

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JULY 2, 2015

AMENDED IN ASSEMBLY MAY 21, 2015

AMENDED IN ASSEMBLY MAY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1521**

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

March 10, 2015

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An act to amend Sections ~~55, 55.3, 55.3~~ and 55.54 of, and to add Section 54.35, the Civil Code, to amend Section 425.50 of, and to add Sections ~~425.55 and 425.60~~ Section 425.55 to, the Code of Civil Procedure, ~~to amend Section 19953 of the Health and Safety Code, and to add Sections 68085.35 and 70616.5 to the Government Code,~~ relating to disability ~~access~~: access, and declaring the urgency thereof, to take effect immediately.

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.

Existing law authorizes commencement of an action for damages against persons who interfere with these access rights, including, but not limited to, actions against owners and tenants of property for construction-related barriers.

This bill would, with certain exceptions, require the owner of property to which the general public is invited to indemnify a microbusiness tenant, as defined, from liability arising from any construction-related accessibility claims, as specified.

This bill would require that the attorney, or the party in cases where the party is not represented by counsel, certify that specified conditions have been met, including, but not limited to, that the action is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay. By expanding the definition of the crime of perjury, this bill would impose a state-mandated local program.

~~Existing law entitles the prevailing party to recover reasonable attorney's fees.~~

~~This bill would, instead, require the court to award costs and reasonable attorney's fees to a prevailing plaintiff, and to award court costs and reasonable attorney's fees to the defendant if the court finds that the plaintiff's case is clearly frivolous.~~

~~This bill would, with certain exceptions, require a person who is represented by an attorney and has filed more than 15 lawsuits that allege construction-related accessibility violations against places of public accommodation within the prior 12 month period, to seek and obtain approval of the court with respect to settlement of the case.~~

Existing law authorizes a defendant to file a request for a court stay and an early evaluation conference in the proceedings under certain circumstances, and tolls the period for responsive pleadings.

This bill would specify that these provisions also apply if a defendant is a business that has been served with a complaint filed by a high-frequency litigant, as defined, or is a business requesting an early evaluation conference.

Existing law, upon the filing of an application for a court stay and an early evaluation conference by a defendant, requires the court to immediately issue an order that does certain things, including, but not limited to, scheduling a mandatory early evaluation conference for a date as soon as possible from the date of the order, but in no event later than 70 days after the issuance of the order.

This bill would, if requested by the defendant, require the court order to direct the parties and their counsel to meet at the premises, or other place as specified, no later than 30 days after issuance of the court order, to jointly inspect the premises, and review any programmatic or policy issues, that are claimed to constitute a violation of a construction-related accessibility standard.

Existing law requires that an allegation of a construction-related accessibility claim in a complaint state facts sufficient to allow a reasonable person to identify the basis of the violation, including, but not limited to, a plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred.

This bill would, for cases filed by or on behalf of a high-frequency litigant, require the complaint to also state that the complaint is filed by, or on behalf of, a high-frequency litigant, the number of complaints alleging a construction-related accessibility claim that the high-frequency litigant has filed during the 12 months prior to filing the complaint, and the reason why the individual visited the place of public accommodation.

~~This bill would become operative only if Senate Bill 251 of the 2015-16 Legislative Session, relating to disability access, is enacted on or before January 1, 2016.~~

*Existing law imposes a supplemental fee for filing first papers in certain civil proceedings, including, but not limited to, certain complex cases.*

*This bill would, in addition to the first paper filing fee, require payment of a single high-frequency litigant fee at an amount established*

*by the Judicial Council, not to exceed \$1,000, at the time of the filing of the first paper if the complaint alleges a construction-related accessibility claim and the plaintiff is a high-frequency litigant, and would make conforming changes related to the distribution of those fees.*

Existing Constitutional provisions require a statute that limits the right of public access to meeting or writings of public officials to be adopted with findings demonstrating the interested to be protected by that limitation and the need to protect that interest.

This bill would declare that it includes limitations on access, that the interests to be protected are the privacy rights of the litigants, and that the need to protect those interests is to prevent a chilling effect on litigation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 54.35 is added to the Civil Code,
- 2 immediately following Section 54.3, to read:
- 3 54.35. (a) Notwithstanding any law, the owner of property to
- 4 which the general public is invited, as set forth in Section 54.1,
- 5 shall indemnify a microbusiness tenant of that property for any
- 6 liability under this part arising from any construction-related
- 7 accessibility ~~claims if either of the following conditions apply:~~
- 8 *claims, as defined in paragraph (2) of subdivision (a) of Section*
- 9 *55.3, if the owner of the property had knowledge or notice that*
- 10 *either of the following applied:*
- 11 (1) The construction-related barrier existed prior to the initiation,
- 12 renewal, or extension of the lease which is the basis of the
- 13 microbusiness tenant’s liability.
- 14 (2) The construction-related barrier was created by parties other
- 15 than the microbusiness tenant after the initiation, renewal, or

1 extension of the lease which is the basis of the microbusiness  
2 tenant’s liability.

3 (b) The duty of the owner to indemnify a microbusiness tenant  
4 pursuant to subdivision (a) may be modified through a written  
5 agreement that may be included as a separate rider to the lease  
6 agreement, setting forth the terms under which the microbusiness  
7 tenant is accepting some or all of the potential liability for  
8 construction-related claims, including, but not limited to, a grant  
9 of the authority for the microbusiness tenant to modify the structure  
10 in order to comply with this part, and a process for determining  
11 the owner’s share of the costs of those modifications.

12 (c) For the purposes of this section, “microbusiness” has the  
13 same meaning as set forth in Section 14837 of the Government  
14 Code.

15 (d) This section shall apply only to construction-related liability  
16 arising from leases entered into, amended, or extended, on and  
17 after January 1, 2016.

18 ~~SEC. 2. Section 55 of the Civil Code is amended to read:~~

19 ~~55. Any person who is aggrieved or potentially aggrieved by  
20 a violation of Section 54 or 54.1 of this code, Chapter 7  
21 (commencing with Section 4450) of Division 5 of Title 1 of the  
22 Government Code, or Part 5.5 (commencing with Section 19955)  
23 of Division 13 of the Health and Safety Code may bring an action  
24 to enjoin the violation. The court shall award costs and reasonable  
25 attorney’s fees to a prevailing plaintiff in an action filed pursuant  
26 to this section. If the court finds that the plaintiff’s case is clearly  
27 frivolous, it shall award court costs and reasonable attorney’s fees  
28 to the defendant.~~

29 ~~SEC. 3.~~

30 *SEC. 2.* Section 55.3 of the Civil Code is amended to read:

31 55.3. (a) For purposes of this section, the following apply:

32 (1) “Complaint” means a civil complaint that is filed or is to be  
33 filed with a court and is sent to or served upon a defendant on the  
34 basis of one or more construction-related accessibility claims, as  
35 defined in this section.

36 (2) “Construction-related accessibility claim” means any claim  
37 of a violation of any construction-related accessibility standard,  
38 as defined by paragraph (6) of subdivision (a) of Section 55.52,  
39 with respect to a place of public accommodation.

