

Introduced by Senator GalgianiJanuary 7, 2015

An act to amend Sections 55.54 and 55.56 of the Civil Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 67, as introduced, Galgiani. Disability access: statutory damages.

Existing law permits statutory damages to be awarded in certain construction-related accessibility claims against a place of public accommodation only if the violation denied the plaintiff full and equal access to the place of public accommodation on a particular occasion. Existing law reduces a defendant's minimum statutory damage liability to \$1000 if the defendant demonstrates that it has corrected all construction-related violations that are the basis of a claim within 60 days of being served with the complaint, and other conditions are met, including, among others, that the structure or area was inspected by a certified access specialist, as defined. Existing law also reduces a defendant's minimum statutory damage liability to \$2000 in this context if it demonstrates that it has corrected all construction-related violations that are the basis of a claim within 30 days of being served with the complaint and it is a small business, as defined.

This bill would except a small business from statutory damage liability in connection with a construction-related accessibility claim, as described above, and would instead limit recovery to injunctive relief and reasonable attorney's fees as deemed appropriate by the court. The bill would also extend the period for correcting construction-related violations that are the basis of a claim from 60 days to 120 days of being served with the complaint, for purposes of reducing a defendant's minimum statutory damage liability to \$1000. The bill would make

conforming changes a notice a plaintiff is required to served on a defendant in an action that includes a construction-related accessibility claim.

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

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

1 SECTION 1. Section 55.54 of the Civil Code is amended to
2 read:

3 55.54. (a) (1) An attorney who causes a summons and
4 complaint to be served in an action 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, shall, at the
7 same time, cause to be served a copy of the application form
8 specified in subdivision (c) and a copy of the following notice,
9 including, until January 1, 2013, the bracketed text, to the defendant
10 on separate papers that shall be served with the summons and
11 complaint:

12
13 ADVISORY NOTICE TO DEFENDANT
14

15 YOU MAY BE ENTITLED TO ASK FOR A COURT
16 STAY (AN ORDER TEMPORARILY STOPPING ANY
17 LAWSUIT) AND EARLY EVALUATION CONFERENCE
18 IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED
19 STATUTORY DAMAGES *OR NO STATUTORY DAMAGES*
20 IF YOU MEET CERTAIN CONDITIONS.

21 If the construction-related accessibility claim pertains to a
22 site that has a Certified Access Specialist (CASp) inspection
23 report for that site, or to a site where new construction or
24 improvement was approved after January 1, 2008, by the local
25 building permit and inspection process, you may make an
26 immediate request for a court stay and early evaluation
27 conference in the construction-related accessibility claim by
28 filing the attached application form with the court. You may
29 be entitled to the court stay and early evaluation conference
30 regarding the accessibility claim only if ALL of the statements
31 in the application form applicable to you are true.

1 FURTHER, if you are a defendant described above (with a
2 CASp inspection report or with new construction after January
3 1, 2008), and, to the best of your knowledge, there have been
4 no modifications or alterations completed or commenced since
5 the CASp report or building department approval of the new
6 construction or improvement that impacted compliance with
7 construction-related accessibility standards with respect to the
8 plaintiff’s claim, your liability for minimum statutory damages
9 may be reduced to \$1,000 for each offense, unless the violation
10 was intentional, and if all construction-related accessibility
11 violations giving rise to the claim are corrected within ~~60~~ 120
12 days of being served with this complaint.

13 IN ADDITION, if your business is a small business that,
14 over the previous three years, or the existence of the business
15 if less than three years, employs 25 or fewer employees on
16 average over that time period and meets specified gross
17 receipts criteria, ~~you may also be entitled to the court stay and
18 early evaluation conference and your minimum statutory
19 damages for each claim may be reduced to \$2,000 for each
20 offense, unless the violation was intentional, and if all the
21 alleged construction-related accessibility violations are
22 corrected within 30 days of being served with the complaint.
23 recovery against you is limited to injunctive relief and
24 reasonable attorney’s fees as determined by the court, if the
25 violation was unintentional.~~

26 If you plan to correct the violations giving rise to the claim,
27 you should take pictures and measurements or similar action
28 to document the condition of the physical barrier asserted to
29 be the basis for a violation before undertaking any corrective
30 action in case a court needs to see the condition of a barrier
31 before it was corrected.

