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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), Chau, Chiu, Cristina Garcia, and Holden)**

March 10, 2015

An act to amend Sections 55.3 and 55.54 of, and to add Section ~~54.35~~, 54.35 to, the Civil Code, to amend Section 425.50 of, and to add Section 425.55 to, the Code of Civil Procedure, and to add Sections 68085.35 and 70616.5 to the Government Code, relating to disability 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.

Existing law requires every pleading, petition, or other similar paper to be signed by an attorney, or the party in cases where the party is not represented by counsel, as specified. Existing law further provides that an attorney or unrepresented party who presents a pleading, petition, or other similar paper to the court is certifying 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.

~~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. *specify that those requirements and provisions apply to a complaint alleging a construction-related accessibility claim.*~~

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, *additionally* 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. *The bill would authorize the court to allow a plaintiff who is unable to meet in person at the premises to be excused from participation, or participate by alternative means, for good cause and would provide that a plaintiff or plaintiff's counsel is not required to attend more than one in-person site meeting.*

Existing law *requires a complaint alleging a construction-related accessibility claim to be verified by the plaintiff or be subject to a motion to strike, and further* 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. *By expanding the definition of the crime of perjury, this bill would impose a state-mandated local program.*

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 of \$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~~ *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~~ *interest* 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: $\frac{2}{3}$. 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, as defined in paragraph (2) of subdivision (a)
- 8 of Section 55.3, if the owner of the property had knowledge or
- 9 notice that either of the following applied:
- 10 (1) The construction-related barrier existed prior to the initiation,
- 11 renewal, or extension of the lease which is the basis of the
- 12 microbusiness tenant’s liability.

1 (2) The construction-related barrier was created by parties other
2 than the microbusiness tenant after the initiation, renewal, or
3 extension of the lease which is the basis of the microbusiness
4 tenant’s liability.

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

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

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

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

21 55.3. (a) For purposes of this section, the following apply:

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

26 (2) “Construction-related accessibility claim” means any claim
27 of a violation of any construction-related accessibility standard,
28 as defined by paragraph (6) of subdivision (a) of Section 55.52,
29 with respect to a place of public accommodation.
30 “Construction-related accessibility claim” does not include a claim
31 of interference with housing within the meaning of paragraph (2)
32 of subdivision (b) of Section 54.1, or any claim of interference
33 caused by something other than the construction-related
34 accessibility condition of the property, including, but not limited
35 to, the conduct of any person.

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

1 (A) Alleges that the site is in violation of one or more
2 construction-related accessibility standards, as defined in paragraph
3 (6) of subdivision (a) of Section 55.52, or alleges one or more
4 construction-related accessibility claims, as defined in paragraph
5 (2).

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

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

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

20 (b) An attorney shall provide the following items with each
21 demand letter or complaint sent to or served upon a defendant or
22 potential defendant alleging a construction-related accessibility
23 claim:

24 (1) A written advisory on the form described in subparagraph
25 (B), or, until that form is available, on a separate page or pages
26 that are clearly distinguishable from the demand letter or complaint.
27 The advisory shall not be required in subsequent communications
28 following the initial demand letter or initial complaint unless a
29 new construction-related accessibility claim is asserted in the
30 subsequent demand letter or amended complaint.

31 (A) The advisory shall state as follows:

32

33 STATE LAW REQUIRES THAT YOU GET THIS
34 IMPORTANT ADVISORY INFORMATION FOR BUILDING
35 OWNERS AND TENANTS
36

37 This information is available in English, Spanish, Chinese,
38 Vietnamese, and Korean through the Judicial Council of California.
39 Persons with visual impairments can get assistance in viewing this

1 form through the Judicial Council Internet Web site at
2 www.courts.ca.gov.

3 California law requires that you receive this information because
4 the demand letter or court complaint you received with this
5 document claims that your building or property does not comply
6 with one or more existing construction-related accessibility laws
7 or regulations protecting the civil rights of persons with disabilities
8 to access public places.

9 **YOU HAVE IMPORTANT LEGAL OBLIGATIONS.**
10 Compliance with disability access laws is a serious and significant
11 responsibility that applies to all California building owners and
12 tenants with buildings open for business to the public. You may
13 obtain information about your legal obligations and how to comply
14 with disability access laws through the Division of the State
15 Architect at www.dgs.ca.gov. Information is also available from
16 the California Commission on Disability Access at
17 www.cdda.ca.gov/guide.htm.

