commission on Disability Access at
 9 www.cdda.ca.gov/guide.htm.

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

20 You have the right to seek assistance or advice about this demand
 21 letter or court complaint from any person of your choice. If you
 22 have insurance, you may also wish to contact your insurance
 23 provider. Your best interest may be served by seeking legal advice
 24 or representation from an attorney, but you may also represent
 25 yourself and file the necessary court papers to protect your interests
 26 if you are served with a court complaint. If you have hired an
 27 attorney to represent you, you should immediately notify your
 28 attorney.

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

32 **ADDITIONAL THINGS YOU SHOULD KNOW:**

33 **ATTORNEY MISCONDUCT.** Except for limited circumstances,
 34 state law generally requires that a prelitigation demand letter from
 35 an attorney **MAY NOT MAKE A REQUEST OR DEMAND FOR**
 36 **MONEY OR AN OFFER OR AGREEMENT TO ACCEPT**
 37 **MONEY.** Moreover, a demand letter from an attorney **MUST**
 38 **INCLUDE THE ATTORNEY’S STATE BAR LICENSE**
 39 **NUMBER.**

1 If you believe the attorney who provided you with this notice
2 and prelitigation demand letter is not complying with state law,
3 you may send a copy of the demand letter you received from the
4 attorney to the State Bar of California by facsimile transmission
5 to 1-415-538-2171, or by mail to the State Bar of California, 180
6 Howard Street, San Francisco, CA, 94105, Attention: Professional
7 Competence.

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

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

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

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

4 (A) The answer form shall be written in plain language and
5 allow the defendant to state any relevant information affecting the
6 defendant’s liability or damages including, but not limited to, the
7 following:

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

12 (ii) Potential affirmative defenses available to the defendant,
13 including:

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

17 (II) An assertion that the defendant’s landlord is responsible for
18 ensuring that some or all of the property leased by the defendant,
19 including the areas at issue in the complaint, are accessible to the
20 public. The defendant shall provide facts supporting that assertion,
21 and the name and contact information of the defendant’s landlord.

22 (III) Any other affirmative defense the defendant wishes to
23 assert.

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

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

29 (B) The answer form shall provide instructions to a defendant
30 who wishes to file the form as an answer to the complaint. The
31 form shall also notify the defendant that he or she may use the
32 completed form as an informal response to a demand letter or for
33 settlement discussion purposes.

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

38 (c) Subdivision (b) applies only to a demand letter or complaint
39 made by an attorney. This section does not affect the right to file
40 a civil complaint under any other law or regulation protecting the

1 physical access rights of persons with disabilities. Additionally,
2 this section does not require a party to provide or send a demand
3 letter to another party before proceeding against that party with a
4 civil complaint.

5 (d) This section does not apply to an action brought by the
6 ~~Attorney General, or by~~ *General or* any district attorney, city
7 attorney, or county counsel.

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