40 “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 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:

33 (1) A written advisory on the form described in subparagraph  
34 (B), or, until that form is available, on a separate page or pages  
35 that are clearly distinguishable from the demand letter or complaint.  
36 The advisory shall not be required in subsequent communications  
37 following the initial demand letter or initial complaint unless a  
38 new construction-related accessibility claim is asserted in the  
39 subsequent demand letter or amended complaint.

40 (A) The advisory shall state as follows:

1 STATE LAW REQUIRES THAT YOU GET THIS  
2 IMPORTANT ADVISORY INFORMATION FOR BUILDING  
3 OWNERS AND TENANTS  
4

5 This information is available in English, Spanish, Chinese,  
6 Vietnamese, and Korean through the Judicial Council of California.  
7 Persons with visual impairments can get assistance in viewing this  
8 form through the Judicial Council Internet Web site at  
9 [www.courts.ca.gov](http://www.courts.ca.gov).

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

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

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

35 You have the right to seek assistance or advice about this demand  
36 letter or court complaint from any person of your choice. If you  
37 have insurance, you may also wish to contact your insurance  
38 provider. Your best interest may be served by seeking legal advice  
39 or representation from an attorney, but you may also represent  
40 yourself and file the necessary court papers to protect your interests

1 if you are served with a court complaint. If you have hired an  
2 attorney to represent you, you should immediately notify your  
3 attorney.

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

7 **ADDITIONAL THINGS YOU SHOULD KNOW:**

8 **ATTORNEY MISCONDUCT.** Except for limited circumstances,  
9 state law generally requires that a prelitigation demand letter from  
10 an attorney **MAY NOT MAKE A REQUEST OR DEMAND FOR**  
11 **MONEY OR AN OFFER OR AGREEMENT TO ACCEPT**  
12 **MONEY.** Moreover, a demand letter from an attorney **MUST**  
13 **INCLUDE THE ATTORNEY’S STATE BAR LICENSE**  
14 **NUMBER.**

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

22 **REDUCING YOUR DAMAGES.** If you are a small business  
23 owner and correct all of the construction-related violations that  
24 are the basis of the complaint against you within 30 days of being  
25 served with the complaint, you may qualify for reduced damages  
26 if the matter results in a court judgment. If you believe you qualify  
27 for reduced damages, you may wish to consult an attorney to obtain  
28 legal advice, or contact the California Commission on Disability  
29 Access for additional information about the rights and obligations  
30 of business owners.

31 **COMMERCIAL TENANT.** If you are a commercial tenant, you  
32 may not be responsible for ensuring that some or all portions of  
33 the premises you lease for your business, including common areas  
34 such as parking lots, are accessible to the public because those  
35 areas may be the responsibility of your landlord. You may want  
36 to refer to your lease agreement and consult with an attorney or  
37 contact your landlord, to determine if your landlord is responsible  
38 under the terms of your lease for maintaining and improving some  
39 or all of the areas you lease to operate your business.

40

1 (B) On or before July 1, 2016, the Judicial Council shall update  
2 the advisory form that may be used by an attorney to comply with  
3 the requirements of subparagraph (A). The advisory form shall be  
4 in substantially the same format and include all of the text set forth  
5 in subparagraph (A). The advisory form shall be available in  
6 English, Spanish, Chinese, Vietnamese, and Korean, and shall  
7 include a statement that the advisory form is available in additional  
8 languages, and the Judicial Council Internet Web site address  
9 where the different versions of the advisory form are located. The  
10 advisory form shall include Internet Web site information for the  
11 Division of the State Architect and the California Commission on  
12 Disability Access.

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

16 (A) The answer form shall be written in plain language and  
17 allow the defendant to state any relevant information affecting the  
18 defendant's liability or damages including, but not limited to, the  
19 following:

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

24 (ii) Potential affirmative defenses available to the defendant,  
25 including:

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

29 (II) An assertion that the defendant's landlord is responsible for  
30 ensuring that some or all of the property leased by the defendant,  
31 including the areas at issue in the complaint, are accessible to the  
32 public. The defendant shall provide facts supporting that assertion,  
33 and the name and contact information of the defendant's landlord.

34 (III) Any other affirmative defense the defendant wishes to  
35 assert.

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

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

1 (B) The answer form shall provide instructions to a defendant  
2 who wishes to file the form as an answer to the complaint. The  
3 form shall also notify the defendant that he or she may use the  
4 completed form as an informal response to a demand letter or for  
5 settlement discussion purposes.

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

10 (c) Subdivision (b) applies only to a demand letter or complaint  
11 made by an attorney. This section does not affect the right to file  
12 a civil complaint under any other law or regulation protecting the  
13 physical access rights of persons with disabilities. Additionally,  
14 this section does not require a party to provide or send a demand  
15 letter to another party before proceeding against that party with a  
16 civil complaint.

17 (d) This section does not apply to an action brought by the  
18 Attorney General or any district attorney, city attorney, or county  
19 counsel.

20 ~~SEC. 4.~~

21 *SEC. 3.* Section 55.54 of the Civil Code is amended to read:

22 55.54. (a) (1) An attorney who causes a summons and  
23 complaint to be served in an action that includes a  
24 construction-related accessibility claim, including, but not limited  
25 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the  
26 same time, cause to be served a copy of the application form  
27 specified in subdivision (c) and a copy of the following notice,  
28 including, until January 1, 2013, the bracketed text, to the defendant  
29 on separate papers that shall be served with the summons and  
30 complaint:

31  
32 **ADVISORY NOTICE TO DEFENDANT**

33  
34 **YOU MAY BE ENTITLED TO ASK FOR A COURT**  
35 **STAY (AN ORDER TEMPORARILY STOPPING ANY**  
36 **LAWSUIT) AND EARLY EVALUATION CONFERENCE**  
37 **IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED**  
38 **STATUTORY DAMAGES IF YOU MEET CERTAIN**  
39 **CONDITIONS.**

1 If the construction-related accessibility claim pertains to a  
2 site that has a Certified Access Specialist (CASp) inspection  
3 report for that site, or to a site where new construction or  
4 improvement was approved after January 1, 2008, by the local  
5 building permit and inspection process, you may make an  
6 immediate request for a court stay and early evaluation  
7 conference in the construction-related accessibility claim by  
8 filing the attached application form with the court. You may  
9 be entitled to the court stay and early evaluation conference  
10 regarding the accessibility claim only if ALL of the statements  
11 in the application form applicable to you are true.

12 FURTHER, if you are a defendant described above (with a  
13 CASp inspection report or with new construction after January  
14 1, 2008), and, to the best of your knowledge, there have been  
15 no modifications or alterations completed or commenced since  
16 the CASp report or building department approval of the new  
17 construction or improvement that impacted compliance with  
18 construction-related accessibility standards with respect to the  
19 plaintiff’s claim, your liability for minimum statutory damages  
20 may be reduced to \$1,000 for each offense, unless the violation  
21 was intentional, and if all construction-related accessibility  
22 violations giving rise to the claim are corrected within 60 days  
23 of being served with this complaint.

