

AMENDED IN SENATE SEPTEMBER 4, 2015
AMENDED IN SENATE SEPTEMBER 3, 2015
AMENDED IN SENATE AUGUST 17, 2015
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

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, 55.32, and 55.54 of 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 a verified 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 requires a demand letter alleging a violation of a construction-related accessibility standard or asserting a construction-related accessibility claim to include specified information and, among other things, until January 1, 2016, requires an attorney who provides a demand letter to send a copy of the demand letter to the State Bar of California.

This bill would extend that requirement until January 1, 2019.

Existing law requires an attorney who sends or serves a complaint on the basis of a construction-related accessibility claim to also send a copy of the complaint to the California Commission on Disability Access.

This bill would additionally require the attorney to notify the commission within 5 business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of specified information, including, among others, whether or not the construction-related accessibility violations alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter.

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 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 whether 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 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 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 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.

This bill would also make other conforming changes.

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 55.3 of the Civil Code is amended to
- 2 read:
- 3 55.3. (a) For purposes of this section, the following apply:
- 4 (1) "Complaint" means a civil complaint that is filed or is to be
- 5 filed with a court and is sent to or served upon a defendant on the
- 6 basis of one or more construction-related accessibility claims, as
- 7 defined in this section.

1 (2) “Construction-related accessibility claim” means any claim
2 of a violation of any construction-related accessibility standard,
3 as defined by paragraph (6) of subdivision (a) of Section 55.52,
4 with respect to a place of public accommodation.
5 “Construction-related accessibility claim” does not include a claim
6 of interference with housing within the meaning of paragraph (2)
7 of subdivision (b) of Section 54.1, or any claim of interference
8 caused by something other than the construction-related
9 accessibility condition of the property, including, but not limited
10 to, the conduct of any person.

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

15 (A) Alleges that the site is in violation of one or more
16 construction-related accessibility standards, as defined in paragraph
17 (6) of subdivision (a) of Section 55.52, or alleges one or more
18 construction-related accessibility claims, as defined in paragraph
19 (2).

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

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

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

34 (b) An attorney shall provide the following items with each
35 demand letter or complaint sent to or served upon a defendant or
36 potential defendant alleging a construction-related accessibility
37 claim:

38 (1) A written advisory on the form described in subparagraph
39 (B), or, until that form is available, on a separate page or pages
40 that are clearly distinguishable from the demand letter or complaint.

1 The advisory shall not be required in subsequent communications
2 following the initial demand letter or initial complaint unless a
3 new construction-related accessibility claim is asserted in the
4 subsequent demand letter or amended complaint.

5 (A) The advisory shall state as follows:

6

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

10

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

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

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

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

1 You have the right to seek assistance or advice about this demand
2 letter or court complaint from any person of your choice. If you
3 have insurance, you may also wish to contact your insurance
4 provider. Your best interest may be served by seeking legal advice
5 or representation from an attorney, but you may also represent
6 yourself and file the necessary court papers to protect your interests
7 if you are served with a court complaint. If you have hired an
8 attorney to represent you, you should immediately notify your
9 attorney.

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

13 **ADDITIONAL THINGS YOU SHOULD KNOW:**

14 **ATTORNEY MISCONDUCT.** Except for limited circumstances,
15 state law generally requires that a prelitigation demand letter from
16 an attorney **MAY NOT MAKE A REQUEST OR DEMAND FOR**
17 **MONEY OR AN OFFER OR AGREEMENT TO ACCEPT**
18 **MONEY.** Moreover, a demand letter from an attorney **MUST**
19 **INCLUDE THE ATTORNEY'S STATE BAR LICENSE**
20 **NUMBER.**

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

28 **REDUCING YOUR DAMAGES.** If you are a small business
29 owner and correct all of the construction-related violations that
30 are the basis of the complaint against you within 30 days of being
31 served with the complaint, you may qualify for reduced damages.
32 You may wish to consult an attorney to obtain legal advice. You
33 may also wish to contact the California Commission on Disability
34 Access for additional information about the rights and obligations
35 of business owners.

