

AMENDED IN ASSEMBLY JANUARY 25, 2016

AMENDED IN ASSEMBLY JANUARY 11, 2016

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 269

Introduced by Senators Roth and Vidak

(Principal coauthor: Senator Galgiani)

(Coauthors: Senators Anderson, Moorlach, *Morrell*, and Nielsen)

(Coauthors: Assembly Members Cooper, *Eggman*, *Gray*, Linder,
O'Donnell and Olsen)

February 19, 2015

An act to amend Sections 55.53 and 55.56 of the Civil Code, and to amend Sections 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, relating to ~~disability-access-~~ *access, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 269, as amended, Roth. 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 specifies that a violation of construction-related accessibility standards personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff

experienced difficulty, discomfort, or embarrassment because of the violation. Under existing law, a defendant is liable for actual damages plus minimum statutory damages for each instance of discrimination relating to a construction-related accessibility standard.

This bill ~~would~~ *would, for claims filed on and after its effective date,* establish a rebuttable presumption, for the purpose of an award of minimum statutory damages, that certain technical violations do not cause a plaintiff to experience difficulty, discomfort, or embarrassment, if specified conditions are met. This bill would also exempt a defendant from liability for minimum statutory damages with respect to a structure or area inspected by a certified access specialist for a period of 120 days if specified conditions are met. The bill would require a defendant who claims the benefit of this exemption to disclose the date and findings of any certified access specialist (CASp) inspection to the plaintiff.

(2) 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 regularly update, easily accessible lists of businesses that file prescribed notices of inspection, and businesses which have been inspected by a CASp on or after January 1, 2017, including the date of the inspection. The bill would require the State Architect to develop a process by which a small business may notify the State Architect that a structure or area has had a CASp inspection and to develop a form for businesses to notify the public that the business has obtained a CASp inspection. The bill would also require applicants for CASp certification or renewal to additionally provide to the State Architect 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.

(3) 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.

(4) The Permit Streamlining Act 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 of 1990, 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 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 would apply to charter cities and charter counties.

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

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

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

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

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 55.53 of the Civil Code is amended to
2 read:
3 55.53. (a) For purposes of this part, a certified access specialist
4 shall, upon completion of the inspection of a site, comply with the
5 following:
6 (1) For a meets applicable standards site, if the CASp determines
7 the site meets all applicable construction-related accessibility
8 standards, the CASp shall provide a written inspection report to
9 the requesting party that includes both of the following:
10 (A) An identification and description of the inspected structures
11 and areas of the site.
12 (B) A signed and dated statement that includes both of the
13 following:
14 (i) A statement that, in the opinion of the CASp, the inspected
15 structures and areas of the site meet construction-related
16 accessibility standards. The statement shall clearly indicate whether
17 the determination of the CASp includes an assessment of readily
18 achievable barrier removal.
19 (ii) If corrections were made as a result of the CASp inspection,
20 an itemized list of all corrections and dates of completion.
21 (2) For an inspected by a CASp site, if the CASp determines
22 that corrections are needed to the site in order for the site to meet
23 all applicable construction-related accessibility standards, the
24 CASp shall provide a signed and dated written inspection report
25 to the requesting party that includes all of the following:
26 (A) An identification and description of the inspected structures
27 and areas of the site.
28 (B) The date of the inspection.
29 (C) A statement that, in the opinion of the CASp, the inspected
30 structures and areas of the site need correction to meet
31 construction-related accessibility standards. This statement shall
32 clearly indicate whether the determination of the CASp includes
33 an assessment of readily achievable barrier removal.

1 (D) An identification and description of the structures or areas
2 of the site that need correction and the correction needed.

3 (E) A schedule of completion for each of the corrections within
4 a reasonable timeframe.

5 (3) The CASp shall provide, within 30 days of the date of the
6 inspection of a business that qualifies for the provisions of
7 subparagraph (A) of paragraph (3) of subdivision (g) of Section
8 55.56, a copy of a report prepared pursuant to that subparagraph
9 to the business.