24 *ALSO, if your business has been served with a complaint filed*  
25 *by a high-frequency litigant, as defined in subdivision (b) of*  
26 *Section 425.55 of the Code of Civil Procedure, asserting a*  
27 *construction-related accessibility claim, including, but not*  
28 *limited to, a claim brought under Section 51, 54, 54.1, or 55*  
29 *of the Civil Code, you may also be entitled to a court stay,*  
30 *early evaluation conference, and a site visit. If you choose to*  
31 *request a stay and early evaluation conference, you may also*  
32 *request to meet in person with the plaintiff and counsel for*  
33 *both parties, as well as experts if the parties so elect, at the*  
34 *subject premises no later than 30 days after issuance of the*  
35 *court order to jointly inspect the portions of the subject*  
36 *premises and review any conditions that are claimed to*  
37 *constitute a violation of a construction-related accessibility*  
38 *standard.*

39 IN ADDITION, if your business is a small business that,  
40 over the previous three years, or the existence of the business

1 if less than three years, employs 25 or fewer employees on  
 2 average over that time period and meets specified gross  
 3 receipts criteria, you may also be entitled to the court stay and  
 4 early evaluation  
 5 conference, if the plaintiff in this case has filed more than 15  
 6 lawsuits that allege construction-related accessibility claims  
 7 against places of public accommodation in the 12 months prior  
 8 to the date of this lawsuit. If you are a small businesses that  
 9 meets the employee and gross receipts criteria, you may also  
 10 be entitled to a court stay and an early evaluation conference,  
 11 *conference*  
 12 and your minimum statutory damages for each claim may be  
 13 reduced to \$2,000 for each offense, unless the violation was  
 14 intentional, and if all the alleged construction-related  
 15 accessibility violations are corrected within 30 days of being  
 16 served with the complaint.

17 If you plan to correct the violations giving rise to the claim,  
 18 you should take pictures and measurements or similar action  
 19 to document the condition of the physical barrier asserted to  
 20 be the basis for a violation before undertaking any corrective  
 21 action in case a court needs to see the condition of a barrier  
 22 before it was corrected.

23 The court will schedule the conference to be held within 90  
 24 70 days after you file the attached application form.

25 [If you are not a defendant with a CASp inspection report,  
 26 until a form is adopted by the Judicial Council, you may use  
 27 the attached form if you modify the form and supplement it  
 28 with your declaration stating any one of the following:

29 (1) Until January 1, 2018, that the site’s new construction  
 30 or improvement on or after January 1, 2008, and before January  
 31 1, 2016, was approved pursuant to the local building permit  
 32 and inspection process; that, to the best of your knowledge,  
 33 there have been no modifications or alterations completed or  
 34 commenced since the building department approval that  
 35 impacted compliance with construction-related accessibility  
 36 standards with respect to the plaintiff’s claim; and that all  
 37 violations giving rise to the claim have been corrected, or will  
 38 be corrected within 60 days of the complaint being served.

39 (2) That the site’s new construction or improvement passed  
 40 inspection by a local building department inspector who is a

1 certified access specialist; that, to the best of your knowledge,  
2 there have been no modifications or alterations completed or  
3 commenced since that inspection approval that impacted  
4 compliance with construction-related accessibility standards  
5 with respect to the plaintiff's claim; and that all violations  
6 giving rise to the claim have been corrected, or will be  
7 corrected within 60 days of the complaint being served.

8 (3) That your business is a small business with 25 or fewer  
9 employees and meets the gross receipts criteria set out in  
10 Section 55.56 of the Civil Code, and that all violations giving  
11 rise to the claim have been corrected, or will be corrected  
12 within 30 days of being served with the complaint.]

13 The court will also issue an immediate stay of the  
14 proceedings unless the plaintiff has obtained a temporary  
15 restraining order in the construction-related accessibility claim.  
16 You may obtain a copy of the application form, filing  
17 instructions, and additional information about the stay and  
18 early evaluation conference through the Judicial Council  
19 Internet Web site at [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

20 You may file the application after you are served with a  
21 summons and complaint, but no later than your first court  
22 pleading or appearance in this case, which is due within 30  
23 days after you receive the summons and complaint. If you do  
24 not file the application, you will still need to file your reply  
25 to the lawsuit within 30 days after you receive the summons  
26 and complaint to contest it. You may obtain more information  
27 about how to represent yourself and how to file a reply without  
28 hiring an attorney at [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

29 You may file the application without the assistance of an  
30 attorney, but it may be in your best interest to immediately  
31 seek the assistance of an attorney experienced in disability  
32 access laws when you receive a summons and complaint. You  
33 may make an offer to settle the case, and it may be in your  
34 interest to put that offer in writing so that it may be considered  
35 under Section 55.55 of the Civil Code.

36  
37 (2) An attorney who files a Notice of Substitution of Counsel  
38 to appear as counsel for a plaintiff who, acting in propria persona,  
39 had previously filed a complaint in an action that includes a  
40 construction-related accessibility claim, including, but not limited

1 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the  
2 same time, cause to be served a copy of the application form  
3 specified in subdivision (c) and a copy of the notice specified in  
4 paragraph (1) upon the defendant on separate pages that shall be  
5 attached to the Notice of Substitution of Counsel.

6 (b) (1) Notwithstanding any other law, upon being served with  
7 a summons and complaint asserting a construction-related  
8 accessibility claim, including, but not limited to, a claim brought  
9 under Section 51, 54, 54.1, or 55, a qualified defendant, or other  
10 defendant as defined in paragraph (2), may file a request for a court  
11 stay and early evaluation conference in the proceedings of that  
12 claim prior to or simultaneous with that defendant's responsive  
13 pleading or other initial appearance in the action that includes the  
14 claim. If that defendant filed a timely request for stay and early  
15 evaluation conference before a responsive pleading was due, the  
16 period for filing a responsive pleading shall be tolled until the stay  
17 is lifted. Any responsive pleading filed simultaneously with a  
18 request for stay and early evaluation conference may be amended  
19 without prejudice, and the period for filing that amendment shall  
20 be tolled until the stay is lifted.

21 (2) This subdivision shall also apply to a defendant if any of  
22 the following apply:

23 (A) Until January 1, 2018, the site's new construction or  
24 improvement on or after January 1, 2008, and before January 1,  
25 2016, was approved pursuant to the local building permit and  
26 inspection process, and the defendant declares with the application  
27 that, to the best of the defendant's knowledge, there have been no  
28 modifications or alterations completed or commenced since that  
29 approval that impacted compliance with construction-related  
30 accessibility standards with respect to the plaintiff's claim, and  
31 that all violations have been corrected, or will be corrected within  
32 60 days of being served with the complaint.

33 (B) The site's new construction or improvement was approved  
34 by a local public building department inspector who is a certified  
35 access specialist, and the defendant declares with the application  
36 that, to the best of the defendant's knowledge, there have been no  
37 modifications or alterations completed or commenced since that  
38 approval that impacted compliance with construction-related  
39 accessibility standards with respect to the plaintiff's claim, and

1 that all violations have been corrected, or will be corrected within  
2 60 days of being served with the complaint.

3 (C) The defendant is a small business described in subdivision  
4 (f) of Section 55.56, and the defendant declares with the application  
5 that all violations have been corrected, or will be corrected within  
6 30 days of being served with the complaint.

7 (D) The defendant is a ~~small business, as described in~~  
8 ~~subdivision (f) of Section 55.56;~~ *business* that has been served  
9 with a complaint filed by a high-frequency litigant, as defined in  
10 subdivision (b) of Section 425.55 of the Code of Civil Procedure,  
11 asserting a construction-related accessibility claim, including, but  
12 not limited to, a claim brought under Section 51, 54, 54.1, or 55.

