

AMENDED IN SENATE MAY 20, 2015

AMENDED IN SENATE MAY 4, 2015

SENATE BILL

No. 251

Introduced by Senator Roth
(Principal coauthor: Senator Galgiani)
(Coauthors: Senators Anderson and Nielsen)

February 18, 2015

An act to amend ~~Sections 55.52 and 55.56~~ *Section 55.32* of, and to add Sections 55.535 and 1938.5 to, the Civil Code, to amend Sections ~~4459.8 and 4459.7, 4459.8, and 8299.06~~ of, to add Section 65941.6 to, and to add Article 4 (commencing with Section 65946) to Chapter 4.5 of Division 1 of Title 7 of, the Government Code, and to add and repeal Sections 17053.43 and 23643 of the Revenue and Taxation Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 251, as amended, Roth. Civil rights: disability access.

(1) Existing law prohibits discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards. Existing law requires ~~certified~~ *that a demand letter alleging a violation of a construction-related accessibility standard or asserting a construction-related accessibility claim include specified information, and that copies of the demand letter be sent to the California Commission on Disability Access and the State Bar of California.*

Existing law repeals the requirement that a copy of a demand letter be sent to the State Bar of California on January 1, 2016.

This bill would extend the above-described January 1, 2016, repeal date, to January 1, 2019.

(2) Existing law requires a certified access specialists (CASps), specialist (CASp), upon completion of an inspection of a site, to issue a written inspection report for the site, as specified. Existing law provides, upon being served with a summons and complaint asserting a construction-related accessibility claim, that a defendant may file a request for a court stay and early evaluation conference in the proceedings, as specified. Under existing law, a defendant is liable for actual damages plus minimum statutory damages for each instance of discrimination.

This bill would provide that a business business, prior to the initiation of litigation, receipt of a demand letter, or a business that is otherwise on notice of a violation of a construction-related accessibility standard prior to a CASp inspection, is not liable for minimum statutory damages for violating a construction-related liability standard if the business is an inspected by a CASp site and the violation is corrected within 90 days of receiving the above-described written the date of an inspection report from by a CASp. If the alleged violation is a minor matter, as provided, the The bill would also provide that the a small business is not liable for the minimum statutory damages for an alleged violation if the violation concerns interior or exterior signage, the color and condition of parking lot paint striping, or truncated domes and is corrected within 30 15 days of service of a summons and complaint in a construction-related accessibility claim or receipt of a written notice, whichever is earlier.

(2) Existing law establishes remedies for discrimination on the basis of personal characteristics. Under existing law, a defendant is liable for actual damages plus an additional amount, up to three times actual damages but no less than \$4,000, for each offense. A defendant's liability for statutory damages for a violation of a construction-related accessibility standard may be reduced to \$1,000 for each offense if the defendant demonstrates, among other things, that it has corrected the construction-related violations within 60 days of being served with the complaint. Under existing law, a person who interferes with the rights of an individual with disabilities, as provided, is liable for actual damages plus an additional amount, up to three times actual damages but no less than \$1,000, for each offense.

~~This bill would provide that a defendant is not liable for statutory damages for more than one offense if the defendant is a microbusiness, as defined, and has corrected the construction-related violation prior to the filing of the lawsuit.~~

(3) Under existing federal law, a landlord and tenant are both responsible for compliance with the federal Americans with Disabilities Act and implementing regulations. The parties to a lease agreement may allocate responsibility by the lease or other contract. Existing law requires a commercial property owner or lessor to state on every lease form or rental agreement executed on or after July 1, 2013, whether the property has been inspected by a ~~certified access specialist~~ CASp and, if so, whether or not the property has been determined to meet all applicable construction-related accessibility standards.

This bill would require a commercial property owner to state on every lease form or rental agreement executed on or after January 1, 2016, that the owner or lessor and the tenant are both responsible for compliance with the Americans with Disabilities Act and that responsibility for compliance may be allocated between the parties by the terms of the lease or other contract.

(4) Existing law requires the State Architect to establish and publicize a program for the voluntary certification by the state of any person who meets specified criteria as a CASp. *Existing law requires the State Architect to annually publish a list of CASps.* Existing law requires each applicant for CASp certification or renewal to pay certain fees, and requires the State Architect to periodically review those fees, as specified. Existing law provides for the deposit of those fees into the Certified Access Specialist Fund, which is continuously appropriated for use by the State Architect to implement the CASp program.

This bill would *additionally require the State Architect to publish, and periodically update, an easily accessible list of businesses which have been inspected by a CASp on or after January 1, 2016, including the date of the inspection. The bill would also require* applicants for CASp certification or renewal to additionally provide to the State Architect ~~information about~~ *the name of the city, county, or city and county in which the applicant intends to provide or has provided services, and would require the Division of the State Architect to post that information on its Internet Web site.*

(5) Existing law establishes the California Commission on Disability Access for purposes of developing recommendations to enable persons with disabilities to exercise their right to full and equal access to public

facilities and facilitating business compliance with applicable state and federal laws and regulations. Existing law sets forth the powers and duties of the commission, including developing educational materials and information for businesses, building owners, tenants, and building officials, posting that information on the commission's Internet Web site, and coordinating with other state agencies and local building departments to ensure that information provided to the public on disability access requirements is uniform and complete.

This bill would additionally require the commission to provide a link on its Internet Web site to the Internet Web site of the Division of the State Architect's CASp certification program, and make the commission's educational materials and information available to other state agencies and local building departments.

