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THIRD READING

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Bill No: SB 585  
Author: Niello (R)  
Amended: 5/18/23  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 8-0, 5/2/23  
AYES: Wilk, Allen, Ashby, Caballero, Laird, Min, Niello, Wiener  
NO VOTE RECORDED: Umberg, Durazo, Stern

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**SUBJECT:** Disability access: construction-related accessibility claims: statutory damages: attorney's fees and costs

**SOURCE:** Author

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**DIGEST:** This bill prohibits a construction-related accessibility claim for statutory damages from being initiated in a legal proceeding against a defendant unless the defendant has: (1) been served with a letter specifying each alleged violation of a construction-related accessibility standard; and (2) the alleged violations have not been corrected within 120 days of service. This bill provides that a defendant is not liable for statutory damages, costs, or plaintiff's attorney's fees for an alleged violation that is corrected within 120 days of service of a letter.

*Senate Floor Amendments* of 5/18/23 (1) limit the bill's application to any defendant who employs 50 or fewer individuals as of the date of the receipt of the letter or for any period over the past three years from the date of the receipt of the letter; and (2) specify that service of the letter may be accomplished by mail to the defendant pursuant to Civil Procedure Code Section 415.30, by personal delivery to the defendant pursuant to Civil Procedure Code Section 415.10, or by any other means authorized for service of a summons.

**ANALYSIS:**

## Existing law:

- 1) Provides, pursuant to the federal Americans with Disabilities Act (ADA), that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. § 12182.)
- 2) Provides, pursuant to the Unruh Civil Rights Act (Unruh), that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind; provides that a violation of the ADA also constitutes a violation of Unruh; and subjects a person or entity in violation to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civ. Code § 51 *et seq.* All further statutory references are to the California Civil Code, unless otherwise indicated.)
- 3) Provides that, pursuant to the Disabled Persons Act, individuals with disabilities or medical conditions have the same rights as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, and medical facilities including hospitals, clinics, and physicians' offices, public facilities, and other public places, and also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civ. Code § 54.)
- 4) Entitles individuals with disabilities to full and equal access to public accommodations, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. (Civ. Code § 54.1.)
- 5) Establishes the Construction-Related Accessibility Standards Compliance Act which, among other things, requires the Department of the State Architect (DSA) to establish the Certified Access Specialist Program and develop the specified criteria to have a person qualify as a Certified Access Specialist (CAsp). Requires a local agency to employ or retain building inspectors who are a CAsp to provide consultation to local agency, permit applicants, and members of the public on compliance with state construction-related

accessibility standards with respect to inspections of a place of public accommodation that relate to permitting, plan checks, or new construction, as specified. (Gov. Code § 4459.5; Civ. Code §§ 55.51, 55.52.)

- 6) Provides that a business, as defined, shall not be liable for minimum statutory damages in a construction related accessibility claim, with respect to a violation noted in a report by a CASp for a period of 120 days following the date of the inspection if the defendant demonstrates compliance with each of the following:
  - a) The defendant is a business that, as of the date of inspection, has employed 50 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Employment Development Department.
  - b) The structure or area of the alleged violation was the subject of an inspection report indicating “CASp determination pending” or “Inspected by a CASp.”
  - c) The inspection predates the filing of the claim by, or receipt of a demand letter from, the plaintiff regarding the alleged violation of a construction-related accessibility standard, and the defendant was not on notice of the alleged violation prior to the CASp inspection.
  - d) The defendant has corrected, within 120 days of the date of the inspection, all construction-related violations in the structure or area inspected by the CASp that are noted in the CASp report that are the basis of the claim. (Civ. Code sec 55.56(g).)
- 7) Requires a city, county, or city and county to provide to an applicant for the issuance or renewal of a business license or equivalent instrument or permit, the following information relating to obtaining information about the legal obligation to comply with disability access laws: “Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. You may obtain information about your legal obligations and how to comply with disability access laws at the following agencies ...” (Gov. Code § 4469.)
- 8) Defines a "high-frequency litigant" (HFL) as a plaintiff who has filed 10 or more complaints alleging violations of construction-related accessibility