13 (3) Notwithstanding any other law, if the plaintiff had acted in  
14 *propria persona* in filing a complaint that includes a  
15 construction-related accessibility claim, including, but not limited  
16 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified  
17 defendant, or a defendant described by paragraph (2), who is served  
18 with a Notice of Substitution of Counsel shall have 30 days to file  
19 an application for a stay and an early evaluation conference. The  
20 application may be filed prior to or after the defendant's filing of  
21 a responsive pleading or other initial appearance in the action that  
22 includes the claim, except that an application may not be filed in  
23 a claim in which an early evaluation conference or settlement  
24 conference has already been held on the claim.

25 (c) (1) An application for an early evaluation conference and  
26 stay by a qualified defendant shall include a signed declaration  
27 that states both of the following:

28 (A) The site identified in the complaint has been  
29 CASp-inspected or meets applicable standards, or is CASp  
30 determination pending or has been inspected by a CASp, and if  
31 the site is CASp-inspected or meets applicable standards, there  
32 have been no modifications completed or commenced since the  
33 date of inspection that may impact compliance with  
34 construction-related accessibility standards to the best of the  
35 defendant's knowledge.

36 (B) An inspection report pertaining to the site has been issued  
37 by a CASp. The inspection report shall be provided to the court  
38 and the plaintiff at least 15 days prior to the court date set for the  
39 early evaluation conference.

1 (2) An application for an early evaluation conference and stay  
2 by a defendant described by subparagraph (A) of paragraph (2) of  
3 subdivision (b), which may be filed until January 1, 2018, shall  
4 include a signed declaration that states all of the following:

5 (A) The site’s new construction or improvement was approved  
6 pursuant to the local building permit and inspection process on or  
7 after January 1, 2008, and before January 1, 2016.

8 (B) To the best of the defendant’s knowledge there have been  
9 no modifications or alterations completed or commenced since  
10 that approval that impacted compliance with construction-related  
11 accessibility standards with respect to the plaintiff’s claim.

12 (C) All construction-related violations giving rise to the claim  
13 have been corrected, or will be corrected within 60 days of the  
14 complaint being served upon the defendant.

15 (3) An application for an early evaluation conference and stay  
16 by a defendant described in subparagraph (B) of paragraph (2) of  
17 subdivision (b) shall include a signed declaration that states all of  
18 the following:

19 (A) The site’s new construction or improvement was approved  
20 by a local building department inspector who is a certified access  
21 specialist.

22 (B) To the best of the defendant’s knowledge there have been  
23 no modifications or alterations completed or commenced since  
24 that approval that impacted compliance with construction-related  
25 accessibility standards with respect to the plaintiff’s claim.

26 (C) All construction related violations giving rise to the claim  
27 have been corrected, or will be corrected within 60 days of the  
28 complaint being served upon the defendant.

29 (4) An application for an early evaluation conference and stay  
30 by a defendant described by subparagraph (C) of paragraph (2) of  
31 subdivision (b) shall include the materials listed in paragraphs (5)  
32 and (6) of this subdivision, and shall include a signed declaration  
33 that states both of the following:

34 (A) The defendant is a small business that employs 25 or fewer  
35 employees and meets the gross receipts eligibility criteria provided  
36 in paragraph (2) of subdivision (f) of Section 55.56.

37 (B) All construction-related violations giving rise to the claim  
38 have been corrected, or will be corrected within 30 days of the  
39 complaint being served upon the defendant.

1 (5) An application for an early evaluation conference and stay  
2 by a small business defendant under paragraph (4) shall include  
3 evidence showing correction of all violations within 30 days of  
4 the service of the complaint and served upon the plaintiff with the  
5 reply unless the application is filed prior to completion of the  
6 corrections. In that event, the evidence shall be provided to the  
7 court and served upon the plaintiff within 10 days of the court  
8 order as provided in paragraph (4) of subdivision (d). This  
9 paragraph shall not be construed to extend the permissible time  
10 under subdivision (f) of Section 55.56 to make the corrections.

11 (6) An application for an early evaluation conference and stay  
12 by a small business defendant under paragraph (4) shall also  
13 include both of the following, which shall be confidential  
14 documents filed only with the court and not served upon or  
15 available to the plaintiff:

16 (A) Proof of the defendant's number of employees, as shown  
17 by wage report forms filed with the Employment Development  
18 Department.

19 (B) Proof of the defendant's average gross receipts for the  
20 previous three years, or for the existence of the business if less  
21 than three years, as shown by a federal or state tax document.

22 (7) An application for an early evaluation conference and stay  
23 by a defendant described by subparagraph (D) of paragraph (2) of  
24 subdivision (b) shall include a declaration that the defendant ~~is a~~  
25 ~~small business that employs 25 or fewer employees and meets the~~  
26 ~~gross receipts eligibility criteria provided in paragraph (2) of~~  
27 ~~subdivision (f) of Section 55.56 and shall also include both of the~~  
28 ~~following, which shall be confidential documents filed only with~~  
29 ~~the court and not served upon or available to the plaintiff:~~

30 ~~(A) Proof of the defendant's number of employees, as shown~~  
31 ~~by wage report forms filed with the Employment Development~~  
32 ~~Department.~~

33 ~~(B) Proof of the defendant's average gross receipts for the~~  
34 ~~previous three years, or for the existenee of the business if less~~  
35 ~~than three years, as shown by a federal or state tax document. was~~  
36 ~~served with a complaint filed by a high-frequency litigant, as~~  
37 ~~defined in subdivision (b) of Section 425.55 of the Code of Civil~~  
38 ~~Procedure, asserting a construction-related accessibility claim,~~  
39 ~~including, but not limited to, a claim brought under Section 51,~~  
40 ~~54, 54.1, or 55.~~

1     (8) The following provisional request and notice forms may be  
2 used and filed by a qualified defendant until forms are adopted by  
3 the Judicial Council for those purposes pursuant to subdivision  
4 (l):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address):  TELEPHONE NO.:                      FAX NO. (Optional):  E-MAIL ADDRESS (Optional):  ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____  STREET ADDRESS:  MAILING ADDRESS:  CITY AND ZIP CODE:  BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
<b>NOTICE OF STAY OR PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)</b>	<b>CASE NUMBER:</b>

**Stay of Proceedings**

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

**Notice of Early Evaluation Conference**

1. This action includes a construction-related accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.
2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.
3. The early evaluation conference is scheduled as follows:
  - a. Date:                      Time:                      Dept.                      Room:
  - b. The conference will be held at \_\_\_\_\_ the court address shown above, or \_\_\_\_\_ at:
4. The plaintiff and defendant shall attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant that requested the conference and stay of proceedings must file with the court and serve on all parties a copy of the CASp report for the site that is the subject of the construction-related accessibility claim at least fifteen (15) days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code Section 55.54(d)(4).
6. The CASp report shall be marked "CONFIDENTIAL" and may be disclosed only to counsel, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case.
7. The plaintiff shall file with the court and serve on all parties at least fifteen (15) days before the date set for the early evaluation conference a statement of, to the extent known, all of the following:
  - a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;
  - b. The amount of damages claimed;
  - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
  - d. Any demand for settlement of the case in its entirety.