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

28 You have the right to seek assistance or advice about this demand
29 letter or court complaint from any person of your choice. If you
30 have insurance, you may also wish to contact your insurance
31 provider. Your best interest may be served by seeking legal advice
32 or representation from an attorney, but you may also represent
33 yourself and file the necessary court papers to protect your interests
34 if you are served with a court complaint. If you have hired an
35 attorney to represent you, you should immediately notify your
36 attorney.

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

40 **ADDITIONAL THINGS YOU SHOULD KNOW:**

1 ATTORNEY MISCONDUCT. Except for limited circumstances,
 2 state law generally requires that a prelitigation demand letter from
 3 an attorney MAY NOT MAKE A REQUEST OR DEMAND FOR
 4 MONEY OR AN OFFER OR AGREEMENT TO ACCEPT
 5 MONEY. Moreover, a demand letter from an attorney MUST
 6 INCLUDE THE ATTORNEY’S STATE BAR LICENSE
 7 NUMBER.

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

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

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

33
 34 (B) On or before July 1, 2016, the Judicial Council shall update
 35 the advisory form that may be used by an attorney to comply with
 36 the requirements of subparagraph (A). The advisory form shall be
 37 in substantially the same format and include all of the text set forth
 38 in subparagraph (A). The advisory form shall be available in
 39 English, Spanish, Chinese, Vietnamese, and Korean, and shall
 40 include a statement that the advisory form is available in additional

1 languages, and the Judicial Council Internet Web site address
2 where the different versions of the advisory form are located. The
3 advisory form shall include Internet Web site information for the
4 Division of the State Architect and the California Commission on
5 Disability Access.

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

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

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

17 (ii) Potential affirmative defenses available to the defendant,
18 including:

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

22 ~~(H)~~

23 (I) An assertion that the defendant's landlord is responsible for
24 ensuring that some or all of the property leased by the defendant,
25 including the areas at issue in the complaint, are accessible to the
26 public. The defendant shall provide facts supporting that assertion,
27 and the name and contact information of the defendant's landlord.

28 ~~(HH)~~

29 (II) Any other affirmative defense the defendant wishes to assert.

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

33 (iii) *A request to meet in person at the subject premises, if the*
34 *defendant qualifies for an early evaluation conference pursuant*
35 *to Section 55.54.*

36 (iv) Any other information that the defendant believes is relevant
37 to his or her potential liability or ~~damages~~. *damages, including*
38 *that the defendant qualifies for reduced damages pursuant to*
39 *paragraph (1) or (2) of subdivision (f) of Section 55.56, and, if so,*
40 *any facts supporting that assertion.*

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

21 55.54. (a) (1) An attorney who causes a summons and
22 complaint to be served in an action that includes a
23 construction-related accessibility claim, including, but not limited
24 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
25 same time, cause to be served a copy of the application form
26 specified in subdivision (c) and a copy of the following notice,
27 including, until January 1, 2013, the bracketed text, to the defendant
28 on separate papers that shall be served with the summons and
29 complaint:

30
31 **ADVISORY NOTICE TO DEFENDANT**

32
33 **YOU MAY BE ENTITLED TO ASK FOR A COURT**
34 **STAY (AN ORDER TEMPORARILY STOPPING ANY**
35 **LAWSUIT) AND EARLY EVALUATION CONFERENCE**
36 **IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED**
37 **STATUTORY DAMAGES IF YOU MEET CERTAIN**
38 **CONDITIONS.**

39 If the construction-related accessibility claim pertains to a
40 site that has a Certified Access Specialist (CASp) inspection

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

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

22 ~~ALSO,~~

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

38 IN ADDITION, if your business is a small business that,
39 over the previous three years, or the existence of the business
40 if less than three years, employs 25 or fewer employees on

1 average over that time period and meets specified gross
2 receipts criteria, you may also be entitled to the court stay and
3 early evaluation conference and your minimum statutory
4 damages for each claim may be reduced to \$2,000 for each
5 offense, unless the violation was intentional, and if all the
6 alleged construction-related accessibility violations are
7 corrected within 30 days of being served with the complaint.

8 If you plan to correct the violations giving rise to the claim,
9 you should take pictures and measurements or similar action
10 to document the condition of the physical barrier asserted to
11 be the basis for a violation before undertaking any corrective
12 action in case a court needs to see the condition of a barrier
13 before it was corrected.