10 (4) The CASp shall file, within 10 days of inspecting a business
11 pursuant to subparagraph (A) of paragraph (3) of subdivision (g)
12 of Section 55.56, a notice with the State Architect for listing on
13 the State Architect’s Internet Web site, as provided by subdivision
14 (d) of Section 4459.7 of the Government Code, indicating that the
15 CASp has inspected the business, the name and address of the
16 business, the date of the filing, the date of the inspection of the
17 business, the name and license number of the CASp, and a
18 description of the structure or area inspected by the CASp.

19 (5) The CASp shall post the notice described in paragraph (4),
20 in a form prescribed by the State Architect, in a conspicuous
21 location within five feet of all public entrances to the building on
22 the date of the inspection and instruct the business to keep it in
23 place until the earlier of either of the following:

24 (A) One hundred twenty days after the date of the inspection.

25 (B) The date when all of the construction-related violations in
26 the structure or area inspected by the CASp are corrected.

27 (b) For purposes of this section, in determining whether the site
28 meets applicable construction-related accessibility standards when
29 there is a conflict or difference between a state and federal
30 provision, standard, or regulation, the state provision, standard, or
31 regulation shall apply unless the federal provision, standard, or
32 regulation is more protective of accessibility rights.

33 (c) Every CASp who conducts an inspection of a place of public
34 accommodation shall, upon completing the inspection of the site,
35 provide the building owner or tenant who requested the inspection
36 with the following notice, which the State Architect shall make
37 available as a form on the State Architect’s Internet Web site:

1 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

2
3 YOU ARE ADVISED TO KEEP IN YOUR RECORDS ANY
4 WRITTEN INSPECTION REPORT AND ANY OTHER
5 DOCUMENTATION CONCERNING YOUR PROPERTY SITE
6 THAT IS GIVEN TO YOU BY A CERTIFIED ACCESS
7 SPECIALIST.

8 IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT
9 INCLUDES A CLAIM CONCERNING A SITE INSPECTED
10 BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE
11 ENTITLED TO A COURT STAY (AN ORDER TEMPORARILY
12 STOPPING ANY LAWSUIT) OF THE CLAIM AND AN EARLY
13 EVALUATION CONFERENCE.

14 IN ORDER TO REQUEST THE STAY AND EARLY
15 EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY
16 THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED
17 THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU
18 WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND
19 THE PLAINTIFF WITH THE COPY OF A WRITTEN
20 INSPECTION REPORT BY THE CERTIFIED ACCESS
21 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION
22 55.54. THE APPLICATION FORM AND INFORMATION ON
23 HOW TO REQUEST A STAY AND EARLY EVALUATION
24 CONFERENCE MAY BE OBTAINED AT
25 www.courts.ca.gov/selfhelp-start.htm.

26 YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED
27 ACCESS SPECIALIST WHO HAS CONDUCTED AN
28 INSPECTION OF YOUR PROPERTY, A WRITTEN
29 INSPECTION REPORT AND OTHER DOCUMENTATION AS
30 SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO
31 ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY
32 ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY
33 POST ON YOUR PROPERTY.

34
35 (d) (1) Commencing July 1, 2010, a local agency shall employ
36 or retain at least one building inspector who is a certified access
37 specialist. The certified access specialist shall provide consultation
38 to the local agency, permit applicants, and members of the public
39 on compliance with state construction-related accessibility
40 standards with respect to inspections of a place of public

1 accommodation that relate to permitting, plan checks, or new
2 construction, including, but not limited to, inspections relating to
3 tenant improvements that may impact access. If a local agency
4 employs or retains two or more certified access specialists to
5 comply with this subdivision, at least one-half of the certified
6 access specialists shall be building inspectors who are certified
7 access specialists.