8. A copy of this Notice and Order and the Defendant's Application shall be served on the plaintiff or plaintiff's attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.

**Requests for Accommodation**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

**Proof of Service**

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant's Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

\_\_\_\_\_ On the Plaintiff's attorney

\_\_\_\_\_ On the Plaintiff who is not represented by an attorney

By hand delivering it or mailing it to the address listed on the complaint on the day the court issued this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address of named person

1 (9) The provisional forms and any replacement Judicial Council  
2 forms shall include the defendant's declaration of proof of service  
3 of the application, the notice of the court's order, and the court's  
4 order pursuant to subdivision (d).

5 (d) Upon the filing of an application for stay and early evaluation  
6 conference by a qualified defendant, or a defendant described by  
7 paragraph (2) of subdivision (b), the court shall immediately issue  
8 an order that does all of the following:

9 (1) Grants a 90-day stay of the proceedings with respect to the  
10 construction-related accessibility claim, unless the plaintiff has  
11 obtained temporary injunctive relief that is still in place for the  
12 construction-related accessibility claim.

13 (2) Schedules a mandatory early evaluation conference for a  
14 date as soon as possible from the date of the order, but in no event  
15 later than 70 days after issuance of the order, and in no event earlier  
16 than 50 days after the filing of the request.

17 (3) Directs the parties, and any other person whose authority is  
18 required to negotiate and enter into settlement, to appear in person  
19 at the time set for the conference. Appearance by counsel shall not  
20 satisfy the requirement that the parties or those with negotiation  
21 and settlement authority personally appear, provided, however,  
22 that the court may allow a party who is unable to attend in person  
23 due to his or her disability to participate in the hearing by telephone  
24 or other alternative means or through a representative authorized  
25 to settle the case.

26 (4) (A) Directs the qualified defendant to file with the court  
27 and serve on the plaintiff a copy of any relevant CASp inspection  
28 report at least 15 days before the date of the conference. The CASp  
29 inspection report is confidential and is available only as set forth  
30 in paragraph (5) of this subdivision and in paragraph (4) of  
31 subdivision (e).

32 (B) Directs a defendant described by subparagraph (A) or (B)  
33 of paragraph (2) of subdivision (b) who has filed a declaration  
34 stating that the violation or violations have been corrected, or will  
35 be corrected within 60 days of service of the complaint to file with  
36 the court and serve on the plaintiff evidence showing correction  
37 of the violation or violations within 10 calendar days after the  
38 completion of the corrections.

39 (C) Directs a defendant described by subparagraph (C) of  
40 paragraph (2) of subdivision (b) who has filed a declaration stating

1 that the violation or violations have been corrected, or will be  
2 corrected within 30 days of service of the complaint to file with  
3 the court and serve on the plaintiff within 10 days after issuance  
4 of the court order evidence of correction of the violation or  
5 violations, if that evidence showing correction was not filed  
6 previously with the application and served on the plaintiff.

7 (5) Directs the parties that the CASp inspection report may be  
8 disclosed only to the court, the parties to the action, the parties'  
9 attorneys, those individuals employed or retained by the attorneys  
10 to assist in the litigation, and insurance representatives or others  
11 involved in the evaluation and settlement of the case.

12 (6) If the defendant so requests, directs the parties that no later  
13 than 30 days after issuance of the court order the parties and their  
14 counsel, accompanied by their experts if the parties so elect, shall  
15 meet in person at the subject premises. ~~If plaintiff alleges only~~  
16 ~~programmatic or policy violations, the parties and their counsel~~  
17 ~~may meet in person at any mutually agreeable location.~~ They shall  
18 jointly inspect the portions of the subject premises, and shall review  
19 any programmatic or policy issues, that are claimed to constitute  
20 a violation of a construction-related accessibility standard.

21 (7) Directs the plaintiff to file with the court and serve on the  
22 defendant at least 15 days before the date of the conference a  
23 statement that includes, to the extent reasonably known, for use  
24 solely for the purpose of the early evaluation conference, all of the  
25 following:

26 (A) An itemized list of specific conditions on the subject  
27 premises that are the basis of the claimed violations of  
28 construction-related accessibility standards in the plaintiff's  
29 complaint.

30 (B) The amount of damages claimed.

31 (C) The amount of attorney's fees and costs incurred to date, if  
32 any, that are being claimed.

33 (D) Any demand for settlement of the case in its entirety.

34 (e) (1) A party failing to comply with any court order may be  
35 subject to court sanction at the court's discretion.

36 (2) (A) The court shall lift the stay when the defendant has  
37 failed to file and serve the CASp inspection report prior to the  
38 early evaluation conference and has failed also to produce the  
39 report at the time of the early evaluation conference, unless the  
40 defendant shows good cause for that failure.

1 (B) The court shall lift the stay when a defendant described by  
2 paragraph (2) of subdivision (b) has failed to file and serve the  
3 evidence showing correction of the violation or violations as  
4 required by law.

5 (3) The court may lift the stay at the conclusion of the early  
6 evaluation conference upon a showing of good cause by the  
7 plaintiff. Good cause may include the defendant's failure to make  
8 reasonably timely progress toward completion of corrections noted  
9 by a CASp.

10 (4) The CASp inspection report filed and served pursuant to  
11 subdivision (d) shall remain confidential throughout the stay and  
12 shall continue to be confidential until the conclusion of the claim,  
13 whether by dismissal, settlement, or final judgment, unless there  
14 is a showing of good cause by any party. Good cause may include  
15 the defendant's failure to make reasonably timely progress toward  
16 completion of corrections noted by a CASp. The confidentiality  
17 of the inspection report shall terminate upon the conclusion of the  
18 claim, unless the owner of the report obtains a court order pursuant  
19 to the California Rules of Court to seal the record.

20 (f) All discussions at the early evaluation conference shall be  
21 subject to Section 1152 of the Evidence Code. It is the intent of  
22 the Legislature that the purpose of the evaluation conference shall  
23 include, but not be limited to, evaluation of all of the following,  
24 as applicable:

25 (1) Whether the defendant is entitled to the 90-day stay for some  
26 or all of the identified issues in the case, as a qualified defendant.

27 (2) The current condition of the site and the status of any plan  
28 of corrections, including whether the qualified defendant has  
29 corrected or is willing to correct the alleged violations, and the  
30 timeline for doing so.

31 (3) Whether subdivision (f) of Section 55.56 may be applicable  
32 to the case, and whether all violations giving rise to the claim have  
33 been corrected within the specified time periods.

34 (4) Whether the case, including any claim for damages or  
35 injunctive relief, can be settled in whole or in part.

36 (5) Whether the parties should share other information that may  
37 facilitate early evaluation and resolution of the dispute.

38 (g) Nothing in this section precludes any party from making an  
39 offer to compromise pursuant to Section 998 of the Code of Civil  
40 Procedure.

1 (h) For a claim involving a qualified defendant, as provided in  
2 paragraph (1) of subdivision (b), the court may schedule additional  
3 conferences and may extend the 90-day stay for good cause shown,  
4 but not to exceed one additional 90-day extension.