36 **COMMERCIAL TENANT.** If you are a commercial tenant, you
37 may not be responsible for ensuring that some or all portions of
38 the premises you lease for your business, including common areas
39 such as parking lots, are accessible to the public because those
40 areas may be the responsibility of your landlord. You may want

1 to refer to your lease agreement and consult with an attorney or
2 contact your landlord, to determine if your landlord is responsible
3 for maintaining and improving some or all of the areas you lease.

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

17 (2) A verified answer form developed by the Judicial Council,
18 which allows a defendant to respond to the complaint in the event
19 a complaint is filed.

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

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

28 (ii) Potential affirmative defenses available to the defendant,
29 including:

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

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

36 (iii) A request to meet in person at the subject premises, if the
37 defendant qualifies for an early evaluation conference pursuant to
38 Section 55.54.

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

1 defendant qualifies for reduced damages pursuant to paragraph
2 (1) or (2) of subdivision (f) of Section 55.56, and, if so, any facts
3 supporting that assertion.

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

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

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

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

23 SEC. 2. Section 55.32 of the Civil Code, as added by Section
24 5 of Chapter 383 of the Statutes of 2012, is amended to read:

25 55.32. (a) An attorney who provides a demand letter, as defined
26 in subdivision (a) of Section 55.3, shall do all of the following:

27 (1) Include the attorney's State Bar license number in the
28 demand letter.

29 (2) Contemporaneously with providing the demand letter, send
30 a copy of the demand letter to the State Bar of California by
31 facsimile transmission at 1-415-538-2171, or by mail to 180
32 Howard Street, San Francisco, CA, 94105, Attention: Professional
33 Competence.

34 (3) Within five business days of providing the demand letter,
35 send a copy of the demand letter to the California Commission on
36 Disability Access.

37 (b) An attorney who sends or serves a complaint, as defined in
38 subdivision (a) of Section 55.3, shall do both of the following:

1 (1) Send a copy of the complaint to the California Commission
2 on Disability Access within five business days of sending or
3 serving the complaint.

4 (2) Notify the California Commission on Disability Access
5 within five business days of judgment, settlement, or dismissal of
6 the claim or claims alleged in the complaint of the following
7 information in a standard format specified by the commission:

8 (A) The date of the judgment, settlement, or dismissal.

9 (B) Whether or not the construction-related accessibility
10 violations alleged in the complaint were remedied in whole or in
11 part after the plaintiff filed a complaint or provided a demand
12 letter, as defined by Section 55.3.

13 (C) If the construction-related accessibility violations alleged
14 in the complaint were not remedied in whole or in part after the
15 plaintiff filed a complaint or provided a demand letter, as defined
16 by Section 55.3, whether or not another favorable result was
17 achieved after the plaintiff filed the complaint or provided the
18 demand letter.

19 (D) Whether or not the defendant submitted an application for
20 an early evaluation conference and stay pursuant to Section 55.54,
21 whether the defendant requested a site inspection, the date of any
22 early evaluation conference, and the date of any site inspection.

23 (c) A violation of paragraph (2) or (3) of subdivision (a) or
24 subdivision (b) shall constitute cause for the imposition of
25 discipline of an attorney where a copy of the complaint, demand
26 letter, or notification of a case outcome is not sent to the California
27 Commission on Disability Access within five business days, or a
28 copy of the demand letter is not sent to the State Bar within five
29 business days. In the event the State Bar receives information
30 indicating that an attorney has failed to send a copy of the
31 complaint, demand letter, or notification of a case outcome to the
32 California Commission on Disability Access within five business
33 days, the State Bar shall investigate to determine whether paragraph
34 (3) of subdivision (a) or subdivision (b) has been violated.

35 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
36 required to send to the State Bar of California or the California
37 Commission on Disability Access a copy of any subsequent
38 demand letter or amended complaint in the same dispute following
39 the initial demand letter or complaint, unless that subsequent

1 demand letter or amended complaint alleges a new
2 construction-related accessibility claim.

