

ASSEMBLY BILL

No. 2325

Introduced by Assembly Member Norby

February 24, 2012

An act to add Sections 55.4 and 55.41 to the Civil Code, and to amend Section 4452 of the Government Code, relating to special access, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2325, as introduced, Norby. Special 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, as specified.

This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business 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. The bill would require that 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, as specified. If that owner, agent, or other responsible party elects to fix the alleged violation, the bill would provide 120 days to do so. The bill would provide that its provisions do not apply to claims for recovery of special

damages for an injury in fact, and would authorize the court to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury. The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws.

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

Vote: $\frac{2}{3}$. 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 of this code,
4 or Section 4450 or 4452 of the Government Code, the alleged
5 aggrieved party shall notify the owner of the property, agent, or
6 other responsible party where the alleged violation occurred by
7 personal service, in accordance with applicable state or federal
8 laws, or certified mail, of all alleged special access violations for
9 which a claim may be filed by the alleged aggrieved party. That
10 notice shall contain the following language:

11
12 “This letter is to inform you that the property located at (address
13 of property), for which you are the property owner, agent, or other
14 responsible party, may be in violation of federal and/or state special
15 access laws pursuant to (expressly cite the federal and/or California
16 statute of which the property is believed to be in violation) and
17 caused harm to (list the name of the alleged aggrieved party).

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

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

1 (1) You may expressly state that improvements will be made
2 to bring the premises into compliance with applicable special
3 access laws. If you respond in this fashion, you have a maximum
4 of 120 days to make these improvements or repairs. The 120-day
5 period shall begin on the date your response to this notice is
6 received at the address given above. If the improvements or repairs
7 necessary to bring the property into compliance with federal and
8 state special access laws are not completed in 120 days, a lawsuit
9 may be brought against you.

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

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

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

21
22 (b) Beginning with the date of notice, the property owner, agent,
23 or other responsible party where the alleged violation occurred
24 shall have 30 days to respond by certified mail or personal service
25 to the alleged aggrieved party. That response shall communicate
26 any of the following:

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

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

39 (3) State that the alleged violations identified by the alleged
40 aggrieved party have been corrected to comply with applicable

1 state and federal special access laws. The property owner, agent,
2 or other responsible party where the alleged violation occurred
3 shall also attach evidence that verifies those improvements.

4 (c) If the property owner, agent, or responsible party where the
5 alleged violation occurred responds in the manner described in
6 paragraph (1) of subdivision (b), the property owner, agent, or
7 responsible party where the alleged violation occurred shall have
8 120 days to remedy the alleged violation. The 120-day period shall
9 begin on the date the alleged aggrieved party receives a response,
10 pursuant to subdivision (b), from the owner, agent, or responsible
11 party where the alleged violation occurred.

12 (d) If, at the end of the 120-day period, the property owner,
13 agent, or responsible party where the alleged violation occurred
14 has not made the improvements described in paragraph (1) of
15 subdivision (b) and fails to provide satisfactory explanation as to
16 why those repairs were not yet completed, the alleged aggrieved
17 party may file a claim.

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

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

31 (g) In making a determination of the amount of damages
32 awarded to a successful plaintiff, a court or jury shall consider
33 previous or pending actual damage awards received or prayed for
34 by that plaintiff for the same or similar injury.

35 SEC. 2. Section 55.41 is added to the Civil Code, to read:

36 55.41. It is the intent of the Legislature to institute programs
37 to educate business property owners and local municipalities about
38 the accessibility requirements of federal and state special access
39 laws.

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

3 4452. (a) It is the intent of the Legislature that the building
4 standards published in the State Building Standards Code relating
5 to access by the physically handicapped and the other regulations
6 adopted by the State Architect pursuant to Section 4450 shall be
7 used as minimum requirements to insure that buildings, structures
8 and related facilities covered by this chapter are accessible to, and
9 functional for, the physically handicapped to, through, and within
10 their doors, without loss of function, space, or facility where the
11 general public is concerned.

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

15 (c) *Notwithstanding subdivision (b), prior to any action*
16 *commenced for an alleged violation of Section 4450 or this section,*
17 *the notice requirements specified in Section 55.4 of the Civil Code*
18 *shall apply to the alleged aggrieved party.*

19 SEC. 4. This act is an urgency statute necessary for the
20 immediate preservation of the public peace, health, or safety within
21 the meaning of Article IV of the Constitution and shall go into
22 immediate effect. The facts constituting the necessity are:

23 Small business owners across the state have been hit recently
24 with a spate of frivolous and vexatious lawsuits, threatening the
25 viability of small businesses. In order to protect small business
26 owners and ensure that these lawsuits stop, it is necessary that this
27 act take effect immediately.