(6) The Planning and Zoning Law establishes procedures for the application, and review of an application, for a development project. Existing law requires a public agency to notify applicants for development permits of specified information, including the time limits established for the review and approval of development permits.

This bill would additionally require local agencies to develop and provide to applicants materials relating to the requirements of the federal Americans with Disabilities ~~Act~~. *Act, or to instead provide similar materials developed by the California Commission on Disability Access.* The bill would require a local agency to notify an applicant that approval of a permit does not signify that the applicant has complied with that act. The bill would also require local agencies to expedite review of projects ~~that have received a written report from a CASp indicating that the site meets applicable CASp standards, as specified.~~ *for which the applicant provides a copy of a disability access certificate, demonstrates that the project is necessary to address an alleged violation of a construction-related access standard or a violation noted in a CASp report, and, if project plans are necessary for approval, has had a CASp review the project plans for compliance with all applicable construction-related accessibility standards.* The bill would declare that these provisions constitute a matter of statewide concern and shall apply to charter cities and charter counties.

By imposing additional duties on local agencies with respect to the receipt and review of applications for development projects, this bill would impose a state-mandated local program.

(7) Existing federal law allows a credit against federal income taxes for eligible small businesses for eligible access expenditures, as those

terms are defined, in an amount equal to 50% of eligible access expenditures for a taxable year that exceed \$250 but do not exceed \$10,250. The Personal Income Tax Law and the Corporation Tax Law allow a credit against the taxes imposed by those laws for the amount paid or incurred for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year as do not exceed \$250, as specified.

This bill would, for taxable years beginning on or after January 1, 2016, and before January 1, 2023, allow a credit under both the Personal Income Tax Law and the Corporation Tax Law for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year, as specified. ~~If the taxpayer is a microbusiness, as defined, the bill would provide that the credit is the amount calculated pursuant to these provisions, plus an additional \$5,000.~~

(8) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. 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 55.52 of the Civil Code is amended to~~
2 ~~read:~~

3 ~~55.52. (a) For purposes of this part, the following definitions~~
4 ~~apply:~~

5 (1) ~~“Construction-related accessibility claim” means a civil~~
6 ~~claim in a civil action with respect to a place of public~~
7 ~~accommodation, including, but not limited to, a claim brought~~
8 ~~under Section 51, 54, 54.1, or 55, based wholly or in part on an~~
9 ~~alleged violation of any construction-related accessibility standard,~~
10 ~~as defined in paragraph (6).~~

11 (2) ~~“Application for stay and early evaluation conference” means~~
12 ~~an application to be filed with the court that meets the requirements~~
13 ~~of subdivision (c) of Section 55.54.~~

1 ~~(3) “Certified access specialist” or “CASp” means any person~~
2 ~~who has been certified pursuant to Section 4459.5 of the~~
3 ~~Government Code.~~

4 ~~(4) “Meets applicable standards” means the site was inspected~~
5 ~~by a CASp and determined to meet all applicable~~
6 ~~construction-related accessibility standards pursuant to paragraph~~
7 ~~(1) of subdivision (a) of Section 55.53. A site that is “CASp~~
8 ~~inspected” on or before the effective date of the amendments made~~
9 ~~to this section by Chapter 383 of the Statutes of 2012 means that~~
10 ~~the site “meets applicable standards.”~~

11 ~~(5) “Inspected by a CASp” means the site was inspected by a~~
12 ~~CASp and is pending a determination by the CASp that the site~~
13 ~~meets applicable construction-related accessibility standards~~
14 ~~pursuant to paragraph (2) of subdivision (a) of Section 55.53. A~~
15 ~~site that is “CASp determination pending” on or before the effective~~
16 ~~date of the amendments made to this section by Chapter 383 of~~
17 ~~the Statutes of 2012 means that the site was “inspected by a CASp.”~~

18 ~~(6) “Construction-related accessibility standard” means a~~
19 ~~provision, standard, or regulation under state or federal law~~
20 ~~requiring compliance with standards for making new construction~~
21 ~~and existing facilities accessible to persons with disabilities,~~
22 ~~including, but not limited to, any provision, standard, or regulation~~
23 ~~set forth in Section 51, 54, 54.1, or 55 of this code, Section 19955.5~~
24 ~~of the Health and Safety Code, the California Building Standards~~
25 ~~Code (Title 24 of the California Code of Regulations), the federal~~
26 ~~Americans with Disabilities Act of 1990 (Public Law 101-336; 42~~
27 ~~U.S.C. Sec. 12101 et seq.), and the federal Americans with~~
28 ~~Disabilities Act Accessibility Guidelines (Appendix A to Part 36~~
29 ~~of Title 28 of the Code of Federal Regulations).~~

30 ~~(7) “Place of public accommodation” has the same meaning as~~
31 ~~defined in Section 12181(7) of Title 42 of the United States Code~~
32 ~~and the federal regulations adopted pursuant to that section.~~

33 ~~(8) “Qualified defendant” means a defendant in an action that~~
34 ~~includes a construction-related accessibility claim that is asserted~~
35 ~~against a place of public accommodation that met the requirements~~
36 ~~of “meets applicable standards” or “inspected by a CASp” prior~~
37 ~~to the date the defendant was served with the summons and~~
38 ~~complaint in that action. To be a qualified defendant, the defendant~~
39 ~~is not required to have been the party who hired any CASp, so~~
40 ~~long as the basis of the alleged liability of the defendant is a~~