8 (2) Commencing January 1, 2014, a local agency shall employ
9 or retain a sufficient number of building inspectors who are
10 certified access specialists to conduct permitting and plan check
11 services to review for compliance with state construction-related
12 accessibility standards by a place of public accommodation with
13 respect to new construction, including, but not limited to, projects
14 relating to tenant improvements that may impact access. If a local
15 agency employs or retains two or more certified access specialists
16 to comply with this subdivision, at least one-half of the certified
17 access specialists shall be building inspectors who are certified
18 access specialists.

19 (3) If a permit applicant or member of the public requests
20 consultation from a certified access specialist, the local agency
21 may charge an amount limited to a reasonable hourly rate, an
22 estimate of which shall be provided upon request in advance of
23 the consultation. A local government may additionally charge or
24 increase permitting, plan check, or inspection fees to the extent
25 necessary to offset the costs of complying with this subdivision.
26 Any revenues generated from an hourly or other charge or fee
27 increase under this subdivision shall be used solely to offset the
28 costs incurred to comply with this subdivision. A CASp inspection
29 pursuant to subdivision (a) by a building inspector who is a
30 certified access specialist shall be treated equally for legal and
31 evidentiary purposes as an inspection conducted by a private CASp.
32 Nothing in this subdivision shall preclude permit applicants or any
33 other person with a legal interest in the property from retaining a
34 private CASp at any time.

35 (e) (1) Every CASp who completes an inspection of a place of
36 public accommodation shall, upon a determination that the site
37 meets applicable standards pursuant to paragraph (1) of subdivision
38 (a) or is inspected by a CASp pursuant to paragraph (2) of
39 subdivision (a), provide the building owner or tenant requesting
40 the inspection with a numbered disability access inspection

1 certificate indicating that the site has undergone inspection by a
2 certified access specialist. The disability access inspection
3 certificate shall be dated and signed by the CASp inspector, and
4 shall contain the inspector's name and license number. Upon
5 issuance of a certificate, the CASp shall record the issuance of the
6 numbered certificate, the name and address of the recipient, and
7 the type of report issued pursuant to subdivision (a) in a record
8 book the CASp shall maintain for that purpose.

9 (2) Beginning March 1, 2009, the State Architect shall make
10 available for purchase by any local building department or CASp
11 sequentially numbered disability access inspection certificates that
12 are printed with a watermark or other feature to deter forgery and
13 that comply with the information requirements specified in
14 subdivision (a).

15 (3) The disability access inspection certificate may be posted
16 on the premises of the place of public accommodation, unless,
17 following the date of inspection, the inspected site has been
18 modified or construction has commenced to modify the inspected
19 site in a way that may impact compliance with construction-related
20 accessibility standards.

21 (f) Nothing in this section or any other law is intended to require
22 a property owner or tenant to hire a CASp. A property owner's or
23 tenant's election not to hire a CASp shall not be admissible to
24 prove that person's lack of intent to comply with the law.

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

26 55.56. (a) Statutory damages under either subdivision (a) of
27 Section 52 or subdivision (a) of Section 54.3 may be recovered in
28 a construction-related accessibility claim against a place of public
29 accommodation only if a violation or violations of one or more
30 construction-related accessibility standards denied the plaintiff
31 full and equal access to the place of public accommodation on a
32 particular occasion.

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

37 (c) A violation personally encountered by a plaintiff may be
38 sufficient to cause a denial of full and equal access if the plaintiff
39 experienced difficulty, discomfort, or embarrassment because of
40 the violation.

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

4 (1) The plaintiff had actual knowledge of a violation or
5 violations that prevented or reasonably dissuaded the plaintiff from
6 accessing a place of public accommodation that the plaintiff
7 intended to use on a particular occasion.