14 The court will schedule the conference to be held within 70
15 days after you file the attached application form.

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

20 (1) Until January 1, 2018, that the site’s new construction
21 or improvement on or after January 1, 2008, and before January
22 1, 2016, was approved pursuant to the local building permit
23 and inspection process; that, to the best of your knowledge,
24 there have been no modifications or alterations completed or
25 commenced since the building department approval that
26 impacted compliance with construction-related accessibility
27 standards with respect to the plaintiff’s claim; and that all
28 violations giving rise to the claim have been corrected, or will
29 be corrected within 60 days of the complaint being served.

30 (2) That the site’s new construction or improvement passed
31 inspection by a local building department inspector who is a
32 certified access specialist; that, to the best of your knowledge,
33 there have been no modifications or alterations completed or
34 commenced since that inspection approval that impacted
35 compliance with construction-related accessibility standards
36 with respect to the plaintiff’s claim; and that all violations
37 giving rise to the claim have been corrected, or will be
38 corrected within 60 days of the complaint being served.

39 (3) That your business is a small business with 25 or fewer
40 employees and meets the gross receipts criteria set out in

1 Section 55.56 of the Civil Code, and that all violations giving
2 rise to the claim have been corrected, or will be corrected
3 within 30 days of being served with the complaint.]

4 The court will also issue an immediate stay of the
5 proceedings unless the plaintiff has obtained a temporary
6 restraining order in the construction-related accessibility claim.
7 You may obtain a copy of the application form, filing
8 instructions, and additional information about the stay and
9 early evaluation conference through the Judicial Council
10 Internet Web site at www.courts.ca.gov/selfhelp-start.htm.

11 You may file the application after you are served with a
12 summons and complaint, but no later than your first court
13 pleading or appearance in this case, which is due within 30
14 days after you receive the summons and complaint. If you do
15 not file the application, you will still need to file your reply
16 to the lawsuit within 30 days after you receive the summons
17 and complaint to contest it. You may obtain more information
18 about how to represent yourself and how to file a reply without
19 hiring an attorney at www.courts.ca.gov/selfhelp-start.htm.

20 You may file the application without the assistance of an
21 attorney, but it may be in your best interest to immediately
22 seek the assistance of an attorney experienced in disability
23 access laws when you receive a summons and complaint. You
24 may make an offer to settle the case, and it may be in your
25 interest to put that offer in writing so that it may be considered
26 under Section 55.55 of the Civil Code.

27
28 (2) An attorney who files a Notice of Substitution of Counsel
29 to appear as counsel for a plaintiff who, acting in propria persona,
30 had previously filed a complaint in an action that includes a
31 construction-related accessibility claim, including, but not limited
32 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
33 same time, cause to be served a copy of the application form
34 specified in subdivision (c) and a copy of the notice specified in
35 paragraph (1) upon the defendant on separate pages that shall be
36 attached to the Notice of Substitution of Counsel.

37 (b) (1) Notwithstanding any other law, upon being served with
38 a summons and complaint asserting a construction-related
39 accessibility claim, including, but not limited to, a claim brought
40 under Section 51, 54, 54.1, or 55, a qualified defendant, or other

1 defendant as defined in paragraph (2), may file a request for a court
2 stay and early evaluation conference in the proceedings of that
3 claim prior to or simultaneous with that defendant's responsive
4 pleading or other initial appearance in the action that includes the
5 claim. If that defendant filed a timely request for stay and early
6 evaluation conference before a responsive pleading was due, the
7 period for filing a responsive pleading shall be tolled until the stay
8 is lifted. Any responsive pleading filed simultaneously with a
9 request for stay and early evaluation conference may be amended
10 without prejudice, and the period for filing that amendment shall
11 be tolled until the stay is lifted.

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

14 (A) Until January 1, 2018, the site's new construction or
15 improvement on or after January 1, 2008, and before January 1,
16 2016, was approved pursuant to the local building permit and
17 inspection process, and the defendant declares with the application
18 that, to the best of the defendant's knowledge, there have been no
19 modifications or alterations completed or commenced since that
20 approval that impacted compliance with construction-related
21 accessibility standards with respect to the plaintiff's claim, and
22 that all violations have been corrected, or will be corrected within
23 60 days of being served with the complaint.