1 ~~construction-related accessibility claim. To determine whether a~~
2 ~~defendant is a qualified defendant, the court need not make a~~
3 ~~finding that the place of public accommodation complies with all~~
4 ~~applicable construction-related accessibility standards as a matter~~
5 ~~of law. The court need only determine that the place of public~~
6 ~~accommodation has a status of “meets applicable standards” or~~
7 ~~“inspected by a CASp.”~~

8 (9) ~~“Site” means a place of public accommodation.~~

9 (10) ~~“Microbusiness” has the same meaning as defined in~~
10 ~~Section 14837 of the Government Code.~~

11 (b) ~~Unless otherwise indicated, terms used in this part relating~~
12 ~~to civil procedure have the same meanings that those terms have~~
13 ~~in the Code of Civil Procedure.~~

14 *SECTION 1. Section 55.32 of the Civil Code, as added by*
15 *Section 5 of Chapter 383 of the Statutes of 2012, is amended to*
16 *read:*

17 55.32. (a) An attorney who provides a demand letter, as defined
18 in subdivision (a) of Section 55.3, shall do all of the following:

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

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

26 (3) Within five business days of providing the demand letter,
27 send a copy of the demand letter to the California Commission on
28 Disability Access.

29 (b) An attorney who sends or serves a complaint, as defined in
30 subdivision (a) of Section 55.3, shall send a copy of the complaint
31 to the California Commission on Disability Access within five
32 business days of sending or serving the complaint.

33 (c) A violation of paragraph (2) or (3) of subdivision (a) or
34 subdivision (b) shall constitute cause for the imposition of
35 discipline of an attorney where a copy of the complaint or demand
36 letter is not sent to the California Commission on Disability Access
37 within five business days, or a copy of the demand letter is not
38 sent to the State Bar within five business days. In the event the
39 State Bar receives information indicating that an attorney has failed
40 to send a copy of the complaint or demand letter to the California

1 Commission on Disability Access within five business days, the
2 State Bar shall investigate to determine whether paragraph (3) of
3 subdivision (a) or subdivision (b) has been violated.

4 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
5 required to send to the State Bar of California or the California
6 Commission on Disability Access a copy of any subsequent
7 demand letter or amended complaint in the same dispute following
8 the initial demand letter or complaint, unless that subsequent
9 demand letter or amended complaint alleges a new
10 construction-related accessibility claim.

11 (e) A demand letter or complaint sent to the California
12 Commission on Disability Access shall be for the informational
13 purposes of Section 8299.08 of the Government Code. A demand
14 letter received by the State Bar from either the sender or recipient
15 of the demand letter shall be reviewed by the State Bar to determine
16 whether subdivision (b) or (c) of Section 55.31 has been violated.

17 (f) (1) Commencing July 31, 2013, and annually each July 31
18 thereafter, the State Bar shall report to the Legislature and the
19 Chairs of the Senate and Assembly Committees on Judiciary, both
20 of the following with respect to demand letters received by the
21 State Bar:

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

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

26 (2) A report to be submitted pursuant to this subdivision shall
27 be submitted in compliance with Section 9795 of the Government
28 Code.

29 (g) The California Commission on Disability Access shall
30 review and report on the demand letters and complaints it receives
31 as provided in Section 8299.08 of the Government Code.

32 (h) Paragraphs (2) and (3) of subdivision (a) and subdivision
33 (b) shall not apply to a demand letter or complaint sent or filed by
34 an attorney employed or retained by a qualified legal services
35 project or a qualified support center, as defined in Section 6213
36 of the Business and Professions Code, when acting within the
37 scope of employment in asserting a construction-related
38 accessibility claim. The Legislature finds and declares that qualified
39 legal services projects and support centers are extensively regulated
40 by the State Bar of California, and that there is no evidence of any

1 abusive use of demand letters or complaints by these organizations.
2 The Legislature further finds that, in light of the evidence of the
3 extraordinarily small number of construction-related accessibility
4 cases brought by regulated legal services programs, and given the
5 resources of those programs, exempting regulated legal services
6 programs from the requirements of this section to report to the
7 California Commission on Disability Access will not affect the
8 purpose of the reporting to, and tabulation by, the commission of
9 all other construction-related accessibility claims.

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

11 (j) This section shall remain in effect only until January 1, 2016,
12 2019, and as of that date is ~~repealed, unless a later enacted statute,~~
13 ~~that is enacted before January 1, 2016, deletes or extends that date.~~
14 *repealed.*

15 *SEC. 2. Section 55.32 of the Civil Code, as added by Section*
16 *6 of Chapter 383 of the Statutes of 2012, is amended to read:*

17 55.32. (a) An attorney who provides a demand letter, as defined
18 in subdivision (a) of Section 55.3, shall do all of the following:

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

21 (2) Within five business days of providing the demand letter,
22 send a copy of the demand letter to the California Commission on
23 Disability Access.

24 (b) An attorney who sends or serves a complaint, as defined in
25 subdivision (a) of Section 55.3, shall send a copy of the complaint
26 to the California Commission on Disability Access within five
27 business days of sending or serving the complaint.

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

38 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
39 required to send to the California Commission on Disability Access
40 a copy of any subsequent demand letter or amended complaint in

1 the same dispute following the initial demand letter or complaint,
2 unless that subsequent demand letter or amended complaint alleges
3 a new construction-related accessibility claim.

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

10 (f) (1) Notwithstanding Section 10231.5 of the Government
11 Code, on or before July 31, ~~2016~~, 2019, and annually thereafter,
12 the State Bar shall report to the Legislature and the Chairs of the
13 Senate and Assembly Judiciary Committees, both of the following
14 with respect to demand letters received by the 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 it receives
24 as provided in Section 8299.08 of the Government Code.