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

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

38 (1) Until January 1, 2018, that the site’s new construction
39 or improvement on or after January 1, 2008, and before January
40 1, 2016, was approved pursuant to the local building permit

1 and inspection process; that, to the best of your knowledge,
2 there have been no modifications or alterations completed or
3 commenced since the building department approval that
4 impacted compliance with construction-related accessibility
5 standards with respect to the plaintiff's claim; and that all
6 violations giving rise to the claim have been corrected, or will
7 be corrected within ~~60~~ 120 days of the complaint being served.

8 (2) That the site's new construction or improvement passed
9 inspection by a local building department inspector who is a
10 certified access specialist; that, to the best of your knowledge,
11 there have been no modifications or alterations completed or
12 commenced since that inspection approval that impacted
13 compliance with construction-related accessibility standards
14 with respect to the plaintiff's claim; and that all violations
15 giving rise to the claim have been corrected, or will be
16 corrected within ~~60~~ 120 days of the complaint being served.

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

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

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

38 You may file the application without the assistance of an
39 attorney, but it may be in your best interest to immediately
40 seek the assistance of an attorney experienced in disability

1 access laws when you receive a summons and complaint. You
2 may make an offer to settle the case, and it may be in your
3 interest to put that offer in writing so that it may be considered
4 under Section 55.55 of the Civil Code.

5
6 (2) An attorney who files a Notice of Substitution of Counsel
7 to appear as counsel for a plaintiff who, acting in propria persona,
8 had previously filed a complaint in an action that includes a
9 construction-related accessibility claim, including, but not limited
10 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
11 same time, cause to be served a copy of the application form
12 specified in subdivision (c) and a copy of the notice specified in
13 paragraph (1) upon the defendant on separate pages that shall be
14 attached to the Notice of Substitution of Counsel.

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

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

32 (A) Until January 1, 2018, the site's new construction or
33 improvement on or after January 1, 2008, and before January 1,
34 2016, was approved pursuant to the local building permit and
35 inspection process, and the defendant declares with the application
36 that, to the best of the defendant's knowledge, there have been no
37 modifications or alterations completed or commenced since that
38 approval that impacted compliance with construction-related
39 accessibility standards with respect to the plaintiff's claim, and

1 that all violations have been corrected, or will be corrected within
2 ~~60~~ 120 days of being served with the complaint.

3 (B) The site's new construction or improvement was approved
4 by a local public building department inspector who is a certified
5 access specialist, and the defendant declares with the application
6 that, to the best of the defendant's knowledge, there have been no
7 modifications or alterations completed or commenced since that
8 approval that impacted compliance with construction-related
9 accessibility standards with respect to the plaintiff's claim, and
10 that all violations have been corrected, or will be corrected within
11 ~~60~~ 120 days of being served with the complaint.

12 (C) The defendant is a small business described in subdivision
13 (f) of Section ~~55.56~~, and the defendant declares with the application
14 ~~that all violations have been corrected, or will be corrected within~~
15 ~~30 days of being served with the complaint.~~ 55.56.

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

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

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

39 (B) An inspection report pertaining to the site has been issued
40 by a CASp. The inspection report shall be provided to the court

1 and the plaintiff at least 15 days prior to the court date set for the
2 early evaluation conference.

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

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

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

14 (C) All construction-related violations giving rise to the claim
15 have been corrected, or will be corrected within ~~60~~ 120 days of
16 the complaint being served upon the defendant.

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

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

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

28 (C) All construction related violations giving rise to the claim
29 have been corrected, or will be corrected within ~~60~~ 120 days of
30 the complaint being served upon the defendant.