5 (i) Early evaluation conferences shall be conducted by a superior  
6 court judge or commissioner, or a court early evaluation conference  
7 officer. A commissioner shall not be qualified to conduct early  
8 evaluation conferences pursuant to this subdivision unless he or  
9 she has received training regarding disability access requirements  
10 imposed by the federal Americans with Disabilities Act of 1990  
11 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws  
12 that govern access to public facilities, and federal and state  
13 regulations adopted pursuant to those laws. For purposes of this  
14 subdivision, a “court early evaluation conference officer” means  
15 an attorney employed by the court who has received training  
16 regarding disability access requirements imposed by the federal  
17 Americans with Disabilities Act of 1990, state laws that govern  
18 access to public facilities, and federal and state regulations adopted  
19 pursuant to those laws. Attorneys serving in this capacity may also  
20 be utilized by the court for other purposes not related to these  
21 proceedings.

22 (j) Nothing in this part shall be deemed to make any inspection  
23 report, opinion, statement, or other finding or conclusion of a CASp  
24 binding on the court, or to abrogate in any manner the ultimate  
25 authority of the court to make all appropriate findings of fact and  
26 law. The CASp inspection report and any opinion, statement,  
27 finding, or conclusion therein shall be given the weight the trier  
28 of fact finds that it deserves.

29 (k) Nothing in this part shall be construed to invalidate or limit  
30 any California construction-related accessibility standard that  
31 provides greater or equal protection for the rights of individuals  
32 with disabilities than is afforded by the federal Americans with  
33 Disabilities Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et  
34 seq.) and the federal regulations adopted pursuant to that act.

35 (l) (1) The Judicial Council shall, by January 1, 2013, prepare  
36 and post on its Internet Web site instructions and a form for use  
37 by a qualified defendant, or other defendant described by paragraph  
38 (2) of subdivision (b), to file an application for stay and early  
39 evaluation conference as provided in subdivisions (b) and (c), a  
40 form for the court’s notice of stay and early evaluation conference,

1 and any other forms appropriate to implement the provisions  
2 relating to early evaluation conferences. Until those forms are  
3 adopted, the Judicial Council shall post on its Internet Web site  
4 the provisional forms set forth in subdivision (c).

5 (2) Until the adoption of the forms as provided in paragraph  
6 (1), the provisional application form may be used by a defendant  
7 described by paragraph (2) of subdivision (b).

8 (3) In lieu of the provisions specified in number 3 of page 1 of  
9 the application form set forth in paragraph (7) of subdivision (c),  
10 the application shall include one of the following declarations of  
11 the defendant as to the basis for the application, as follows:

12 (A) That all of the following apply to a defendant described by  
13 subparagraph (A) of paragraph (2) of subdivision (b):

14 (i) The site's new construction or improvement was approved  
15 pursuant to the local building permit and inspection process on or  
16 after January 1, 2008, and before January 1, 2016.

17 (ii) To the best of the defendant's knowledge there have been  
18 no modifications or alterations completed or commenced since  
19 that approval that impacted compliance with construction-related  
20 accessibility standards with respect to the plaintiff's claim.

21 (iii) All the violations giving rise to the claim have been  
22 corrected, or will be corrected within 60 days of the complaint  
23 being served.

24 (B) That all of the following apply to a defendant described by  
25 subparagraph (B) of paragraph (2) of subdivision (b):

26 (i) The site's new construction or improvement was approved  
27 by a local public building department inspector who is a certified  
28 access specialist.

29 (ii) To the best of the defendant's knowledge there have been  
30 no modifications or alterations completed or commenced since  
31 that approval that impacted compliance with construction-related  
32 accessibility standards with respect to the plaintiff's claim.

33 (iii) All the violations giving rise to the claim have been  
34 corrected, or will be corrected within 60 days of the complaint  
35 being served.

36 (C) That both of the following apply to a defendant described  
37 by subparagraph (C) of paragraph (2) of subdivision (b):

38 (i) The defendant is a small business described in paragraph (2)  
39 of subdivision (f) of Section 55.56.

1 (ii) The violation or violations giving rise to the claim have been  
2 corrected, or will be corrected within 30 days of the complaint  
3 being served.

4 (4) In lieu of the provision specified in number 4(c) of page 1  
5 of the application form set forth in paragraph (7) of subdivision  
6 (c), the application shall include a request that the court order the  
7 defendant to do either of the following:

8 (A) For a defendant who has filed a declaration stating that all  
9 violations have been corrected, or will be corrected within 60 days  
10 of service of the complaint, file with the court and serve on the  
11 plaintiff evidence showing correction of the violation or violations  
12 within 10 calendar days of the completion of the corrections.

13 (B) For a defendant who is a small business that has filed a  
14 declaration stating that all the violations have been corrected, or  
15 will be corrected within 30 days of the service of the complaint,  
16 file with the court and serve on the plaintiff evidence showing  
17 correction of the violation or violations within 10 calendar days  
18 after issuance of the court order, if that evidence showing correction  
19 was not filed previously with the application and served on the  
20 plaintiff.

21 (5) The Judicial Council shall also prepare and post on its  
22 Internet Web site instructions and cover pages to assist plaintiffs  
23 and defendants, respectively, to comply with their filing  
24 responsibilities under subdivision (d). The cover pages shall also  
25 provide for the party's declaration of proof of service of the  
26 pertinent document served under the court order.

27 (m) The stay provisions shall not apply to any  
28 construction-related accessibility claim in which the plaintiff has  
29 been granted temporary injunctive relief that remains in place.

30 (n) This section shall not apply to any action brought by the  
31 Attorney General, or by any district attorney, city attorney, or  
32 county counsel.

33 (o) The amendments to this section made by Senate Bill 1186  
34 of the 2011–12 Regular Session of the Legislature shall apply only  
35 to claims filed on or after the operative date of that act. Nothing  
36 in this part is intended to affect any complaint filed before that  
37 date.

38 (p) Nothing in this part is intended to affect existing law  
39 regarding class action requirements.

1     ~~SEC. 5.~~

2     ~~SEC. 4.~~ Section 425.50 of the Code of Civil Procedure is  
3 amended to read:

4     425.50. (a) An allegation of a construction-related accessibility  
5 claim in a complaint, as defined in subdivision (a) of Section 55.52  
6 of the Civil Code, shall state facts sufficient to allow a reasonable  
7 person to identify the basis of the violation or violations supporting  
8 the claim, including all of the following:

9     (1) A plain language explanation of the specific access barrier  
10 or barriers the individual encountered, or by which the individual  
11 alleges he or she was deterred, with sufficient information about  
12 the location of the alleged barrier to enable a reasonable person to  
13 identify the access barrier.

14     (2) The way in which the barrier denied the individual full and  
15 equal use or access, or in which it deterred the individual, on each  
16 particular occasion.

17     (3) The date or dates of each particular occasion on which the  
18 claimant encountered the specific access barrier, or on which he  
19 or she was deterred.

20     (4) (A) Except in complaints that allege physical injury or  
21 damage to property, a complaint filed by or on behalf of a  
22 high-frequency litigant shall also state all of the following:

23     (i) That the complaint is filed by, or on behalf of, a  
24 high-frequency litigant.

25     (ii) ~~The~~*In the case of a high-frequency litigant who is a plaintiff,*  
26 *the* number of complaints alleging a construction-related  
27 accessibility claim that the high-frequency litigant has filed during  
28 the 12 months prior to filing the complaint.