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

11 (e) (1) The following technical violations are presumed to not
12 cause a person difficulty, discomfort, or embarrassment for the
13 purpose of an award of minimum statutory damages in a
14 construction-related accessibility claim, as set forth in subdivision
15 (c), where the defendant is a small business, as described by
16 subparagraph (B) of paragraph (2) of subdivision (g), the defendant
17 has corrected, within 15 days of the service of a summons and
18 complaint asserting a construction-related accessibility claim or
19 receipt of a written notice, whichever is earlier, all of the technical
20 violations that are the basis of the claim, and the claim is based on
21 one or more of the following violations:

22 (A) Interior signs, other than directional signs or signs that
23 identify the location of accessible elements, facilities, or features,
24 when not all such elements, facilities, or features are accessible.

25 (B) The lack of exterior signs, other than parking signs and
26 directional signs, including signs that indicate the location of
27 accessible pathways or entrance and exit doors when not all
28 pathways, entrance and exit doors are accessible.

29 (C) The order in which parking signs are placed or the exact
30 location or wording of parking signs, provided that the parking
31 signs are clearly visible and indicate the location of accessible
32 parking and van-accessible parking.

33 (D) The color of parking signs, provided that the color of the
34 background contrasts with the color of the information on the sign.

35 (E) The color of parking lot striping, provided that it exists and
36 provides sufficient contrast with the surface upon which it is
37 applied to be reasonably visible.

38 (F) Faded, chipped, damaged, or deteriorated paint in otherwise
39 fully compliant parking spaces and passenger access aisles in
40 parking lots, provided that it indicates the required dimensions of

1 a parking space or access aisle in a manner that is reasonably
2 visible.

3 (G) The presence or condition of detectable warning surfaces
4 on ramps, except where the ramp is part of a pedestrian path of
5 travel that intersects with a vehicular lane or other hazardous area.

6 (2) The presumption set forth in paragraph (1) affects the
7 plaintiff’s burden of proof and is rebuttable by evidence showing,
8 by a preponderance of the evidence, that the plaintiff did, in fact,
9 experience difficulty, discomfort, or embarrassment on the
10 particular occasion as a result of one or more of the technical
11 violations listed in paragraph (1).

12 (3) *This subdivision shall apply only to claims filed on or after*
13 *the effective date of SB 269 of the 2015–16 Regular Session.*

14 (f) Statutory damages may be assessed pursuant to subdivision
15 (a) based on each particular occasion that the plaintiff was denied
16 full and equal access, and not upon the number of violations of
17 construction-related accessibility standards identified at the place
18 of public accommodation where the denial of full and equal access
19 occurred. If the place of public accommodation consists of distinct
20 facilities that offer distinct services, statutory damages may be
21 assessed based on each denial of full and equal access to the distinct
22 facility, and not upon the number of violations of
23 construction-related accessibility standards identified at the place
24 of public accommodation where the denial of full and equal access
25 occurred.

26 (g) (1) Notwithstanding any other law, a defendant’s liability
27 for statutory damages in a construction-related accessibility claim
28 against a place of public accommodation is reduced to a minimum
29 of one thousand dollars (\$1,000) for each offense if the defendant
30 demonstrates that it has corrected all construction-related violations
31 that are the basis of a claim within 60 days of being served with
32 the complaint, and the defendant demonstrates any of the following:

33 (A) The structure or area of the alleged violation was determined
34 to be “CASp-inspected” or “meets applicable standards” and, to
35 the best of the defendant’s knowledge, there were no modifications
36 or alterations that impacted compliance with construction-related
37 accessibility standards with respect to the plaintiff’s claim that
38 were completed or commenced between the date of that
39 determination and the particular occasion on which the plaintiff
40 was allegedly denied full and equal access.

1 (B) The structure or area of the alleged violation was the subject
2 of an inspection report indicating “CASp determination pending”
3 or “Inspected by a CASp,” and the defendant has either
4 implemented reasonable measures to correct the alleged violation
5 before the particular occasion on which the plaintiff was allegedly
6 denied full and equal access, or the defendant was in the process
7 of correcting the alleged violation within a reasonable time and
8 manner before the particular occasion on which the plaintiff was
9 allegedly denied full and equal access.