25 (h) The expiration of any ground for discipline of an attorney
26 shall not affect the imposition of discipline for any act prior to the
27 expiration. An act or omission that constituted cause for imposition
28 of discipline of an attorney when committed or omitted prior to
29 January 1, ~~2016~~, 2019, shall continue to constitute cause for the
30 imposition of discipline of that attorney on and after January 1,
31 ~~2016~~, 2019.

32 (i) Paragraph (2) of subdivision (a) and subdivision (b) shall
33 not apply to a demand letter or complaint sent or filed by an
34 attorney employed or retained by a qualified legal services project
35 or a qualified support center, as defined in Section 6213 of the
36 Business and Professions Code, when acting within the scope of
37 employment in asserting a construction-related accessibility claim.
38 The Legislature finds and declares that qualified legal services
39 projects and support centers are extensively regulated by the State
40 Bar of California, and that there is no evidence of any abusive use

1 of demand letters or complaints by these organizations. The
2 Legislature further finds that, in light of the evidence of the
3 extraordinarily small number of construction-related accessibility
4 cases brought by regulated legal services programs, and given the
5 resources of those programs, exempting regulated legal services
6 programs from the requirements of this section to report to the
7 California Commission on Disability Access will not affect the
8 purpose of the reporting to, and tabulation by, the commission of
9 all other construction-related accessibility claims.

10 (j) This section shall become operative on January 1, ~~2016~~
11 ~~2019~~.

12 ~~SEC. 2.~~

13 *SEC. 3.* Section 55.535 is added to the Civil Code, immediately
14 following Section 55.53, to read:

15 55.535. (a) ~~(1) A business shall not be liable~~ *A business, prior*
16 *to the initiation of litigation, receipt of a demand letter, or that is*
17 *otherwise on notice of a violation of a construction-related*
18 *accessibility standard prior to a CASp inspection, shall not be*
19 *liable for minimum statutory damages for violating a*
20 *construction-related liability standard, as defined in*
21 *Section 55.52, that is noted in the CASp report if the business is*
22 *an inspected by a CASp site and the alleged the violation is*
23 *corrected within 90 days of the date of the written inspection report*
24 *required pursuant to subdivision (a) of Section 55.53. CASp*
25 *inspection.*

26 ~~(2) A business~~

27 *(b) A small business, as that term is defined in subparagraph*
28 *(B) of paragraph (2) of subdivision (f) of Section 55.56, shall not*
29 *be liable for minimum statutory damages for a violation of violating*
30 *a construction-related accessibility standard if the both of the*
31 *following conditions are met:*

32 *(1) The alleged violation is a minor matter and is corrected*
33 *within 30 days of the service of a summons and complaint asserting*
34 *a construction-related accessibility claim or receipt of a written*
35 *notice, whichever is earlier. For the purposes of this paragraph,*
36 *“minor matter” shall be limited to a violation concerning concerns*
37 *interior and or exterior signage, the color and or condition of*
38 *parking lot paint striping, and or truncated domes.*

1 ~~(b) For the purposes of the period provided for in paragraph (2)~~
2 ~~of subdivision (a), a written notice shall be deemed received when~~
3 ~~it is delivered to the business premises.~~

4 ~~(2) The violation is corrected within 15 days of the service of a~~
5 ~~summons and complaint asserting a construction-related~~
6 ~~accessibility claim or receipt of a written notice, whichever is~~
7 ~~earlier.~~

8 ~~SEC. 3. Section 55.56 of the Civil Code is amended to read:~~

9 ~~55.56. (a) Statutory damages under either subdivision (a) of~~
10 ~~Section 52 or subdivision (a) of Section 54.3 may be recovered in~~
11 ~~a construction-related accessibility claim against a place of public~~
12 ~~accommodation only if a violation or violations of one or more~~
13 ~~construction-related accessibility standards denied the plaintiff~~
14 ~~full and equal access to the place of public accommodation on a~~
15 ~~particular occasion.~~

16 ~~(b) A plaintiff is denied full and equal access only if the plaintiff~~
17 ~~personally encountered the violation on a particular occasion, or~~
18 ~~the plaintiff was deterred from accessing a place of public~~
19 ~~accommodation on a particular occasion.~~

20 ~~(c) A violation personally encountered by a plaintiff may be~~
21 ~~sufficient to cause a denial of full and equal access if the plaintiff~~
22 ~~experienced difficulty, discomfort, or embarrassment because of~~
23 ~~the violation.~~

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

27 ~~(1) The plaintiff had actual knowledge of a violation or~~
28 ~~violations that prevented or reasonably dissuaded the plaintiff from~~
29 ~~accessing a place of public accommodation that the plaintiff~~
30 ~~intended to use on a particular occasion.~~

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

34 ~~(e) Statutory damages may be assessed pursuant to subdivision~~
35 ~~(a) based on each particular occasion that the plaintiff was denied~~
36 ~~full and equal access, and not upon the number of violations of~~
37 ~~construction-related accessibility standards identified at the place~~
38 ~~of public accommodation where the denial of full and equal access~~
39 ~~occurred. If the place of public accommodation consists of distinct~~
40 ~~facilities that offer distinct services, statutory damages may be~~

1 assessed based on each denial of full and equal access to the distinct
2 facility, and not upon the number of violations of
3 construction-related accessibility standards identified at the place
4 of public accommodation where the denial of full and equal access
5 occurred.