24 (B) The site's new construction or improvement was approved
25 by a local public building department inspector who is a certified
26 access specialist, 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 (C) The defendant is a small business described in subdivision
34 (f) of Section 55.56, and the defendant declares with the application
35 that all violations have been corrected, or will be corrected within
36 30 days of being served with the complaint.

37 (D) The defendant is a business that has been served with a
38 complaint filed by a high-frequency litigant, as defined in
39 subdivision (b) of Section 425.55 of the Code of Civil Procedure,

1 asserting a construction-related accessibility claim, including, but
2 not limited to, a claim brought under Section 51, 54, 54.1, or 55.

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

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

18 (A) The site identified in the complaint has been
19 CASp-inspected or meets applicable standards, or is CASp
20 determination pending or has been inspected by a CASp, and if
21 the site is CASp-inspected or meets applicable standards, there
22 have been no modifications completed or commenced since the
23 date of inspection that may impact compliance with
24 construction-related accessibility standards to the best of the
25 defendant's knowledge.

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

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

34 (A) The site's new construction or improvement was approved
35 pursuant to the local building permit and inspection process on or
36 after January 1, 2008, and before January 1, 2016.

37 (B) To the best of the defendant's knowledge there have been
38 no modifications or alterations completed or commenced since
39 that approval that impacted compliance with construction-related
40 accessibility standards with respect to the plaintiff's claim.

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

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

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

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

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

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

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

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

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

39 (6) An application for an early evaluation conference and stay
40 by a small business defendant under paragraph (4) shall also

1 include both of the following, which shall be confidential
2 documents filed only with the court and not served upon or
3 available to the plaintiff:

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

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

10 (7) An application for an early evaluation conference and stay
11 by a defendant described by subparagraph (D) of paragraph (2) of
12 subdivision (b) shall include a declaration that the defendant was
13 served with a complaint filed by a high-frequency litigant, as
14 defined in subdivision (b) of Section 425.55 of the Code of Civil
15 Procedure, asserting a construction-related accessibility claim,
16 including, but not limited to, a claim brought under Section 51,
17 54, 54.1, or 55.

18 (8) The following provisional request and notice forms may be
19 used and filed by a qualified defendant until forms are adopted by
20 the Judicial Council for those purposes pursuant to subdivision
21 (I):

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:	
NOTICE OF STAY OR PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	CASE NUMBER:

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 than 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.

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:	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	

(Information about this application and the filing instructions may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.)

1. Defendant (name) _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code Section 55.52(a)(1).
3. The claim concerns a site that (check the box if the statement is true):
 - a. Has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending and, if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
 - b. An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued. (Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
4. I am requesting the court to:
 - a. Stay the proceedings relating to the construction-related accessibility claim.
 - b. Schedule an early evaluation conference.
 - c. Order Defendant to file a confidential copy of the Certified Access Specialist (CASp) report with the court and serve a copy of the report on the Plaintiff at least fifteen (15) days before the Early Evaluation Conference date.
 - d. Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(6)(A)-(D) with the court and serve a copy of the statement on the Defendant at least fifteen (15) days before the date of the Early Evaluation Conference.

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

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

(TITLE OF DECLARANT)

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 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.

Date: _____

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. They shall jointly inspect
16 the portions of the subject premises, and shall review any
17 programmatic or policy issues, that are claimed to constitute a
18 violation of a construction-related accessibility standard. *The court*
19 *may allow a plaintiff who is unable to meet in person at the subject*
20 *premises to be excused from participating in a site visit or to*
21 *participate by telephone or other alternative means for good cause.*
22 *A plaintiff or plaintiff's counsel is not required, but may agree, to*
23 *attend more than one in-person site meeting. A site inspection*
24 *pursuant to this paragraph shall not affect the right of the parties*
25 *to conduct otherwise appropriate discovery.*

26 (7) Directs the plaintiff to file with the court and serve on the
27 defendant at least 15 days before the date of the conference a
28 statement that includes, to the extent reasonably known, for use
29 solely for the purpose of the early evaluation conference, all of the
30 following:

31 (A) An itemized list of specific conditions on the subject
32 premises that are the basis of the claimed violations of
33 construction-related accessibility standards in the plaintiff's
34 complaint.

35 (B) The amount of damages claimed.