29     (iii) ~~The~~*In the case of a high-frequency litigant who is a*  
30 *plaintiff, the* reason the individual was in the geographic area of  
31 the defendant's business.

32     (iv) ~~The~~*In the case of a high-frequency litigant who is a*  
33 *plaintiff, the* reason why the individual desired to access the  
34 defendant's business, including the specific commercial, business,  
35 personal, social, leisure, recreational, or other purpose.

36     (B) As used in this section "high-frequency litigant" has the  
37 same meaning as set forth in subdivision (b) of Section 425.55.

38     (b) A complaint alleging a construction-related accessibility  
39 claim, as those terms are defined in subdivision (a) of Section 55.3

1 of the Civil Code, shall be verified by the plaintiff. A complaint  
2 filed without verification shall be subject to a motion to strike.

3 (c) A complaint alleging a construction-related accessibility  
4 claim shall be signed by at least one attorney of record in the  
5 attorney's individual name, or, if the party is not represented by  
6 an attorney, shall be signed by the party. By signing the complaint,  
7 the attorney or unrepresented party is certifying that, to the best  
8 of the person's knowledge, information, and belief, formed after  
9 an inquiry reasonable under the circumstances, all of the following  
10 conditions are met:

11 (1) It is not being presented primarily for an improper purpose,  
12 such as to harass or to cause unnecessary delay or needless increase  
13 in the cost of litigation.

14 (2) The claims, defenses, and other legal contentions therein  
15 are warranted by existing law or by a nonfrivolous argument for  
16 the extension, modification, or reversal of existing law or the  
17 establishment of new law.

18 (3) The allegations and other factual contentions have  
19 evidentiary support or, if specifically so identified, are likely to  
20 have evidentiary support after a reasonable opportunity for further  
21 investigation or discovery.

22 (4) The denials of factual contentions are warranted on the  
23 evidence or, if specifically so identified, are reasonably based on  
24 a lack of information or belief.

25 (d) A court may, after notice and a reasonable opportunity to  
26 respond, determine whether subdivision (c) has been violated and,  
27 if so, impose sanctions as provided in Section 128.7 for violations  
28 of subdivision (b) Section 128.7.

29 (e) Nothing in this section shall limit the right of a plaintiff to  
30 amend a complaint under Section 472, or with leave of the court  
31 under Section 473. However, an amended pleading alleging a  
32 construction-related accessibility claim shall be pled as required  
33 by subdivision (a).

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

35 ~~SEC. 6.~~

36 *SEC. 5.* Section 425.55 is added to the Code of Civil Procedure,  
37 to read

38 425.55. (a) The Legislature finds and declares all of the  
39 following:

1 (1) Protection of the civil rights of persons with disabilities is  
2 of the utmost importance to this state, and private enforcement is  
3 the essential means of achieving that goal, as the law has been  
4 designed.

5 ~~(2) In recent years, a very small number of plaintiffs have filed  
6 a disproportionately large number of the construction-related  
7 accessibility claims in the state, from 70 to 300 lawsuits each year,  
8 that are filed frequently against small businesses on the basis of  
9 boilerplate complaints.~~

10 (2) *According to information from the California Commission  
11 on Disability Access, more than one-half, or 54 percent, of all  
12 construction-related accessibility complaints filed between 2012  
13 and 2014 were filed by two law firms. Forty-six percent of all  
14 complaints were filed by a total of 14 parties. Therefore, a very  
15 small number of plaintiffs have filed a disproportionately large  
16 number of the construction-related accessibility claims in the state,  
17 from 70 to 300 lawsuits each year. Moreover, these lawsuits are  
18 frequently filed against small businesses on the basis of boilerplate  
19 complaints, apparently seeking quick cash settlements rather than  
20 correction of the accessibility violation. This practice unfairly  
21 taints the reputation of other innocent disabled consumers who  
22 are merely trying to go about their daily lives accessing public  
23 accommodations as they are entitled to have full and equal access  
24 under the state's Unruh Act (Chapter 1 (commencing with Section  
25 1801 of Title 2) and the federal Americans with Disability Act of  
26 1990 (Public Law 101-336).*

27 (3) Therefore, given these special and unique circumstances,  
28 the provisions of this section are warranted for this limited group  
29 of plaintiffs.

30 (b) For the purposes of this article, "high-frequency litigant"  
31 means a person who utilizes court resources in actions arising from  
32 alleged construction-related access violations at such a high level  
33 that it is appropriate that additional safeguards apply so as to ensure  
34 that the claims are warranted and appropriate. A "high-frequency  
35 litigant" means ~~plaintiff who has filed 15 or more~~ *one or more of the  
36 following:*

37 (1) *A plaintiff who has filed 10 or more complaints alleging a  
38 construction-related accessibility violation within the 12-month  
39 period immediately preceding the filing of the current complaint  
40 alleging a construction-related accessibility violation.*

1 (2) *An attorney who has represented 10 or more plaintiffs in*  
2 *complaints alleging a construction-related accessibility violation*  
3 *within the 12-month period immediately preceding the filing of*  
4 *the current complaint alleging a construction-related accessibility*  
5 *violation.*

6 ~~SEC. 7.— Section 425.60 is added to the Code of Civil Procedure,~~  
7 ~~to read:~~

8 ~~425.60.— (a) Any written settlement agreement regarding a~~  
9 ~~construction-related accessibility claim shall be filed by the plaintiff~~  
10 ~~with the California Commission on Disability Access within 30~~  
11 ~~days of the execution of the agreement.~~

12 ~~(b) Except as set forth in subdivision (c), a high frequency~~  
13 ~~litigant shall seek and obtain approval of the court with respect to~~  
14 ~~the settlement of a construction-related accessibility claim against~~  
15 ~~a small business as defined by subdivision (f) of section 55.56 to~~  
16 ~~determine that the proposed settlement is lawful, reasonable, and~~  
17 ~~non-collusive.~~

18 ~~(c) A party requesting court review of a settlement shall do so~~  
19 ~~by means of a motion for a settlement conference, which shall be~~  
20 ~~scheduled no later than 30 court days after the filing of the motion.~~  
21 ~~If the matter is not scheduled to be heard within 30 court days, the~~  
22 ~~settlement shall be deemed approved. A party requesting a court~~  
23 ~~review of the settlement shall attach a copy of the settlement~~  
24 ~~agreement or a description its material terms in the motion.~~

25 ~~(d) If the court does not approve the settlement, it shall state the~~  
26 ~~reasons for decision in a written order and the litigation shall~~  
27 ~~proceed. If the hearing occurs prior to the expiration of a stay of~~  
28 ~~the proceedings pursuant to any provision of law, including, but~~  
29 ~~not limited to, Section 55.54, the court shall terminate the stay on~~  
30 ~~the date of the settlement conference.~~

31 ~~(e) This section shall not apply in any of the following~~  
32 ~~circumstances:~~

33 ~~(1) The settlement agreement provides for the removal or~~  
34 ~~remediation of some or all of the violations described in the~~  
35 ~~complaint by a specified date, unless removal or remediation of~~  
36 ~~the violations cannot be accomplished because of the closure or~~  
37 ~~elimination of the place of public accommodation or a feature or~~  
38 ~~element of the place of public accommodation or because the~~  
39 ~~public accommodation was temporary or ephemeral in nature, such~~  
40 ~~as an irregularly held festival, fair, performance, or athletic games.~~