6 (f) (1) Notwithstanding any other law, a defendant's liability
7 for statutory damages in a construction-related accessibility claim
8 against a place of public accommodation is reduced to a minimum
9 of one thousand dollars (\$1,000) for each offense if the defendant
10 demonstrates that it has corrected all construction-related violations
11 that are the basis of a claim within 60 days of being served with
12 the complaint, and the defendant demonstrates any of the following:

13 (A) The structure or area of the alleged violation was determined
14 to be "CAsp-inspected" or "meets applicable standards" and, to
15 the best of the defendant's knowledge, there were no modifications
16 or alterations that impacted compliance with construction-related
17 accessibility standards with respect to the plaintiff's claim that
18 were completed or commenced between the date of that
19 determination and the particular occasion on which the plaintiff
20 was allegedly denied full and equal access.

21 (B) The structure or area of the alleged violation was the subject
22 of an inspection report indicating "CAsp determination pending"
23 or "Inspected by a CAsp," and the defendant has either
24 implemented reasonable measures to correct the alleged violation
25 before the particular occasion on which the plaintiff was allegedly
26 denied full and equal access, or the defendant was in the process
27 of correcting the alleged violation within a reasonable time and
28 manner before the particular occasion on which the plaintiff was
29 allegedly denied full and equal access.

30 (C) For a claim alleging a construction-related accessibility
31 violation filed before January 1, 2018, the structure or area of the
32 alleged violation was a new construction or an improvement that
33 was approved by, and passed inspection by, the local building
34 department permit and inspection process on or after January 1,
35 2008, and before January 1, 2016, and, to the best of the
36 defendant's knowledge, there were no modifications or alterations
37 that impacted compliance with respect to the plaintiff's claim that
38 were completed or commenced between the completion date of
39 the new construction or improvement and the particular occasion
40 on which the plaintiff was allegedly denied full and equal access.

1 ~~(D) The structure or area of the alleged violation was new~~
2 ~~construction or an improvement that was approved by, and passed~~
3 ~~inspection by, a local building department official who is a certified~~
4 ~~access specialist, and, to the best of the defendant's knowledge,~~
5 ~~there were no modifications or alterations that affected compliance~~
6 ~~with respect to the plaintiff's claim that were completed or~~
7 ~~commenced between the completion date of the new construction~~
8 ~~or improvement and the particular occasion on which the plaintiff~~
9 ~~was allegedly denied full and equal access.~~

10 ~~(2) Notwithstanding any other law, a defendant's liability for~~
11 ~~statutory damages in a construction-related accessibility claim~~
12 ~~against a place of public accommodation is reduced to a minimum~~
13 ~~of two thousand dollars (\$2,000) for each offense if the defendant~~
14 ~~demonstrates both of the following:~~

15 ~~(A) The defendant has corrected all construction-related~~
16 ~~violations that are the basis of a claim within 30 days of being~~
17 ~~served with the complaint.~~

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

32 ~~(3) This subdivision shall not be applicable to intentional~~
33 ~~violations.~~

34 ~~(4) Nothing in this subdivision affects the awarding of actual~~
35 ~~damages, or affects the awarding of treble actual damages.~~

36 ~~(5) This subdivision shall apply only to claims filed on or after~~
37 ~~the effective date of Senate Bill 1186 of the 2011-12 Regular~~
38 ~~Session of the Legislature. Nothing in this subdivision is intended~~
39 ~~to affect a complaint filed before that date.~~

1 ~~(g) Notwithstanding any other law, including, but not limited~~
2 ~~to, Sections 52 and 54.3, a defendant in a construction-related~~
3 ~~accessibility claim against a place of public accommodation shall~~
4 ~~not be liable for statutory damages for more than one offense if~~
5 ~~the site is a microbusiness, as that term is defined in paragraph~~
6 ~~(10) of subdivision (a) of Section 55.52, and the defendant has~~
7 ~~corrected the violation prior to the filing of the lawsuit.~~

8 ~~(h) This section does not alter the applicable law for the~~
9 ~~awarding of injunctive or other equitable relief for a violation or~~
10 ~~violations of one or more construction-related accessibility~~
11 ~~standards, nor alter any legal obligation of a party to mitigate~~
12 ~~damages.~~

13 ~~(i) In assessing liability under subdivision (d), in an action~~
14 ~~alleging multiple claims for the same construction-related~~
15 ~~accessibility violation on different particular occasions, the court~~
16 ~~shall consider the reasonableness of the plaintiff's conduct in light~~
17 ~~of the plaintiff's obligation, if any, to mitigate damages.~~

18 SEC. 4. Section 1938.5 is added to the Civil Code, to read:

19 1938.5. A commercial property owner or lessor shall state on
20 every lease form or rental agreement executed on or after January
21 1, 2016, that, pursuant to Section 36.201 of Title 28 of the Code
22 of Federal Regulations, the owner or lessor and the tenant are both
23 responsible for compliance with the Americans with Disabilities
24 Act (42 U.S.C. Sec. 12101 et seq.) and that responsibility for
25 compliance may be allocated between the parties by the terms of
26 the lease or other contract.

27 *SEC. 5. Section 4459.7 of the Government Code is amended*
28 *to read:*

29 4459.7. (a) (1) No later than October 31 of each year, the
30 State Architect shall publish and make available to the public *both*
31 a list of certified access specialists who have met the requirements
32 of Section 4459.5. ~~This list~~

33 (2) *The State Architect shall publish an easily accessible list of*
34 *businesses which have been inspected by a certified access*
35 *specialist on or after January 1, 2016, including the date of the*
36 *inspection. The State Architect shall periodically update this list.*

37 (3) *The lists required pursuant to this section shall include a*
38 *written disclaimer of liability as specified in subdivision (b).*

39 (b) Notwithstanding any other provision of law, a state agency
40 or employee of a state agency may not be held liable for any injury

1 or damages resulting from any service provided by a certified
2 access specialist whose name appears on the list published pursuant
3 to subdivision (a).