10 (C) For a claim alleging a construction-related accessibility
11 violation filed before January 1, 2018, the structure or area of the
12 alleged violation was a new construction or an improvement that
13 was approved by, and passed inspection by, the local building
14 department permit and inspection process on or after January 1,
15 2008, and before January 1, 2016, and, to the best of the
16 defendant’s knowledge, there were no modifications or alterations
17 that impacted compliance with respect to the plaintiff’s claim that
18 were completed or commenced between the completion date of
19 the new construction or improvement and the particular occasion
20 on which the plaintiff was allegedly denied full and equal access.

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

30 (2) Notwithstanding any other law, a defendant’s liability for
31 statutory damages in a construction-related accessibility claim
32 against a place of public accommodation is reduced to a minimum
33 of two thousand dollars (\$2,000) for each offense if the defendant
34 demonstrates both of the following:

35 (A) The defendant has corrected all construction-related
36 violations that are the basis of a claim within 30 days of being
37 served with the complaint.

38 (B) The defendant is a small business that has employed 25 or
39 fewer employees on average over the past three years, or for the
40 years it has been in existence if less than three years, as evidenced

1 by wage report forms filed with the Economic Development
2 Department, and has average annual gross receipts of less than
3 three million five hundred thousand dollars (\$3,500,000) over the
4 previous three years, or for the years it has been in existence if
5 less than three years, as evidenced by federal or state income tax
6 returns. The average annual gross receipts dollar amount shall be
7 adjusted biannually by the Department of General Services for
8 changes in the California Consumer Price Index for All Urban
9 Consumers, as compiled by the Department of Industrial Relations.
10 The Department of General Services shall post that adjusted
11 amount on its Internet Web site.

12 (3) (A) Notwithstanding any other law, a defendant shall not
13 be liable for minimum statutory damages in a construction-related
14 accessibility claim, with respect to a violation noted in a report by
15 a certified access specialist (CASp), for a period of 120 days
16 following the date of the inspection if the defendant demonstrates
17 compliance with each of the following:

18 (i) The defendant is a business~~that~~ *that, as of the date of*
19 *inspection*, has employed 50 or fewer employees on average over
20 the past three years, or for the years it has been in existence if less
21 than three years, as evidenced by wage report forms filed with the
22 Employment Development Department.

23 (ii) The structure or area of the alleged violation was the subject
24 of an inspection report indicating “CASp determination pending”
25 or “Inspected by a CASp.”

26 (iii) The inspection predates the filing of the claim by, or receipt
27 of a demand letter from, the plaintiff regarding the alleged violation
28 of a construction-related accessibility standard, and the defendant
29 was not on notice of the alleged violation prior to the CASp
30 inspection.

31 (iv) The defendant has corrected, within 120 days of the date
32 of the inspection, all construction-related violations in the structure
33 or area inspected by the CASp that are noted in the CASp report
34 that are the basis of the claim.

35 (B) Notwithstanding any other law, a defendant who claims the
36 benefit of the reduction of, or protection from liability for,
37 minimum statutory damages under this subdivision shall disclose
38 the date and findings of any CASp inspection to a plaintiff if
39 relevant to a claim or defense in an action.

1 (4) A defendant may claim the protection from liability for
2 minimum statutory damages under paragraph (3) only once for
3 each structure or area inspected by a CASp, unless the inspected
4 structure or area has undergone modifications or alterations that
5 affect the compliance with construction-related accessibility
6 standards of those structures or areas after the date of the last
7 inspection, and the defendant obtains an additional CASp
8 inspection within 30 days of final approval by the building
9 department or certificate of occupancy, as appropriate, regarding
10 the modification or alterations.