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

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

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

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

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

10 (3) The court may lift the stay at the conclusion of the early
11 evaluation conference upon a showing of good cause by the
12 plaintiff. Good cause may include the defendant's failure to make
13 reasonably timely progress toward completion of corrections noted
14 by a CASp.

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

25 (f) All discussions at the early evaluation conference shall be
26 subject to Section 1152 of the Evidence Code. It is the intent of
27 the Legislature that the purpose of the evaluation conference shall
28 include, but not be limited to, evaluation of all of the following,
29 as applicable:

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

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

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

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

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

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

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

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

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

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

1 (l) (1) The Judicial Council shall, by January 1, 2013, prepare
2 and post on its Internet Web site instructions and a form for use
3 by a qualified defendant, or other defendant described by paragraph
4 (2) of subdivision (b), to file an application for stay and early
5 evaluation conference as provided in subdivisions (b) and (c), a
6 form for the court’s notice of stay and early evaluation conference,
7 and any other forms appropriate to implement the provisions
8 relating to early evaluation conferences. Until those forms are
9 adopted, the Judicial Council shall post on its Internet Web site
10 the provisional forms set forth in subdivision (c).

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

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

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

20 (i) The site’s new construction or improvement was approved
21 pursuant to the local building permit and inspection process on or
22 after January 1, 2008, and before January 1, 2016.

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

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

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

32 (i) The site’s new construction or improvement was approved
33 by a local public building department inspector who is a certified
34 access specialist.

35 (ii) To the best of the defendant’s knowledge there have been
36 no modifications or alterations completed or commenced since
37 that approval that impacted compliance with construction-related
38 accessibility standards with respect to the plaintiff’s claim.

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

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

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

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

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

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

20 (B) For a defendant who is a small business that has filed a
21 declaration stating that all the violations have been corrected, or
22 will be corrected within 30 days of the service of the complaint,
23 file with the court and serve on the plaintiff evidence showing
24 correction of the violation or violations within 10 calendar days
25 after issuance of the court order, if that evidence showing correction
26 was not filed previously with the application and served on the
27 plaintiff.

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

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

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

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

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

8 SEC. 4. Section 425.50 of the Code of Civil Procedure is
9 amended to read:

10 425.50. (a) An allegation of a construction-related accessibility
11 claim in a complaint, as defined in subdivision (a) of Section 55.52
12 of the Civil Code, shall state facts sufficient to allow a reasonable
13 person to identify the basis of the violation or violations supporting
14 the claim, including all of the following:

15 (1) A plain language explanation of the specific access barrier
16 or barriers the individual encountered, or by which the individual
17 alleges he or she was deterred, with sufficient information about
18 the location of the alleged barrier to enable a reasonable person to
19 identify the access barrier.

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

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

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

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

31 (ii) In the case of a high-frequency litigant who is a plaintiff,
32 the number of complaints alleging a construction-related
33 accessibility claim that the high-frequency litigant has filed during
34 the 12 months prior to filing the complaint.

35 (iii) In the case of a high-frequency litigant who is a plaintiff,
36 the reason the individual was in the geographic area of the
37 defendant's business.

38 (iv) In the case of a high-frequency litigant who is a plaintiff,
39 the reason why the individual desired to access the defendant's

1 business, including the specific commercial, business, personal,
2 social, leisure, recreational, or other purpose.

3 (B) As used in this section “high-frequency litigant” has the
4 same meaning as set forth in subdivision (b) of Section 425.55.

5 (b) A complaint alleging a construction-related accessibility
6 claim, as those terms are defined in subdivision (a) of Section 55.3
7 of the Civil Code, shall be verified by the plaintiff. A complaint
8 filed without verification shall be subject to a motion to strike.

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

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

20 (2) The claims, defenses, and other legal contentions therein
21 are warranted by existing law or by a nonfrivolous argument for
22 the extension, modification, or reversal of existing law or the
23 establishment of new law.

24 (3) The allegations and other factual contentions have
25 evidentiary support or, if specifically so identified, are likely to
26 have evidentiary support after a reasonable opportunity for further
27 investigation or discovery.