4 (c) The State Architect may perform periodic audits of work
5 performed by a certified access specialist as deemed necessary to
6 ensure the desired standard of performance. A certified access
7 specialist shall provide an authorized representative of the State
8 Architect with complete access, at any reasonable hour of the day,
9 to all technical data, reports, records, photographs, design outlines
10 and plans, and files used in building inspection and plan review,
11 with the exception of proprietary and confidential information.

12 ~~SEC. 5.~~

13 *SEC. 6.* Section 4459.8 of the Government Code is amended
14 to read:

15 4459.8. (a) The certification authorized by Section 4459.5 is
16 effective for three years from the date of initial certification and
17 expires if not renewed. The State Architect, upon consideration of
18 any factual complaints regarding the work of a certified access
19 specialist or of other relevant information, may suspend
20 certification or deny renewal of certification.

21 (b) (1) The State Architect shall require each applicant for
22 certification as a certified access specialist to do the following:

23 (A) Pay fees, including an application and course fee and an
24 examination fee, at a level sufficient to meet the costs of application
25 processing, registration, publishing a list, and other activities that
26 are reasonably necessary to implement and administer the certified
27 access specialist program.

28 (B) Provide to the State Architect ~~information about~~ the *name*
29 *of the* city, county, or city and county in which the applicant intends
30 to provide services.

31 (2) The State Architect shall require each applicant for renewal
32 of certification to do the following:

33 (A) Pay a fee sufficient to cover the reasonable costs of
34 reassessing qualifications of renewal applicants.

35 (B) Provide to the State Architect ~~information about~~ the *name*
36 *of the* city, county, or city and county in which the applicant has
37 provided services since the last day of certification by the State
38 Architect.

39 (3) The State Architect shall periodically review its schedule
40 of fees to ensure that its fees for certification are not excessive

1 while covering the costs to administer the certified access specialist
2 program. The application fee for a California licensed architect,
3 landscape architect, civil engineer, or structural engineer shall not
4 exceed two hundred fifty dollars (\$250).

5 (c) All fees collected pursuant to this section shall be deposited
6 into the Certified Access Specialist Fund, which is hereby created
7 in the State Treasury. Notwithstanding Section 13340, this fund
8 is continuously appropriated without regard to fiscal years for use
9 by the State Architect to implement Sections 4459.5 to 4459.8,
10 inclusive.

11 (d) The State Architect shall post on his or her Internet Web
12 site ~~information about~~ the *name of the* city, county, or city and
13 county in which each certified access specialist provides or intends
14 to provide services.

15 ~~SEC. 6.~~

16 *SEC. 7.* Section 8299.06 of the Government Code is amended
17 to read:

18 8299.06. (a) A priority of the commission shall be the
19 development and dissemination of educational materials and
20 information to promote and facilitate disability access compliance.

21 (b) The commission shall work with other state agencies,
22 including the Division of the State Architect and the Department
23 of Rehabilitation, to develop educational materials and information
24 for use by businesses to understand its obligations to provide
25 disability access and to facilitate compliance with
26 construction-related accessibility standards.

27 (c) The commission shall develop and make available on its
28 Internet Web site, or make available on its Internet Web site if
29 developed by another governmental agency, including Americans
30 with Disabilities Act centers, toolkits or educational modules to
31 assist a California business to understand its obligations under the
32 law and to facilitate compliance with respect to the top 10 alleged
33 construction-related violations, by type, as specified in subdivision
34 (a) of Section 8299.08. Upon completion of this requirement, the
35 commission shall develop and make available on its Internet Web
36 site, or work with another agency to develop, other toolkits or
37 educational modules that would educate businesses of the
38 accessibility requirements and to facilitate compliance with that
39 requirement.

1 (d) The commission shall post the following on its Internet Web
2 site:

3 (1) Educational materials and information that will assist
4 building owners, tenants, building officials, and building inspectors
5 to understand the disability accessibility requirements and to
6 facilitate compliance with disability access laws. The commission
7 shall at least annually review the educational materials and
8 information on disability access requirements and compliance
9 available on the Internet Web site of other local, state, or federal
10 agencies, including Americans with Disabilities Act centers, to
11 augment the educational materials and information developed by
12 the commission.

13 (2) A link to the Internet Web site of the Division of the State
14 Architect's ~~Certified Access Specialist (CASp) Program~~ *certified*
15 *access specialist (CASp) program* to assist building owners and
16 tenants in locating or hiring a CASp.

17 (e) The commission shall, to the extent feasible, coordinate with
18 other state agencies and local building departments to ensure that
19 information provided to the public on disability access requirements
20 is uniform and complete, and make its educational materials and
21 information available to those agencies and departments.

22 ~~SEC. 7.~~

23 *SEC. 8.* Section 65941.6 is added to the Government Code, to
24 read:

25 65941.6. (a) Each local agency shall develop materials relating
26 to the requirements of the Americans with Disabilities Act (42
27 U.S.C. Sec. 12101 et seq.). The local agency shall provide these
28 materials to an applicant along with notice that approval of a permit
29 does not signify that the applicant has complied with the Americans
30 with Disabilities Act.

