

ASSEMBLY BILL

No. 1878

Introduced by Assembly Member Beth Gaines

February 22, 2012

An act to add Section 55.4 to the Civil Code, and to amend Section 4452 of the Government Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 1878, as introduced, Beth Gaines. Disability access: liability.

Under existing law, a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000. Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities.

This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a microbusiness, as defined, for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. Further, this bill would require the owner, agent, or other responsible party to respond within 30 days with a description of the improvements to be made or with a rebuttal to the allegations. If the owner, agent, or other responsible party elects to fix the alleged violation, the bill would provide 120 days to apply for any necessary permits and to remedy the alleged violation. The provisions of the bill would not apply to claims for recovery of special damages for an injury

in fact, and the bill would require a court or jury to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury.

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

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

1 SECTION 1. Section 55.4 is added to the Civil Code, to read:
2 55.4. (a) Notwithstanding any other provision of law, prior to
3 filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section
4 4450 or 4452 of the Government Code against a microbusiness as
5 defined in Section 14837 of the Government Code, the alleged
6 aggrieved party shall notify the owner of the property, agent, or
7 other responsible party where the alleged violation occurred by
8 personal service, in accordance with applicable state or federal
9 laws, or certified mail, of all alleged special access violations for
10 which a claim may be filed by the alleged aggrieved party. That
11 notice shall contain the following language:
12

13 “This letter is to inform you that the property located at (address
14 of property), for which you are the property owner, agent, or other
15 responsible party, may be in violation of federal and/or state special
16 access laws pursuant to (expressly cite the federal and/or California
17 statute of which the property is believed to be in violation) and
18 caused harm to (list the name of the alleged aggrieved party).
19

20 Specifically, the possible violation(s) has/have been identified
21 as follows: (Notice must identify the specific facts that constitute
22 the alleged violation, including the date on which the alleged
23 violation occurred and identification of the location of the alleged
24 violation with sufficient detail, so that the location can be identified
25 by the property owner, agent, or other responsible party).
26

27 Under Section 55.4 of the California Civil Code, you have 30
28 days to respond to this notice by certified mail or personal service.
29 Your response must be addressed to (give address where personal
30 service may be received or certified mail may be sent). California
31 law allows you to respond in one of three ways:
32

(1) You may expressly state that improvements will be made
to bring the premises into compliance with applicable special
access laws. If you respond in this fashion, you have a maximum

1 of 120 days to make these improvements or repairs and to apply
2 for the appropriate permits necessary to make these improvements
3 or repairs. The 120-day period shall begin on the date your response
4 to this notice is received at the address given above. If the
5 improvements or repairs necessary to bring the property into
6 compliance with federal and state special access laws are not
7 completed in 120 days, and if you have not applied for the
8 appropriate permits necessary to make the necessary improvement
9 or repairs during that 120-day period, a lawsuit may be brought
10 against you.

11 (2) You may challenge the validity of the alleged violations. If
12 you respond in this fashion, a lawsuit may be brought against you
13 immediately.

14 (3) If the violations listed above are the same or similar to
15 previous violations that you believe have been corrected, you may
16 respond by stating that the necessary repairs have been made to
17 bring the property into compliance with federal and state special
18 access laws. You must also attach evidence that verifies those
19 improvements.

20 If you have any questions about this notice or your rights under
21 federal or California law, please contact your legal counsel.”

22
23 (b) Beginning with the date of notice, the property owner, agent,
24 or other responsible party where the alleged violation occurred
25 shall have 30 days to respond by certified mail or personal service
26 to the alleged aggrieved party. That response shall communicate
27 any of the following:

28 (1) Expressly state that improvements will be made to bring the
29 premises into compliance with applicable laws. A response in this
30 fashion by the property owner, agent, or other responsible party
31 where the alleged violation occurred shall not be considered an
32 admission of guilt and is inadmissible in any future claims based
33 on the same facts filed against the property owner, agent, or other
34 responsible party.

35 (2) Challenge the validity of the alleged violation. If the property
36 owner, agent, or other responsible party where the alleged violation
37 occurred so responds, the alleged aggrieved party may file a claim,
38 subject to any applicable statutes of limitations, any time after
39 receipt of notice as prescribed in this section.

(3) State that the alleged violations identified by the alleged aggrieved party have been corrected to comply with applicable state and federal special access laws. The property owner, agent, or other responsible party where the alleged violation occurred shall also attach evidence that verifies those improvements.

(c) If the property owner, agent, or responsible party where the alleged violation occurred responds in the manner described in paragraph (1) of subdivision (b), the property owner, agent, or responsible party where the alleged violation occurred shall have 120 days to remedy the alleged violation and to apply for the appropriate permits necessary to remedy the alleged violation. The 120-day period shall begin on the date the alleged aggrieved party receives a response, pursuant to subdivision (b), from the owner, agent, or responsible party where the alleged violation occurred.

(d) If, at the end of the 120-day period, the property owner, agent, or responsible party where the alleged violation occurred has not made the improvements described in paragraph (1) of subdivision (b) or applied for the appropriate permits necessary to remedy the violation, and fails to provide satisfactory explanation as to why those repairs were not yet completed and why the appropriate permits have not been sought, the alleged aggrieved party may file a claim.

(e) If the property owner, agent, or other responsible party where the alleged violation occurred has made the improvements described in paragraph (1) of subdivision (b), or has applied for the appropriate permits necessary to remedy the violation, no current or future alleged aggrieved party shall receive any damages or attorney's fees, other than special damages, for any claim arising out of the same or similar facts that served as a basis for the alleged violation.

(f) This section applies to all claims for damages or fees, other than those praying for special damages arising out of injuries in fact. This section shall not be construed to limit claims for recovery of special damages filed by any person who suffers an injury in fact because they were denied full and equal access to an accommodation as required by Section 51, 52, 54, 54.1, or 54.3, or Section 4450 or 4452 of the Government Code.

(g) In making a determination of the amount of damages awarded to a successful plaintiff, a court or jury shall consider

1 previous or pending actual damage awards received or prayed for
2 by that plaintiff for the same or similar injury.

3 SEC. 2. Section 4452 of the Government Code is amended to
4 read:

5 4452. (a) It is the intent of the Legislature that the building
6 standards published in the State Building Standards Code relating
7 to access by the physically handicapped and the other regulations
8 adopted by the State Architect pursuant to Section 4450 shall be
9 used as minimum requirements to insure that buildings, structures,
10 and related facilities covered by this chapter are accessible to, and
11 functional for, the physically handicapped to, through, and within
12 their doors, without loss of function, space, or facility where the
13 general public is concerned.

14 (b) *Any unauthorized deviation from those regulations or*
15 *building standards shall be rectified by full compliance within 90*
16 *days after discovery of the deviation.*

17 (c) *Notwithstanding subdivision (b), prior to any action*
18 *commenced for an alleged violation of Section 4450 or this section*
19 *against a microbusiness as defined in Section 14837, the notice*
20 *requirements specified in Section 55.4 of the Civil Code shall apply*
21 *to the alleged aggrieved party.*