11 (5) If the defendant has failed to correct, within 120 days of the
12 date of the inspection, all construction-related violations in the
13 structure or area inspected by the CASp that are noted in the CASp
14 report, the defendant shall not receive any protection from liability
15 for minimum statutory damages pursuant to paragraph (3), unless
16 a building permit is required for the repairs which cannot
17 reasonably be completed by the defendant within 120 days and
18 the defendant is in the process of correcting the violations noted
19 in the CASp report, as evidenced by having, at least, an active
20 building permit necessary for the repairs to correct the violation
21 that was noted, but not corrected, in the CASp report and all of
22 the repairs are completed within 180 days of the date of the
23 inspection.

24 (6) This subdivision shall not be applicable to intentional
25 violations.

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

28 (8) This subdivision shall apply only to claims filed on or after
29 the effective date of Chapter 383 of the Statutes of 2012, except
30 for paragraphs (3), (4), and (5), which shall apply only to claims
31 filed on or after ~~January 1, 2017~~. *the effective date of SB 269 of*
32 *the 2015–16 Regular Session*. Nothing in this subdivision is
33 intended to affect a complaint filed before those dates, as
34 applicable.

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

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

6 (j) For purposes of this section, the "structure or area inspected"
7 means one of the following: the interior of the premises, the
8 exterior of the premises, or both the interior and exterior.

9 SEC. 3. Section 4459.7 of the Government Code is amended
10 to read:

11 4459.7. (a) (1) No later than October 31 of each year, the
12 State Architect shall publish and make available to the public a
13 list of certified access specialists who have met the requirements
14 of Section 4459.5.

15 (2) The State Architect shall publish and regularly update on
16 its Internet Web site easily accessible lists of all of the following:

17 (A) Businesses that have obtained a CASp inspection and have
18 filed, or a CASp has filed on their behalf, a notice pursuant to
19 paragraph (4) of subdivision (a) of Section 55.53 of the Civil Code.

20 (B) Businesses which have been inspected by a certified access
21 specialist on or after January 1, 2017, including the date of the
22 inspection.

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

25 (b) Notwithstanding any other provision of law, a state agency
26 or employee of a state agency may not be held liable for any injury
27 or damages resulting from any service provided by a certified
28 access specialist whose name appears on the list published pursuant
29 to subdivision (a).

30 (c) The State Architect may perform periodic audits of work
31 performed by a certified access specialist as deemed necessary to
32 ensure the desired standard of performance. A certified access
33 specialist shall provide an authorized representative of the State
34 Architect with complete access, at any reasonable hour of the day,
35 to all technical data, reports, records, photographs, design outlines
36 and plans, and files used in building inspection and plan review,
37 with the exception of proprietary and confidential information.

38 (d) By January 1, 2017, the State Architect shall develop a
39 process by which a certified access specialist (CASp) may notify
40 the State Architect that a structure or area on the premises of a

1 business has been inspected by a CASp and to notify the public
2 that the business has a “CASp determination pending,” or has been
3 “Inspected by a CASp,” as provided by paragraph (3) of
4 subdivision (g) of Section 55.56 of the Civil Code, which shall
5 include the name and address of the business, the date of the
6 notification, the date of the inspection of the business, the name
7 and license number of the CASp, and a description of the structure
8 or area inspected by a CASp.

9 (e) By January 1, 2017, the State Architect shall develop a form
10 for a business to notify the public that the business has obtained a
11 CASp inspection pursuant to paragraph (3) of subdivision (g) of
12 Section 55.56 of the Civil Code, which shall include the date of
13 the notification, the date of the inspection, and a description of the
14 structure or area inspected by a CASp.

15 (f) For purposes of this section, the “structure or area inspected”
16 means one of the following: the interior of the premises, the
17 exterior of the premises, or both the interior and exterior.

18 SEC. 4. Section 4459.8 of the Government Code is amended
19 to read:

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

26 (b) (1) The State Architect shall require each applicant for
27 certification as a certified access specialist to do both of the
28 following:

29 (A) Pay fees, including an application and course fee and an
30 examination fee, at a level sufficient to meet the costs of application
31 processing, registration, publishing a list, and other activities that
32 are reasonably necessary to implement and administer the certified
33 access specialist program.