31 (b) *For the purposes of complying with the requirements of*
32 *subdivision (a), a local agency may, in lieu of developing its own*
33 *materials, provide applicants with those materials which the*
34 *California Commission on Disability Access has developed and*
35 *made available pursuant to Section 8299.06.*

36 ~~SEC. 8.~~

37 *SEC. 9.* Article 4 (commencing with Section 65946) is added
38 to Chapter 4.5 of Division 1 of Title 7 of the Government Code,
39 to read:

Article 4. Expedited Review

65946. (a) For the purposes of this section, the following definitions shall apply:

(1) “Certified access specialist” or “CASp” means any person who has been certified pursuant to Section 4459.5.

(2) “Construction-related accessibility standard” means a provision, standard, or regulation under state or federal law requiring compliance with standards for making new construction and existing facilities accessible to persons with disabilities, including, but not limited to, any provision, standard, or regulation set forth in Section 51, 54, 54.1, or 55 of the Civil Code, Section 19955.5 of the Health and Safety Code, the California Building Standards Code (Title 24 of the California Code of Regulations), the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the federal Americans with Disabilities Act Accessibility Guidelines (Appendix A to Part 36 of Title 28 of the Code of Federal Regulations).

~~(3) “Meets applicable standards” means the site was inspected by a CASp and determined to meet all applicable construction-related accessibility standards pursuant to paragraph (1) of subdivision (a) of Section 55.53.~~

~~(4) “Place of public accommodation” has the same meaning as defined in Section 12181(7) of Title 42 of the United States Code and the federal regulations adopted pursuant to that section.~~

~~(5) “Site” means a place of public accommodation.~~

~~(6)~~

(3) “Written inspection report” means the *CASp* report required to be provided pursuant to subdivision (a) of Section 55.53 of the Civil Code.

(b) A local agency shall expedite review of a project application if the ~~applicant~~ *project applicant meets all of the following conditions:*

~~(1) The applicant provides a written inspection report copy of a disability access inspection certificate, provided by a CASp indicating that the project is a site that meets applicable standards pursuant to subdivision (e) of Section 55.53 of the Civil Code, pertaining to the site of the proposed project.~~

~~(2) The applicant demonstrates that the proposed project is necessary to address either an alleged violation of a~~

1 *construction-related accessibility standard or a violation noted in*
 2 *a written inspection report.*

3 *(3) If project plans are necessary for the approval of a project,*
 4 *the applicant has had a CASp review the project plans for*
 5 *compliance with all applicable construction-related accessibility*
 6 *standards.*

7 ~~SEC. 9.~~

8 *SEC. 10.* Section 17053.43 is added to the Revenue and
 9 Taxation Code, to read:

10 17053.43. (a) (1) For each taxable year beginning on or after
 11 January 1, 2016, and before January 1, 2023, there shall be allowed
 12 to a taxpayer a credit against the “net tax,” as defined in Section
 13 17039, for the amount paid or incurred for eligible access
 14 expenditures in excess of two hundred fifty dollars (\$250).

15 (2) (A) Except as specified in subparagraph (B), the credit shall
 16 be in an amount equal to 50 percent of the difference between the
 17 total eligible access expenditures incurred by a taxpayer that do
 18 not exceed ten thousand two hundred fifty dollars (\$10,250) and
 19 two hundred fifty dollars (\$250).

20 (B) For a taxpayer that is a ~~microbusiness~~, *small business*, the
 21 credit shall be in an amount equal to ~~the amount calculated pursuant~~
 22 ~~to subparagraph (A), plus an additional five thousand dollars~~
 23 ~~(\$5,000): 50 percent of the difference between the total eligible~~
 24 ~~access expenditures incurred by a taxpayer that do not exceed~~
 25 ~~fifteen thousand two hundred fifty dollars (\$15,250) and two~~
 26 ~~hundred fifty dollars (\$250).~~

27 (C) *In the case of a partnership, the limitation under this*
 28 *paragraph shall apply with respect to the partnership and each*
 29 *partner. A similar rule shall apply in the case of an “S”*
 30 *corporation.*

31 (b) For the purposes of this section, the following definitions
 32 shall apply:

33 (1) “Eligible access expenditures” has the same meaning as
 34 defined in Section ~~44~~ *44(c)* of the Internal Revenue Code except
 35 that the amounts may be paid or incurred by a taxpayer other than
 36 an eligible small business.

37 ~~(2) “Microbusiness” has the same meaning as defined in Section~~
 38 ~~14837 of the Government Code.~~

39 (2) (A) *“Small business” means a trade or business that, in the*
 40 *three immediately preceding taxable years, had average gross*

1 receipts, less returns and allowances reportable to this state, of
2 less than three million five-hundred thousand dollars (\$3,500,000)
3 and employed 25 or fewer full-time employees.

4 (B) For the purposes of this paragraph, “gross receipts, less
5 returns and allowances reportable to this state” means the sum
6 of the gross receipts from the production of business income, as
7 defined in subdivision (a) of Section 25120, and the gross receipts
8 from the production of nonbusiness income, as defined in
9 subdivision (d) of Section 25120.

10 (C) For the purposes of this paragraph, “full-time employee”
11 means an employee of the taxpayer who works at least 30 hours
12 per week.

13 (c) In the case where the credit allowed by this section exceeds
14 the “net tax,” the excess may be carried over to reduce the “net
15 tax” in the following year, and the succeeding six years, if
16 necessary, until the credit is exhausted.

17 (d) The credit allowed by this section may be claimed only on
18 a timely filed original return of the taxpayer.