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

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

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

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

1 SEC. 5. Section 425.55 is added to the Code of Civil Procedure,
 2 to read read:

3 425.55. (a) The Legislature finds and declares all of the
 4 following:

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

9 (2) According to information from the California Commission
 10 on Disability Access, more than one-half, or 54 percent, of all
 11 construction-related accessibility complaints filed between 2012
 12 and 2014 were filed by two law firms. Forty-six percent of all
 13 complaints were filed by a total of 14 parties. Therefore, a very
 14 small number of plaintiffs have filed a disproportionately large
 15 number of the construction-related accessibility claims in the state,
 16 from 70 to 300 lawsuits each year. Moreover, these lawsuits are
 17 frequently filed against small businesses on the basis of boilerplate
 18 complaints, apparently seeking quick cash settlements rather than
 19 correction of the accessibility violation. This practice unfairly
 20 taints the reputation of other innocent disabled consumers who are
 21 merely trying to go about their daily lives accessing public
 22 accommodations as they are entitled to have full and equal access
 23 under the state’s Unruh *Civil Rights Act* (~~Chapter 1 (commencing~~
 24 ~~with Section 1801 of Title 2)~~ (*Section 51 of the Civil Code*) and
 25 the federal Americans with Disability Act of 1990 (Public Law
 26 101-336).

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 one or more of the following:

36 (1) A plaintiff who has filed 10 or more complaints alleging a
 37 construction-related accessibility violation within the 12-month
 38 period immediately preceding the filing of the current complaint
 39 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 who were high-frequency litigants at the time when complaints
 4 alleging construction-related accessibility violations were filed
 5 on their behalf within the 12-month period immediately preceding
 6 the filing of the current complaint alleging a construction-related
 7 accessibility violation.

8 SEC. 6. Section 68085.35 is added to the Government Code,
 9 immediately following Section 68085.3, to read:

10 68085.35. (a) Fees collected under Section 70616.5 shall be
 11 deposited in a bank account established by the Administrative
 12 Office of the Courts for deposit of fees collected by the courts.

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

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

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

20 (c) If any of the fees listed in subdivision (a) are reduced or
 21 partially waived, the amount of the reduction or partial waiver
 22 shall be deducted from the amount to be distributed to each fund
 23 in the same proportion as the amount each distribution bears to
 24 the total amount of the fee.

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

28 SEC. 7. Section 70616.5 is added to the Government Code, to
 29 read:

30 ~~70616.5.—(a) The Legislature finds and declares all of the~~
 31 ~~following:~~

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

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

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

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

5 (b)
 6 70616.5. (a) In addition to the first paper filing fee required
 7 by Section 70611 or 70613, a single high-frequency litigant fee
 8 shall be paid to the clerk on behalf of a plaintiff who is a
 9 high-frequency litigant, as that term is defined in Section 425.55
 10 of the Code of Civil Procedure, at the time of the filing of the first
 11 paper if the complaint alleges a construction-related accessibility
 12 claim, as those terms are defined in subdivision (a) of Section 55.3
 13 of the Civil Code.

14 (e)
 15 (b) ~~The amount of the fee pursuant to established by this section~~
 16 ~~shall be established by the Judicial Council at an amount sufficient~~
 17 ~~to cover, but not exceed, the actual costs to the court resulting from~~
 18 ~~the claim of the high-frequency litigant. The fee shall not exceed~~
 19 one thousand dollars (\$1,000). The fee shall be transmitted as
 20 provided in Section 68085.35.

21 ~~(d)~~
 22 (c) Failure to pay the fees required by this section shall have
 23 the same effect as the failure to pay a filing fee, and shall be subject
 24 to the same enforcement and penalties.

25 SEC. 8. The Legislature finds and declares that Section 3 of
 26 this act limits the public’s right of access to public documents
 27 within the meaning of Section 3 of Article I of the California
 28 Constitution. Pursuant to that constitutional provision, the
 29 Legislature makes the following findings to demonstrate the interest
 30 and the need for protecting that interest:

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

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

35 SEC. 9. No reimbursement is required by this act pursuant to
 36 Section 6 of Article XIII B of the California Constitution because
 37 the only costs that may be incurred by a local agency or school
 38 district will be incurred because this act creates a new crime or
 39 infraction, eliminates a crime or infraction, or changes the penalty
 40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

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

8 In order to ensure that the courts are not overburdened and are
9 able to provide access to the judicial system for all persons seeking
10 redress of their construction-related accessibility claims, it is
11 necessary that these reasonable requirements placed on
12 high-frequency litigants take effect immediately.

13

14

15 **CORRECTIONS:**

16 **Text—Page 20.**

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