3 (e) A demand ~~letter or complaint~~ *letter, complaint, or*
4 *notification of a case outcome* sent to the California Commission
5 on Disability Access shall be for the informational purposes of
6 Section 8299.08 of the Government Code. A demand letter received
7 by the State Bar from either the sender or recipient of the demand
8 letter shall be reviewed by the State Bar to determine whether
9 subdivision (b) or (c) of Section 55.31 has been violated.

10 (f) (1) Commencing July 31, 2013, and annually each July 31
11 thereafter, the State Bar shall report to the Legislature and the
12 Chairs of the Senate and Assembly Committees on Judiciary, both
13 of the following with respect to demand letters received by the
14 State Bar:

15 (A) The number of investigations opened to date on a suspected
16 violation of subdivision (b) or (c) of Section 55.31.

17 (B) Whether any disciplinary action resulted from the
18 investigation, and the results of that disciplinary action.

19 (2) A report to be submitted pursuant to this subdivision shall
20 be submitted in compliance with Section 9795 of the Government
21 Code.

22 (g) The California Commission on Disability Access shall
23 review and report on the demand ~~letters and complaints~~ *letters,*
24 *complaints, and notifications of case outcomes* it receives as
25 provided in Section 8299.08 of the Government Code.

26 (h) Paragraphs (2) and (3) of subdivision (a) and subdivision
27 (b) shall not apply to a demand letter or complaint sent or filed by
28 an attorney employed or retained by a qualified legal services
29 project or a qualified support center, as defined in Section 6213
30 of the Business and Professions Code, when acting within the
31 scope of employment in asserting a construction-related
32 accessibility claim. The Legislature finds and declares that qualified
33 legal services projects and support centers are extensively regulated
34 by the State Bar of California, and that there is no evidence of any
35 abusive use of demand letters or complaints by these organizations.
36 The Legislature further finds that, in light of the evidence of the
37 extraordinarily small number of construction-related accessibility
38 cases brought by regulated legal services programs, and given the
39 resources of those programs, exempting regulated legal services
40 programs from the requirements of this section to report to the

1 California Commission on Disability Access will not affect the
2 purpose of the reporting to, and tabulation by, the commission of
3 all other construction-related accessibility claims.

4 (i) This section shall become operative on January 1, 2013.

5 (j) This section shall remain in effect only until January 1, 2019,
6 and as of that date is repealed.

7 SEC. 3. Section 55.32 of the Civil Code, as added by Section
8 6 of Chapter 383 of the Statutes of 2012, is amended to read:

9 55.32. (a) An attorney who provides a demand letter, as defined
10 in subdivision (a) of Section 55.3, shall do all of the following:

11 (1) Include the attorney’s State Bar license number in the
12 demand letter.

13 (2) Within five business days of providing the demand letter,
14 send a copy of the demand letter to the California Commission on
15 Disability Access.

16 (b) An attorney who sends or serves a complaint, as defined in
17 subdivision (a) of Section 55.3, shall do both of the following:

18 (1) Send a copy of the complaint to the California Commission
19 on Disability Access within five business days of sending or
20 serving the complaint.

21 (2) Notify the California Commission on Disability Access
22 within five business days of judgment, settlement, or dismissal of
23 the claim or claims alleged in the complaint of the following
24 information in a standard format specified by the commission:

25 (A) The date of the judgment, settlement, or dismissal.

26 (B) Whether or not the construction-related accessibility
27 violations alleged in the complaint were remedied in whole or in
28 part after the plaintiff filed a complaint or provided a demand
29 letter, as defined by Section 55.3.

30 (C) If the construction-related accessibility violations alleged
31 in the complaint were not remedied in whole or in part after the
32 plaintiff filed a complaint or provided a demand letter, as defined
33 by Section 55.3, whether or not another favorable result was
34 achieved after the plaintiff filed the complaint or provided the
35 demand letter.