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

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

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

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

14 ~~(6)~~

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

20 (A) Proof of the defendant’s number of employees, as shown
21 by wage report forms filed with the Employment Development
22 Department.

23 (B) Proof of the defendant’s average gross receipts for the
24 previous three years, or for the existence of the business if less
25 than three years, as shown by a federal or state tax document.

26 ~~(7)~~

27 (6) The following provisional request and notice forms may be
28 used and filed by a qualified defendant until forms are adopted by
29 the Judicial Council for those purposes pursuant to subdivision
30 (l):

31
32 * * * * *

33 NOTICE OF INCOMPLETE TEXT: Forms relating to Stay
34 of Proceedings and Early Evaluation Conference appear
35 in the hard-copy publication of the chaptered bill.
36 See pages 22 to 24 of Chapter 383, Statutes of 2012.

37
38 * * * * *
39

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

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.

Dated: _____

Type or Print Name

Signature

Address of named person

1 ~~(8)~~

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

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

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

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

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

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

33 (B) Directs a defendant described by subparagraph (A) or (B)
34 of paragraph (2) of subdivision (b) who has filed a declaration
35 stating that the violation or violations have been corrected, or will
36 be corrected within ~~60~~ 120 days of service of the complaint to file
37 with the court and serve on the plaintiff evidence showing
38 correction of the violation or violations within 10 calendar days
39 after the completion of the corrections.

1 ~~(C) Directs a defendant described by subparagraph (C) of~~
2 ~~paragraph (2) of subdivision (b) who has filed a declaration stating~~
3 ~~that the violation or violations have been corrected, or will be~~
4 ~~corrected within 30 days of service of the complaint to file with~~
5 ~~the court and serve on the plaintiff within 10 days after issuance~~
6 ~~of the court order evidence of correction of the violation or~~
7 ~~violations, if that evidence showing correction was not filed~~
8 ~~previously with the application and served on the plaintiff.~~

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

14 (6) Directs the plaintiff to file with the court and serve on the
15 defendant at least 15 days before the date of the conference a
16 statement that includes, to the extent reasonably known, for use
17 solely for the purpose of the early evaluation conference, all of the
18 following:

19 (A) An itemized list of specific conditions on the subject
20 premises that are the basis of the claimed violations of
21 construction-related accessibility standards in the plaintiff's
22 complaint.

23 (B) The amount of damages claimed.

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

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

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

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

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

38 (3) The court may lift the stay at the conclusion of the early
39 evaluation conference upon a showing of good cause by the
40 plaintiff. Good cause may include the defendant's failure to make

1 reasonably timely progress toward completion of corrections noted
2 by a CASp.

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

13 (f) All discussions at the early evaluation conference shall be
14 subject to Section 1152 of the Evidence Code. It is the intent of
15 the Legislature that the purpose of the evaluation conference shall
16 include, but not be limited to, evaluation of all of the following,
17 as applicable:

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

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

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

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

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

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

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

38 (i) Early evaluation conferences shall be conducted by a superior
39 court judge or commissioner, or a court early evaluation conference
40 officer. A commissioner shall not be qualified to conduct early

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

15 (j) Nothing in this part shall be deemed to make any inspection
16 report, opinion, statement, or other finding or conclusion of a CASp
17 binding on the court, or to abrogate in any manner the ultimate
18 authority of the court to make all appropriate findings of fact and
19 law. The CASp inspection report and any opinion, statement,
20 finding, or conclusion therein shall be given the weight the trier
21 of fact finds that it deserves.

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

28 (l) (1) The Judicial Council shall, by January 1, 2013, prepare
29 and post on its Internet Web site instructions and a form for use
30 by a qualified defendant, or other defendant described by paragraph
31 (2) of subdivision (b), to file an application for stay and early
32 evaluation conference as provided in subdivisions (b) and (c), a
33 form for the court’s notice of stay and early evaluation conference,
34 and any other forms appropriate to implement the provisions
35 relating to early evaluation conferences. Until those forms are
36 adopted, the Judicial Council shall post on its Internet Web site
37 the provisional forms set forth in subdivision (c).