1 ~~(2) The complaint alleges that the plaintiff suffered physical~~  
2 ~~injuries or damage to property.~~

3 ~~(f) Nothing set forth in this section is intended to affect the law~~  
4 ~~of the interpretation of contracts. There is a presumption that~~  
5 ~~settlement agreements shall be enforceable. It shall be deemed bad~~  
6 ~~faith for any party to negotiate a settlement agreement and then~~  
7 ~~dispute the terms thereof at any hearing held under this section~~  
8 ~~absent good cause shown for a change in position. If the defendant~~  
9 ~~seeks to contest a settlement to which the defendant has previously~~  
10 ~~agreed, he or she shall do so by filing a notice of his or her intent~~  
11 ~~to dispute the settlement which shall be accompanied by a~~  
12 ~~declaration setting forth all of the reasons why the party believes~~  
13 ~~that circumstances have changed and that the settlement is no~~  
14 ~~longer just, fair, or enforceable. This notice shall be filed with the~~  
15 ~~court no later than 15 days before the date of the hearing scheduled~~  
16 ~~pursuant to subdivision (e) and shall be served on the plaintiff~~  
17 ~~concurrently with filing.~~

18 ~~(g) An attorney who violates this section or Section 425.55,~~  
19 ~~shall be subject to discipline by the State Bar.~~

20 ~~SEC. 8. Section 19953 of the Health and Safety Code is~~  
21 ~~amended to read:~~

22 ~~19953. Any person who is aggrieved or potentially aggrieved~~  
23 ~~by a violation of this part, Chapter 7 (commencing with Section~~  
24 ~~4450) of Division 5 of Title 1 of the Government Code, or Part~~  
25 ~~5.5 (commencing with Section 19955) of Division 13 of the Health~~  
26 ~~and Safety Code may bring an action to enjoin the violation. The~~  
27 ~~court shall award costs and reasonable attorney's fees to a~~  
28 ~~prevailing plaintiff in an action filed pursuant to this section. If~~  
29 ~~the court finds that the plaintiff's case is clearly frivolous, it shall~~  
30 ~~award court costs and reasonable attorney's fees to the defendant.~~

31 ~~SEC. 9. This act shall become operative only if Senate Bill~~  
32 ~~251 of the 2015-16 Legislative Session, relating to disability access,~~  
33 ~~is enacted on or before January 1, 2016.~~

34 ~~SEC. 6. Section 68085.35 is added to the Government Code,~~  
35 ~~immediately following Section 68085.3, to read:~~

36 ~~68085.35. (a) Fees collected under Section 70616.5 shall be~~  
37 ~~deposited in a bank account established by the Administrative~~  
38 ~~Office of the Courts for deposit of fees collected by the courts.~~

1 (b) For each one-thousand-dollar (\$1,000) fee listed in  
2 subdivision (a), the Administrative Office of the Courts shall  
3 distribute specified amounts as follows:

4 (1) Five hundred dollars (\$500) to the General Fund for use,  
5 upon appropriation by the Legislature, by the California  
6 Commission on Disability Access.

7 (2) The remainder of the fee to the Trial Court Trust Fund.

8 (c) If any of the fees listed in subdivision (a) are reduced or  
9 partially waived, the amount of the reduction or partial waiver  
10 shall be deducted from the amount to be distributed to each fund  
11 in the same proportion as the amount each distribution bears to  
12 the total amount of the fee.

13 (d) No revenue collected pursuant to Section 70616.5 shall be  
14 used to supplant existing program funding of the California  
15 Commission on Disability Access.

16 SEC. 7. Section 70616.5 is added to the Government Code, to  
17 read:

18 70616.5. (a) The Legislature finds and declares all of the  
19 following:

20 (1) The total fees and costs paid by litigants do not directly  
21 correspond to the total costs of providing access to the judicial  
22 system, the actual costs are much higher.

23 (2) Much of the actual court costs are supported by taxpayer  
24 dollars because there is a strong public policy to make access to  
25 the judicial system affordable for all.

26 (3) The public policy reasons for mitigating the financial burden  
27 on litigants is not as strong in the case of a high-frequency litigant,  
28 as defined in Section 425.55 of the Code of Civil Procedure.

29 (4) Therefore, for reasons set forth in Section 425.55 of the  
30 Code of Civil Procedure, the Legislature finds that it is appropriate  
31 that a high-frequency litigant pay fees that more closely resemble,  
32 but do not exceed, the total courts costs related to the action.

33 (b) In addition to the first paper filing fee required by Section  
34 70611 or 70613, a single high-frequency litigant fee shall be paid  
35 to the clerk on behalf of a plaintiff who is a high-frequency litigant,  
36 as that term is defined in Section 425.55 of the Code of Civil  
37 Procedure, at the time of the filing of the first paper if the complaint  
38 alleges a construction-related accessibility claim, as those terms  
39 are defined in subdivision (a) of Section 55.3 of the Civil Code.

1 (c) *The amount of the fee pursuant to this section shall be*  
 2 *established by the Judicial Council at an amount sufficient to*  
 3 *cover, but not exceed, the actual costs to the court resulting from*  
 4 *the claim of the high-frequency litigant. The fee shall not exceed*  
 5 *one thousand dollars (\$1,000). The fee shall be transmitted as*  
 6 *provided in Section 68085.35.*

7 (d) *Failure to pay the fees required by this section shall have*  
 8 *the same effect as the failure to pay a filing fee, and shall be subject*  
 9 *to the same enforcement and penalties.*

10 ~~SEC. 10.~~

11 *SEC. 8.* The Legislature finds and declares that Section 4 3 of  
 12 this act limits the public’s right of access to public documents  
 13 within the meaning of Section 3 of Article I of the California  
 14 Constitution. Pursuant to that constitutional provision, the  
 15 Legislature makes the following findings to demonstrate the interest  
 16 and the need for protecting that interest:

17 (a) The interest protected by this limitation is the privacy rights  
 18 of litigants.

19 (b) The need for protecting those interests is to preclude the  
 20 chilling effect on litigation if public disclosure were required.

21 ~~SEC. 11.~~

22 *SEC. 9.* No reimbursement is required by this act pursuant to  
 23 Section 6 of Article XIII B of the California Constitution because  
 24 the only costs that may be incurred by a local agency or school  
 25 district will be incurred because this act creates a new crime or  
 26 infraction, eliminates a crime or infraction, or changes the penalty  
 27 for a crime or infraction, within the meaning of Section 17556 of  
 28 the Government Code, or changes the definition of a crime within  
 29 the meaning of Section 6 of Article XIII B of the California  
 30 Constitution.

31 *SEC. 10.* *This act is an urgency statute necessary for the*  
 32 *immediate preservation of the public peace, health, or safety within*  
 33 *the meaning of Article IV of the Constitution and shall go into*  
 34 *immediate effect. The facts constituting the necessity are:*

35 *In order to ensure that the courts are not overburdened and are*  
 36 *able to provide access to the judicial system for all persons seeking*  
 37 *redress of their construction-related accessibility claims, it is*

- 1 *necessary that these reasonable requirements placed on*
- 2 *high-frequency litigants take effect immediately.*

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