

**ASSEMBLY BILL**

**No. 1610**

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**Introduced by Assembly Member Wagner**

February 7, 2012

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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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, as introduced, Wagner. 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.

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. 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  
31 first notifying and allowing property owners, agents, or other

1 responsible parties the opportunity to improve access by curing  
2 any violations.

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

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

9 55.4. (a) Notwithstanding any other provision of law, prior to  
10 filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section  
11 4450 or 4452 of the Government Code, the alleged aggrieved party  
12 shall notify the owner of the property, agent, or other responsible  
13 party where the alleged violation occurred by personal service, in  
14 accordance with applicable state or federal laws, or certified mail,  
15 of all alleged special access violations for which a claim may be  
16 filed by the alleged aggrieved party. That notice shall contain the  
17 following language:

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

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

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

35 (1) You may expressly state that improvements will be made  
36 to bring the premises into compliance with applicable special  
37 access laws. If you respond in this fashion, you have a maximum  
38 of 120 days to make these improvements or repairs. The 120-day  
39 period shall begin on the date your response to this notice is  
40 received at the address given above. If the improvements or repairs

1 necessary to bring the property into compliance with federal and  
2 state special access laws are not completed in 120 days, a lawsuit  
3 may be brought against you.

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

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

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

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

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

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

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

37 (c) If the property owner, agent, or responsible party where the  
38 alleged violation occurred responds in the manner described in  
39 paragraph (1) of subdivision (b), the property owner, agent, or  
40 responsible party where the alleged violation occurred shall have

1 120 days to remedy the alleged violation. The 120-day period shall  
2 begin on the date the alleged aggrieved party receives a response,  
3 pursuant to subdivision (b), from the owner, agent, or responsible  
4 party where the alleged violation occurred.

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

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

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

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

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

29 55.41. It is the intent of the Legislature to institute programs  
30 to educate business property owners and local municipalities about  
31 the accessibility requirements of federal and state special access  
32 laws.

33 SEC. 4. Section 4452 of the Government Code is amended to  
34 read:

35 4452. (a) It is the intent of the Legislature that the building  
36 standards published in the State Building Standards Code relating  
37 to access by the physically handicapped and the other regulations  
38 adopted by the State Architect pursuant to Section 4450 shall be  
39 used as minimum requirements to insure that buildings, structures  
40 and related facilities covered by this chapter are accessible to, and

1 functional for, the physically handicapped to, through, and within  
2 their doors, without loss of function, space, or facility where the  
3 general public is concerned.

4 ~~Any~~

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

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