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

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

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

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

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

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

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

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

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

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

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

31 ~~(i) The defendant (b) is a small business described in paragraph~~
32 ~~(2) of subdivision (f) of Section 55.56.~~

33 ~~(ii) The violation or violations giving rise to the claim have been~~
34 ~~corrected, or will be corrected within 30 days of the complaint~~
35 ~~being served.~~

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

1 ~~(A) For a~~ a defendant who has filed a declaration stating that
2 all violations have been corrected, or will be corrected within ~~60~~
3 ~~120~~ days of service of the complaint, file with the court and serve
4 on the plaintiff evidence showing correction of the violation or
5 violations within 10 calendar days of the completion of the
6 corrections.

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

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

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

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

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

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

34 SEC. 2. Section 55.56 of the Civil Code is amended to read:

35 55.56. (a) ~~Statutory~~ *Subject to the limitation provided in*
36 *subdivision (f), statutory* damages under either subdivision (a) of
37 Section 52 or subdivision (a) of Section 54.3 may be recovered in
38 a construction-related accessibility claim against a place of public
39 accommodation only if a violation or violations of one or more
40 construction-related accessibility standards denied the plaintiff

1 full and equal access to the place of public accommodation on a
2 particular occasion.

3 (b) A plaintiff is denied full and equal access only if the plaintiff
4 personally encountered the violation on a particular occasion, or
5 the plaintiff was deterred from accessing a place of public
6 accommodation on a particular occasion.

7 (c) A violation personally encountered by a plaintiff may be
8 sufficient to cause a denial of full and equal access if the plaintiff
9 experienced difficulty, discomfort, or embarrassment because of
10 the violation.

11 (d) A plaintiff demonstrates that he or she was deterred from
12 accessing a place of public accommodation on a particular occasion
13 only if both of the following apply:

14 (1) The plaintiff had actual knowledge of a violation or
15 violations that prevented or reasonably dissuaded the plaintiff from
16 accessing a place of public accommodation that the plaintiff
17 intended to use on a particular occasion.

18 (2) The violation or violations would have actually denied the
19 plaintiff full and equal access if the plaintiff had accessed the place
20 of public accommodation on that particular occasion.

21 (e) Statutory damages may be assessed pursuant to subdivision
22 (a) based on each particular occasion that the plaintiff was denied
23 full and equal access, and not upon the number of violations of
24 construction-related accessibility standards identified at the place
25 of public accommodation where the denial of full and equal access
26 occurred. If the place of public accommodation consists of distinct
27 facilities that offer distinct services, statutory damages may be
28 assessed based on each denial of full and equal access to the distinct
29 facility, and not upon the number of violations of
30 construction-related accessibility standards identified at the place
31 of public accommodation where the denial of full and equal access
32 occurred.

33 (f) (1) Notwithstanding any other law, a defendant's liability
34 for statutory damages in a construction-related accessibility claim
35 against a place of public accommodation is reduced to a minimum
36 of one thousand dollars (\$1,000) for each offense if the defendant
37 demonstrates that it has corrected all construction-related violations
38 that are the basis of a claim within ~~60~~ 120 days of being served
39 with the complaint, and the defendant demonstrates any of the
40 following:

1 (A) The structure or area of the alleged violation was determined
2 to be “CASp-inspected” or “meets applicable standards” and, to
3 the best of the defendant’s knowledge, there were no modifications
4 or alterations that impacted compliance with construction-related
5 accessibility standards with respect to the plaintiff’s claim that
6 were completed or commenced between the date of that
7 determination and the particular occasion on which the plaintiff
8 was allegedly denied full and equal access.