36 (D) Whether or not the defendant submitted an application for
37 an early evaluation conference and stay pursuant to Section 55.54,
38 whether the defendant requested a site inspection, the date of any
39 early evaluation conference, and the date of any site inspection.

1 (c) A violation of paragraph (2) of subdivision (a) or subdivision
2 (b) shall constitute cause for the imposition of discipline of an
3 attorney if a copy of the demand letter, complaint, or notification
4 of a case outcome is not sent to the California Commission on
5 Disability Access within five business days. In the event the State
6 Bar receives information indicating that an attorney has failed to
7 send a copy of the demand letter, complaint, or notification of a
8 case outcome to the California Commission on Disability Access
9 within five business days, the State Bar shall investigate to
10 determine whether paragraph (2) of subdivision (a) or subdivision
11 (b) has been violated.

12 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
13 required to send to the California Commission on Disability Access
14 a copy of any subsequent demand letter or amended complaint in
15 the same dispute following the initial demand letter or complaint,
16 unless that subsequent demand letter or amended complaint alleges
17 a new construction-related accessibility claim.

18 (e) A demand letter *or notification of a case outcome* sent to
19 the California Commission on Disability Access shall be for the
20 informational purposes of Section 8299.08 of the Government
21 Code. A demand letter received by the State Bar from the recipient
22 of the demand letter shall be reviewed by the State Bar to determine
23 whether subdivision (b) or (c) of Section 55.31 has been violated.

24 (f) (1) Notwithstanding Section 10231.5 of the Government
25 Code, on or before July 31, 2019, and annually thereafter, the State
26 Bar shall report to the Legislature and the Chairs of the Senate and
27 Assembly Judiciary Committees, both of the following with respect
28 to demand letters received by the State Bar:

29 (A) The number of investigations opened to date on a suspected
30 violation of subdivision (b) or (c) of Section 55.31.

31 (B) Whether any disciplinary action resulted from the
32 investigation, and the results of that disciplinary action.

33 (2) A report to be submitted pursuant to this subdivision shall
34 be submitted in compliance with Section 9795 of the Government
35 Code.

36 (g) The California Commission on Disability Access shall
37 review and report on the demand ~~letters and complaints~~ *letters,*
38 *complaints, and notifications of case outcomes* it receives as
39 provided in Section 8299.08 of the Government Code.

1 (h) The expiration of any ground for discipline of an attorney
 2 shall not affect the imposition of discipline for any act prior to the
 3 expiration. An act or omission that constituted cause for imposition
 4 of discipline of an attorney when committed or omitted prior to
 5 January 1, 2019, shall continue to constitute cause for the
 6 imposition of discipline of that attorney on and after January 1,
 7 2019.

8 (i) Paragraph (2) of subdivision (a) and subdivision (b) shall
 9 not apply to a demand letter or complaint sent or filed by an
 10 attorney employed or retained by a qualified legal services project
 11 or a qualified support center, as defined in Section 6213 of the
 12 Business and Professions Code, when acting within the scope of
 13 employment in asserting a construction-related accessibility claim.
 14 The Legislature finds and declares that qualified legal services
 15 projects and support centers are extensively regulated by the State
 16 Bar of California, and that there is no evidence of any abusive use
 17 of demand letters or complaints by these organizations. The
 18 Legislature further finds that, in light of the evidence of the
 19 extraordinarily small number of construction-related accessibility
 20 cases brought by regulated legal services programs, and given the
 21 resources of those programs, exempting regulated legal services
 22 programs from the requirements of this section to report to the
 23 California Commission on Disability Access will not affect the
 24 purpose of the reporting to, and tabulation by, the commission of
 25 all other construction-related accessibility claims.

26 (j) This section shall become operative on January 1, 2019.