19 (e) In the case of a credit allowed under this section, the
20 following shall apply:

21 (1) A deduction or credit shall not be allowed for that amount
22 under any other provision of this part.

23 (2) An increase in the adjusted basis of any property shall not
24 result from that amount.

25 ~~(d)~~

26 (f) The Franchise Tax Board may prescribe rules, guidelines,
27 or procedures necessary or appropriate to carry out the purposes
28 of this section, including any guidelines regarding the
29 substantiation of the credit allowed by this section. Chapter 3.5
30 (commencing with Section 11340) of Part 1 of Division 3 of Title
31 2 of the Government Code does not apply to any rule, guideline,
32 or procedure prescribed by the Franchise Tax Board pursuant to
33 this section.

34 ~~(e)~~

35 (g) This section shall remain in effect only until December 1,
36 2023, and as of that date is repealed.

37 ~~SEC. 10.~~

38 *SEC. 11.* Section 23643 is added to the Revenue and Taxation
39 Code, to read:

1 23643. (a) (1) For each taxable year beginning on or after
2 January 1, 2016, and before January 1, 2023, there shall be allowed
3 a credit to a taxpayer against the “tax,” as defined in Section 23036,
4 for the amount paid or incurred for eligible access expenditures in
5 excess of two hundred fifty dollars (\$250).

6 (2) (A) Except as specified in subparagraph (B), the credit shall
7 be in an amount equal to 50 percent of the difference between the
8 total eligible access expenditures incurred by a taxpayer that do
9 not exceed ten thousand two hundred fifty dollars (\$10,250) and
10 two hundred fifty dollars (\$250).

11 (B) For a taxpayer that is a ~~microbusiness~~, *small business*, the
12 credit shall be in an amount equal to ~~the amount calculated pursuant~~
13 ~~to subparagraph (A), plus an additional five thousand dollars~~
14 ~~(\$5,000)~~. *50 percent of the difference between the total eligible*
15 *access expenditures incurred by a taxpayer that do not exceed*
16 *fifteen thousand two hundred fifty dollars (\$15,250) and two*
17 *hundred fifty dollars (\$250).*

18 (C) *In the case of a partnership, the limitation under this*
19 *paragraph shall apply with respect to the partnership and each*
20 *partner. A similar rule shall apply in the case of an “S”*
21 *corporation.*

22 (b) For the purposes of this section, the following definitions
23 shall apply:

24 (1) “Eligible access expenditures” has the same meaning as
25 defined in Section ~~44~~ *44(c)* of the Internal Revenue Code except
26 that the amounts may be paid or incurred by a taxpayer other than
27 an eligible small business.

28 ~~(2) “Microbusiness” has the same meaning as defined in Section~~
29 ~~14837 of the Government Code.~~

30 (2) (A) “*Small business*” means a trade or business that, in the
31 three immediately preceding taxable years, had average gross
32 receipts, less returns and allowances reportable to this state, of
33 less than three million five-hundred thousand dollars (\$3,500,000)
34 and employed 25 or fewer full-time employees.

35 (B) For the purposes of this paragraph, “gross receipts, less
36 returns and allowances reportable to this state” means the sum
37 of the gross receipts from the production of business income, as
38 defined in subdivision (a) of Section 25120, and the gross receipts
39 from the production of nonbusiness income, as defined in
40 subdivision (d) of Section 25120.

1 (C) For the purposes of this paragraph, “full-time employee”
2 means an employee of the taxpayer who works at least 30 hours
3 per week.

4 (D) The dollar amount specified in paragraph (A) shall apply
5 to the gross receipts of all taxpayers required or authorized to be
6 included on a combined report pursuant to Section 25101 or
7 25101.15.

8 (c) In the case where the credit allowed by this section exceeds
9 the “tax,” the excess may be carried over to reduce the “tax” in
10 the following year, and the succeeding six years, if necessary, until
11 the credit is exhausted.

12 (d) The credit allowed by this section may be claimed only on
13 a timely filed original return of the taxpayer.

14 (e) In the case of a credit allowed under this section, the
15 following shall apply:

16 (1) A deduction or credit shall not be allowed for that amount
17 under any other provision of this part.

18 (2) An increase in the adjusted basis of any property shall not
19 result from that amount.

20 (d)

21 (f) The Franchise Tax Board may prescribe rules, guidelines,
22 or procedures necessary or appropriate to carry out the purposes
23 of this section, including any guidelines regarding the
24 substantiation of the credit allowed by this section. Chapter 3.5
25 (commencing with Section 11340) of Part 1 of Division 3 of Title
26 2 of the Government Code does not apply to any rule, guideline,
27 or procedure prescribed by the Franchise Tax Board pursuant to
28 this section.

29 (e)

30 (g) This section shall remain in effect only until December 1,
31 2023, and as of that date is repealed.

32 ~~SEC. 11.~~

33 ~~SEC. 12.~~ The Legislature finds and declares that Sections 7 8
34 and 8 9 of this act, pertaining to the review and approval of
35 development permit applications, constitute matters of statewide
36 concern, and shall apply to charter cities and charter counties.
37 These sections shall supersede any inconsistent provisions in the
38 charter of any city, county, or city and county.

1 ~~SEC. 12.~~

2 *SEC. 13.* It is the intent of the Legislature to make the findings
3 required by Section 41 of the Revenue and Taxation Code with
4 respect to the tax credits allowed by Sections ~~9 10~~ and ~~10 11~~ of
5 this act.

6 ~~SEC. 13.~~

7 *SEC. 14.* If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.