- standards in the past 12 months; or an attorney who has represented 10 or more such plaintiffs in the past year. (Code of Civ. Proc. § 425.55 (b).)
- 9) Requires an HFL to pay a supplemental filing fee of \$1,000 and imposes the following pleading requirements on HFLs who file new claims:
    - a) Whether the complaint is filed by, or on behalf of, an HFL.
    - b) If the HFL is a plaintiff, the number of complaints filed by the plaintiff in the past 12 months.
    - c) If the HFL is a plaintiff, the reason why the HFL was in the geographic area of the defendant's business.
    - d) If the HFL is a plaintiff, the reason why the individual desired to access the defendant's business, including the specific commercial, business, personal, social, leisure, recreational, or other purpose. (Code of Civ. Proc. § 425.50 (a), § 425.50 (b); Gov. Code § 70616.5.)
  - 10) Allows a court, after notice and a reasonable opportunity to respond, to determine whether the requirements above, have been violated and, if so, impose sanctions. (Code of Civ. Proc. § 425.50 (d).)
  - 11) Requires an attorney who sends or serves a complaint alleging a construction-related accessibility violation to do both of the following:
    - a) Send a copy of the complaint to the California Commission on Disability Access (CCDA) within five business days of sending or serving the complaint.
    - b) Notify the CCDA about how the claim is resolved, including whether the violations were remedied and whether the defendant applied for an early evaluation conference and stay. (Civ. Code § 55.32 (b).)
  - 12) Entitles any business that is served with a complaint by an HFL to obtain a stay of the proceedings and an early evaluation conference. (Civ. Code § 55.54 (b)(2)(D).)
  - 13) Allows a court to declare an unrepresented litigant, after providing notice and a hearing, to be a vexatious litigant, require them to post security, and prohibit them from filing new claims without court permission, including in a case where the litigant "repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are

frivolous or solely intended to cause unnecessary delay.” (Code of Civ. Proc. § 391 *et seq.*)

This bill:

- 1) Prohibits a construction-related accessibility claim for statutory damages from being initiated against a defendant unless: the defendant has been served with a letter specifying each alleged violation of a construction-related accessibility standard; and the alleged violations have not been corrected within 120 days of service.
- 2) Provides that a defendant is not liable for statutory damages, costs, or plaintiff’s attorney’s fees for an alleged violation that is corrected within 120 days of service of a letter alleging the violation.
- 3) Provides that a plaintiff shall not be permitted to circumvent the requirements of this bill and the limitations on liability by claiming that they are seeking general discrimination damages based on a violation of the ADA, and not damages for a construction-related accessibility claim, if the underlying basis of the claim is the defendant’s alleged failure to comply with physical accessibility standards.
- 4) Applies the provisions of this bill to defendants who employ 50 or fewer individuals as of the date of the receipt of the letter or for any period over the past three years from the date of the receipt of the letter.

## Comments

California’s disability access laws have long operated to ensure that people with disabilities can utilize businesses and places of public accommodation in the state. In spite of their important civil rights functions, these laws have sometimes generated controversy due to high-volume claims made by a relatively small group of litigants and law firms. One way the Legislature has addressed this issue is through the California Certified Access Specialist Program. Under this program businesses can request a trained inspector to examine their establishment and point out any changes that are needed to ensure compliance with disability access standards. If the business proceeds to undertake necessary upgrades, the business receives temporary immunity from disability access lawsuits.

Under existing law, people who are deterred from accessing a business are entitled to, at the very least, minimum statutory damages ranging from \$1,000 per violation to \$4,000 per violation, depending on the type of business. In addition, people who are able to demonstrate some type of harm, may be entitled to “actual” damages,

although actual damages in access suits are rarely present because they are very difficult to ascertain except in situations involving, for example, hospitals and clinics when the plaintiff needed medical attention. Thus, the law provides for the minimum of \$1,000 in statutory damages so that businesses are deterred from ignoring access standards with regard to their establishments.

While the proponents argue that this bill is necessary to protect small businesses from shake down lawsuits, this bill will in fact also curb meritorious claims by disabled plaintiffs. If passed, this bill will radically shift disability access law in California with regard to businesses who employ 50 or fewer individuals. There would be no incentive for these businesses to ever make their businesses accessible to disabled people. These business owners could deny access to disabled people and know they will not be held accountable until a disabled person prepares a letter specifying each alleged violation of a construction-related accessibility standard. At this point, and not before, these business owners would be incentivized to just fix the alleged violation and not fix anything beyond the alleged violation. The business owner would have 120 days to fix the issues. If the listed violations are fixed within 120 days then the disabled plaintiff would have no right to attorney fees, statutory damages, and costs.

According to the author:

Since the pandemic there has been a surge in ADA lawsuits filed across California, typically by very few repeat plaintiffs. Two plaintiffs filed more than 1,000 combined ADA lawsuits across California from 2020-2021 and are some of the most frequent filers in Northern California, according to an NBC Bay area analysis. In 2021, California had more disability access lawsuits filed than the remaining 49 states, combined.