27 SEC. 4. Section 55.54 of the Civil Code is amended to read:

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

37
 38 ADVISORY NOTICE TO DEFENDANT
 39

1 YOU MAY BE ENTITLED TO ASK FOR A COURT
2 STAY (AN ORDER TEMPORARILY STOPPING ANY
3 LAWSUIT) AND EARLY EVALUATION CONFERENCE
4 IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED
5 STATUTORY DAMAGES IF YOU MEET CERTAIN
6 CONDITIONS.

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

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

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

1 inspect the portions of the subject premises and review any
2 conditions that are claimed to constitute a violation of a
3 construction-related accessibility standard.

4 IN ADDITION, if your business is a small business that,
5 over the previous three years, or the existence of the business
6 if less than three years, employs 25 or fewer employees on
7 average over that time period and meets specified gross
8 receipts criteria, you may also be entitled to the court stay and
9 early evaluation conference and your minimum statutory
10 damages for each claim may be reduced to \$2,000 for each
11 offense, unless the violation was intentional, and if all the
12 alleged construction-related accessibility violations are
13 corrected within 30 days of being served with the complaint.

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

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

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

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

36 (2) That the site’s new construction or improvement passed
37 inspection by a local building department inspector who is a
38 certified access specialist; that, to the best of your knowledge,
39 there have been no modifications or alterations completed or
40 commenced since that inspection approval that impacted

1 compliance with construction-related accessibility standards
2 with respect to the plaintiff’s claim; and that all violations
3 giving rise to the claim have been corrected, or will be
4 corrected within 60 days of the complaint being served.

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

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

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

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

33
34 (2) An attorney who files a Notice of Substitution of Counsel
35 to appear as counsel for a plaintiff who, acting in propria persona,
36 had previously filed a complaint in an action that includes a
37 construction-related accessibility claim, including, but not limited
38 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
39 same time, cause to be served a copy of the application form
40 specified in subdivision (c) and a copy of the notice specified in

1 paragraph (1) upon the defendant on separate pages that shall be
2 attached to the Notice of Substitution of Counsel.

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

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

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

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

39 (C) The defendant is a small business described in subdivision
40 (f) of Section 55.56, and the defendant declares with the application

1 that all violations have been corrected, or will be corrected within
2 30 days of being served with the complaint.

3 (D) The defendant is a business that has been served with a
4 complaint filed by a high-frequency litigant, as defined in
5 subdivision (b) of Section 425.55 of the Code of Civil Procedure,
6 asserting a construction-related accessibility claim, including, but
7 not limited to, a claim brought under Section 51, 54, 54.1, or 55.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (5) An application for an early evaluation conference and stay
37 by a small business defendant under paragraph (4) shall include
38 evidence showing correction of all violations within 30 days of
39 the service of the complaint and served upon the plaintiff with the
40 reply unless the application is filed prior to completion of the

1 corrections. In that event, the evidence shall be provided to the
2 court and served upon the plaintiff within 10 days of the court
3 order as provided in paragraph (4) of subdivision (d). This
4 paragraph shall not be construed to extend the permissible time
5 under subdivision (f) of Section 55.56 to make the corrections.

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

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

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

17 (7) An application for an early evaluation conference and stay
18 by a defendant described by subparagraph (D) of paragraph (2) of
19 subdivision (b) shall include a signed declaration that the defendant
20 was served with a complaint filed by a high-frequency litigant, as
21 defined in subdivision (b) of Section 425.55 of the Code of Civil
22 Procedure, asserting a construction-related accessibility claim,
23 including, but not limited to, a claim brought under Section 51,
24 54, 54.1, or 55.

25 (8) The following provisional request and notice forms may be
26 used and filed by a qualified defendant until forms are adopted by
27 the Judicial Council for those purposes pursuant to subdivision
28 (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:	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	CASE NUMBER:

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

DEFENDANT'S APPLICATION FOR EARLY EVALUATION CONFERENCE AND STAY OF PROCEEDINGS
 (Construction-related Accessibility Claim) Provisional Form

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 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/.](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. 5. 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) Whether 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) (1) 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 (2) A complaint alleging a construction-related accessibility
 10 claim filed by, or on behalf of, a high-frequency litigant shall state
 11 in the caption “ACTION SUBJECT TO THE SUPPLEMENTAL
 12 FEE IN GOVERNMENT CODE SECTION 70616.5.”