9 (B) The structure or area of the alleged violation was the subject
10 of an inspection report indicating “CASp determination pending”
11 or “Inspected by a CASp,” and the defendant has either
12 implemented reasonable measures to correct the alleged violation
13 before the particular occasion on which the plaintiff was allegedly
14 denied full and equal access, or the defendant was in the process
15 of correcting the alleged violation within a reasonable time and
16 manner before the particular occasion on which the plaintiff was
17 allegedly denied full and equal access.

18 (C) For a claim alleging a construction-related accessibility
19 violation filed before January 1, 2018, the structure or area of the
20 alleged violation was a new construction or an improvement that
21 was approved by, and passed inspection by, the local building
22 department permit and inspection process on or after January 1,
23 2008, and before January 1, 2016, and, to the best of the
24 defendant’s knowledge, there were no modifications or alterations
25 that impacted compliance with respect to the plaintiff’s claim that
26 were completed or commenced between the completion date of
27 the new construction or improvement and the particular occasion
28 on which the plaintiff was allegedly denied full and equal access.

29 (D) The structure or area of the alleged violation was new
30 construction or an improvement that was approved by, and passed
31 inspection by, a local building department official who is a certified
32 access specialist, and, to the best of the defendant’s knowledge,
33 there were no modifications or alterations that affected compliance
34 with respect to the plaintiff’s claim that were completed or
35 commenced between the completion date of the new construction
36 or improvement and the particular occasion on which the plaintiff
37 was allegedly denied full and equal access.

38 (2) Notwithstanding any other law, ~~a defendant’s liability for~~
39 ~~statutory damages in a construction-related accessibility claim~~
40 ~~against a place of public accommodation is reduced to a minimum~~

1 of two thousand dollars (\$2,000) for each offense if the defendant
2 demonstrates both of the following: *statutory damages are not*
3 *available in a construction-related accessibility claim against a*
4 *place of public accommodation that is a small business as defined*
5 *in subparagraph (B) for an unintentional violation.*

6 (A) ~~The defendant has corrected all construction-related~~
7 ~~violations that are the basis of a claim within 30 days of being~~
8 ~~served with the complaint. Recovery on a claim against a small~~
9 ~~business described in this paragraph is limited to injunctive relief~~
10 ~~and reasonable attorney's fees as deemed appropriate by the court.~~

11 (B) The defendant is a small business ~~that if it~~ has employed 25
12 or fewer employees on average over the past three years, or for
13 the years it has been in existence if less than three years, as
14 evidenced by wage report forms filed with the Economic
15 Development Department, and has average annual gross receipts
16 of less than three million five hundred thousand dollars
17 (\$3,500,000) over the previous three years, or for the years it has
18 been in existence if less than three years, as evidenced by federal
19 or state income tax returns. The average annual gross receipts
20 dollar amount shall be adjusted biannually by the Department of
21 General Services for changes in the California Consumer Price
22 Index for All Urban Consumers, as compiled by the Department
23 of Industrial Relations. The Department of General Services shall
24 post that adjusted amount on its Internet Web site.

25 (3) This subdivision shall not be applicable to intentional
26 violations.

27 (4) Nothing in this subdivision affects the awarding of actual
28 damages, or affects the awarding of treble actual damages.

29 (5) This subdivision shall apply only to claims filed on or after
30 the effective date of Senate Bill 1186 of the 2011–12 Regular
31 Session of the Legislature. Nothing in this subdivision is intended
32 to affect a complaint filed before that date.

33 (g) This section does not alter the applicable law for the
34 awarding of injunctive or other equitable relief for a violation or
35 violations of one or more construction-related accessibility
36 standards, nor alter any legal obligation of a party to mitigate
37 damages.

38 (h) In assessing liability under subdivision (d), in an action
39 alleging multiple claims for the same construction-related
40 accessibility violation on different particular occasions, the court

- 1 shall consider the reasonableness of the plaintiff's conduct in light
- 2 of the plaintiff's obligation, if any, to mitigate damages.

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