34 (B) Provide to the State Architect the name of the city, county,
35 or city and county in which the applicant intends to provide
36 services.

37 (2) The State Architect shall require each applicant for renewal
38 of certification to do both of the following:

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

1 (B) Provide to the State Architect the name of the city, county,
2 or city and county in which the applicant has provided services
3 since the last day of certification by the State Architect.

4 (3) The State Architect shall periodically review his or her
5 schedule of fees to ensure that the fees for certification are not
6 excessive while covering the costs to administer the certified access
7 specialist program. The application fee for a California licensed
8 architect, landscape architect, civil engineer, or structural engineer
9 shall not exceed two hundred fifty dollars (\$250).

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

16 (d) The State Architect shall post on his or her Internet Web
17 site the name of the city, county, or city and county in which each
18 certified access specialist provides or intends to provide services.

19 SEC. 5. Section 8299.06 of the Government Code is amended
20 to read:

21 8299.06. (a) A priority of the commission shall be the
22 development and dissemination of educational materials and
23 information to promote and facilitate disability access compliance.

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

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

1 accessibility requirements and to facilitate compliance with that
2 requirement.

3 (d) The commission shall post the following on its Internet Web
4 site:

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

15 (2) A link to the Internet Web site of the Division of the State
16 Architect’s certified access specialist (CASp) program to assist
17 building owners and tenants in locating or hiring a CASp.

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

23 SEC. 6. 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 federal Americans with Disabilities Act
27 of 1990 (42 U.S.C. Sec. 12101 et seq.). The local agency shall
28 provide these materials to an applicant along with notice that
29 approval of a permit does not signify that the applicant has
30 complied with the federal Americans with Disabilities Act of 1990.

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

Article 4. Expedited Review

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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) “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 project applicant meets all of the following conditions:

(1) The applicant provides a copy of a disability access inspection certificate, provided by a CASp 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 construction-related accessibility standard or a violation noted in a written inspection report.

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

SEC. 8. The Legislature finds and declares that Sections 6 and 7 of this act, pertaining to the review and approval of development permit applications, constitute matters of statewide concern, and shall apply to charter cities and charter counties. These sections

1 shall supersede any inconsistent provisions in the charter of any
2 city, county, or city and county.

3 SEC. 9. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution for certain
5 costs because a local agency or school district has the authority to
6 levy service charges, fees, or assessments sufficient to pay for the
7 program or level of service mandated by this act, within the
8 meaning of Section 17556 of the Government Code.

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

13 *Recent data from the California Commission on Disability Access*
14 *indicates that a handful of highly litigious plaintiffs and attorneys*
15 *have targeted small businesses in the state, especially those without*
16 *financial resources or sophistication, with lawsuits alleging*
17 *violations of construction-related accessibility standards. The*
18 *lawsuits appear to be motivated by a desire to obtain quick cash*
19 *settlements with the businesses, rather than to improve access to*
20 *public accommodations. As a result, small businesses are justifiably*
21 *anxious about being sued, while disabled consumers are viewed*
22 *with blame and suspicion, even though they have a right to full*
23 *and equal access and should be able to expect all public*
24 *accommodations to comply with the 25-year-old requirements of*
25 *the Americans with Disabilities Act. It is necessary that this act*
26 *go into immediate effect to ensure that small businesses have the*
27 *information and resources they need in order to bring their*
28 *properties into compliance with construction-related accessibility*
29 *standards. It is also necessary that this act go into immediate effect*
30 *to increase compliance with those standards for the benefit of the*
31 *public, especially disabled consumers who have the right to go*
32 *about their daily lives without difficulty, discomfort, or*
33 *embarrassment, and with the basic dignity that comes from having*
34 *the same access to public accommodations that nondisabled*
35 *persons enjoy.*

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