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

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

24 (2) The claims, defenses, and other legal contentions therein
 25 are warranted by existing law or by a nonfrivolous argument for
 26 the extension, modification, or reversal of existing law or the
 27 establishment of new law.

28 (3) The allegations and other factual contentions have
 29 evidentiary support or, if specifically so identified, are likely to
 30 have evidentiary support after a reasonable opportunity for further
 31 investigation or discovery.

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

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

39 (e) Nothing in this section shall limit the right of a plaintiff to
 40 amend a complaint under Section 472, or with leave of the court

1 under Section 473. However, an amended pleading alleging a
2 construction-related accessibility claim shall be pled as required
3 by subdivision (a).

4 (f) The determination whether an attorney is a high-frequency
5 litigant shall be made solely on the basis of the verified complaint
6 and any other publicly available documents. Notwithstanding any
7 other law, no party to the proceeding may conduct discovery with
8 respect to whether an attorney is a high-frequency litigant.

9 (g) This section shall become operative on January 1, 2013.

10 SEC. 6. Section 425.55 is added to the Code of Civil Procedure,
11 to read:

12 425.55. (a) The Legislature finds and declares all of the
13 following:

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

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

35 (3) Therefore, given these special and unique circumstances,
36 the provisions of this section are warranted for this limited group
37 of plaintiffs.

38 (b) For the purposes of this article, "high-frequency litigant"
39 means a person, except as specified in paragraph (3), who utilizes
40 court resources in actions arising from alleged construction-related

1 access violations at such a high level that it is appropriate that
 2 additional safeguards apply so as to ensure that the claims are
 3 warranted. A “high-frequency litigant” means one or more of the
 4 following:

5 (1) A plaintiff who has filed 10 or more complaints alleging a
 6 construction-related accessibility violation within the 12-month
 7 period immediately preceding the filing of the current complaint
 8 alleging a construction-related accessibility violation.

9 (2) An attorney who has represented as attorney of record 10
 10 or more high-frequency litigant plaintiffs in actions that were
 11 resolved within the 12-month period immediately preceding the
 12 filing of the current complaint alleging a construction-related
 13 accessibility violation, excluding all of the following actions:

14 (A) An action in which an early evaluation conference was held
 15 pursuant to Section 55.54 of the Civil Code.

16 (B) An action in which judgment was entered in favor of the
 17 plaintiff.

18 (C) An action in which the construction-related accessibility
 19 violations alleged in the complaint were remedied in whole or in
 20 part, or a favorable result was achieved, after the plaintiff filed a
 21 complaint or provided a demand letter, as defined in Section 55.3
 22 of the Civil Code.

23 (3) This section does not apply to an attorney employed or
 24 retained by a qualified legal services project or a qualified support
 25 center, as defined in Section 6213 of the Business and Professions
 26 Code, when acting within the scope of employment to represent
 27 a client in asserting a construction-related accessibility claim, or
 28 the client in such a case.

29 SEC. 7. Section 68085.35 is added to the Government Code,
 30 immediately following Section 68085.3, to read:

31 68085.35. (a) Fees collected under Section 70616.5 shall be
 32 deposited in a bank account established by the Administrative
 33 Office of the Courts for deposit of fees collected by the courts.

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

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

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

1 (c) If any of the fees listed in subdivision (a) are reduced or
2 partially waived, the amount of the reduction or partial waiver
3 shall be deducted from the amount to be distributed to each fund
4 in the same proportion as the amount each distribution bears to
5 the total amount of the fee.

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

9 SEC. 8. Section 70616.5 is added to the Government Code, to
10 read:

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

19 (b) The fee established by this section shall be one thousand
20 dollars (\$1,000). The fee shall be transmitted as provided in Section
21 68085.35.

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. 9. 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. 10. 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. 11. 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.