

Introduced by Senator Walters

February 22, 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

SB 1163, as introduced, Walters. 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. The Legislature finds and declares all of the
2 following:

3 (a) The federal Americans with Disabilities Act of 1990 (Public
4 Law 101-336) and this state's complementary special access laws
5 set forth in Sections 51, 52, 54, 54.1, and 54.3 of the Civil Code
6 and Sections 4450 and 4452 of the Government Code are intended
7 to protect Californians with special needs from unlawful and unfair
8 restrictions on access to the full and free use of the streets,
9 highways, sidewalks, walkways, public buildings, medical
10 facilities, including hospitals, clinics, and physicians' offices,
11 public facilities, and other public places.

12 (b) These special access laws are susceptible to abuse through
13 vexatious litigation that is not pursued with the primary intent of
14 rectifying a wrong or advancing or creating a public benefit.

15 (c) Vexatious special access lawsuits unduly burden our courts
16 and taxpayers and do not result in improved access for those with
17 special access needs. Those lawsuits cost California jobs and
18 economic prosperity, unfairly threaten small businesses, force
19 businesses to respond with higher costs for goods and services,
20 and have adverse impacts on levels of employment and employee
21 compensation.

22 (d) It is the intent of the Legislature in enacting this act to
23 eliminate vexatious special access lawsuits while protecting the
24 right of individuals to retain counsel and file an action for relief
25 pursuant to the federal Americans with Disabilities Act of 1990
26 (Public Law 101-336) and Sections 51, 52, 54, 54.1, and 54.3 of
27 the Civil Code and Sections 4450 and 4452 of the Government
28 Code.

29 (e) It is the intent of the Legislature in enacting this act to restrict
30 the filing of special access lawsuits under California law without

1 first notifying and allowing property owners, agents, or other
2 responsible parties the opportunity to improve access by curing
3 any violations.

4 (f) It is not the intent of the Legislature in enacting this act to
5 prohibit the filing of special access lawsuits where, because of an
6 alleged violation of this state's special access laws, an individual
7 has suffered an injury in fact for which a proceeding in a court of
8 competent jurisdiction is proper.

9 SEC. 2. Section 55.4 is added to the Civil Code, to read:

10 55.4. (a) Notwithstanding any other provision of law, prior to
11 filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section
12 4450 or 4452 of the Government Code, the alleged aggrieved party
13 shall notify the owner of the property, agent, or other responsible
14 party where the alleged violation occurred by personal service, in
15 accordance with applicable state or federal laws, or certified mail,
16 of all alleged special access violations for which a claim may be
17 filed by the alleged aggrieved party. That notice shall contain the
18 following language:

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

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

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

37 (1) You may expressly state that improvements will be made
38 to bring the premises into compliance with applicable special
39 access laws. If you respond in this fashion, you have a maximum
40 of 120 days to make these improvements or repairs. The 120-day

1 period shall begin on the date your response to this notice is
2 received at the address given above. If the improvements or repairs
3 necessary to bring the property into compliance with federal and
4 state special access laws are not completed in 120 days, a lawsuit
5 may be brought against you.

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

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

15 If you have any questions about this notice or your rights under
16 federal or California law, please contact your legal counsel.”
17

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

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

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

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

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

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

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

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

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

32 SEC. 3. Section 55.41 is added to the Civil Code, to read:

33 55.41. It is the intent of the Legislature to institute programs
34 to educate business property owners and local municipalities about
35 the accessibility requirements of federal and state special access
36 laws.

37 SEC. 4. Section 4452 of the Government Code is amended to
38 read:

39 4452. (a) It is the intent of the Legislature that the building
40 standards published in the State Building Standards Code relating

1 to access by the physically handicapped and the other regulations
2 adopted by the State Architect pursuant to Section 4450 shall be
3 used as minimum requirements to insure that buildings, structures
4 and related facilities covered by this chapter are accessible to, and
5 functional for, the physically handicapped to, through, and within
6 their doors, without loss of function, space, or facility where the
7 general public is concerned.

8 ~~Any~~

9 (b) Any unauthorized deviation from ~~such~~ those regulations or
10 building standards shall be rectified by full compliance within 90
11 days after discovery of the deviation.

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

16 SEC. 5. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety within
18 the meaning of Article IV of the Constitution and shall go into
19 immediate effect. The facts constituting the necessity are:

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