Across the state, businesses are being targeted for failing to be in compliance with the ever-changing disability access guidelines, resulting in lawsuits that cost the business thousands, and put money in the pockets of serial plaintiffs without ever actually improving accessibility to people with disabilities. Amongst the suits filed are those for a bathroom mirror being one and a half inches too high, the handicap sign on a restroom being the wrong shape, and the color of the handicap parking space sign not being the specified shade of blue.

Because California law provides that the plaintiff is entitled to a minimum damages that can start as high as \$4,000 per violation, triple the damages, and may be awarded attorney's fees, mom-and-pop businesses are finding

themselves fixing a \$10 mirror, but owing tens of thousands of dollars to the plaintiff's attorneys for their fees.

The average settlement can be as much as \$14,000, but the cost of litigating will easily cost hundreds of thousands of dollars in legal fees. This leads to businesses settling out of court for far more than what it would cost to repair the violation. As such, this problem is putting many small businesses out-of-business, and its further adding to the stigma that California is a bad place to open a business and create jobs. Balance must be struck to protect both our disabled population, as well as business owners being targeted from untoward use of the law. SB 585 strikes this balance by placing the emphasis on increased access through curing an alleged violation.

The Legislature enacted bills to better protect small businesses from abusive disability access lawsuits. SB 269 (Roth, Chapter 13, Statutes of 2016), was enacted to protect businesses with 50 or fewer employees from liability for minimum statutory damages in a construction-related accessibility claim for the 120-day period after the business has obtained an inspection of its premises by a CAsp, allowing the business to identify and correct violations during that period. SB 269 also established a presumption that certain "technical violations" of construction-related accessibility standards (such as faded paint on parking spaces or missing signage) do not constitute grounds for a complaint under Unruh as long as those violations are corrected within 15 days of the business owner being notified about them. AB 2093 (Steinorth, Chapter 379, Statutes of 2016) was enacted to require a commercial property owner to disclose on every lease form or rental agreement, whether or not the property being leased has undergone inspection by a CAsp. AB 1521 (Committee on Judiciary, Chapter 755, Statutes of 2015) required a high frequency litigant (HFL) who files a new claim to do the following, in addition to paying a \$1,000 filing fee: (1) comply with special pleading requirements, including an explanation of why they were on the premises of the accommodation; (2) certify that, among other things, the complaint is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (3) provide a notice and answer form to the defendant upon service of the complaint; and (4) meet the defendant, upon the defendant's request, at the site of the accommodation to jointly inspect the premises, and review any programmatic or policy issues, that are claimed to constitute a violation of a construction-related accessibility standard.

Under current law, the potential threat of statutory penalties and attorney fees creates an incentive for business owners to make their buildings accessible and thus provide access to disabled people. If their buildings are accessible then the

business owners are protected from liability. By eliminating a plaintiff's ability to file suit and be awarded damages against defendants who employ 50 or fewer individuals, this bill also eliminates this powerful incentive for these business owners to proactively make improvements to their properties. Under this bill, businesses with 50 or fewer employees would have a financial incentive to wait until being served a letter to fix accessibility violations. They would be incentivized to hold off on accessibility improvements until and unless they actually receive a letter. By allowing these potential defendants 120 days to correct any violations, this bill eliminates any benefit for these businesses that proactively take action, through a CASp inspection, to comply with access laws and make their businesses accessible.

This bill, by requiring that potential plaintiffs serve a pre-litigation letter on businesses that employ 50 or fewer individuals, would create a pre-litigation hurdle for people with disabilities who are seeking to enforce their civil rights. In opposition, a number of disability rights groups, including Disability Rights California, writes, "This bill treats people with disabilities as second-class citizens by targeting them for additional procedural and legal barriers other protected classes do not encounter before they can enforce their rights. It shifts the burden to the person with the disability to inform the defendant, of the access violations. Efforts to add notice and cure requirements decrease accessibility and make it more difficult to enforce disability civil rights."

**FISCAL EFFECT:** Appropriation: No   Fiscal Com.: No   Local: No

**SUPPORT:** (Verified 5/18/23)

California Apartment Association  
California Builders Alliance  
California Business Properties Association  
California Chamber of Commerce  
California Hotel & Lodging Association  
California Restaurant Association  
Civil Justice Association of California  
Sacramento Regional Builders Exchange

**OPPOSITION:** (Verified 5/18/23)

California Council of the Blind  
Californians for Disability Rights, Inc.  
Consumer Attorneys of California  
Disability Rights Advocates



Disability Rights California  
Disability Rights Education & Defense Fund  
National Federation of the Blind

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