

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN SENATE MAY 16, 2012

AMENDED IN SENATE APRIL 30, 2012

SENATE BILL

No. 1186

**Introduced by Senators Steinberg and Dutton
(Coauthors: Senators Cannella and Gaines)**

February 22, 2012

An act to amend Section 55.3 of, and to add Sections 55.31 and 1938 to, the Civil Code, and to amend Section 8299.05 of the Government Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, as amended, Steinberg. Disability access: liability.

Existing law requires an attorney to provide a written advisory to a building owner or tenant with each demand for money or complaint for any construction-related accessibility claim, as specified. The requirement to provide the written advisory applies whether or not the attorney intends to file a complaint or eventually files a complaint in state or federal court. A violation of this requirement may subject the attorney to disciplinary action.

This bill would, instead, require an attorney to provide a written advisory to a building owner or tenant with each complaint or settlement demand for any construction-related accessibility claim, as specified. The requirement to provide the written advisory would apply where the attorney or party has filed a complaint in state or federal court on the basis of one or more construction-related accessibility claims.

This bill also would prohibit an attorney or other person from issuing a demand for money to a building owner or tenant, or an agent or

employee of a building owner or tenant, or from receiving any payment, settlement, compensation, or other remuneration pursuant to a demand for money that is provided or issued without or prior to the filing of a complaint on the basis of one or more construction-related accessibility violations, as specified. ~~The bill would require an attorney to provide to a building owner or tenant, or an agent or employee of a building owner or tenant, a document that notifies the recipient of any alleged construction-related accessibility violation that may be a basis for a damages claim at least 30 days prior to filing any claim for damages based on an alleged construction-related accessibility violation or violations, except in a case solely seeking injunctive relief. The~~

The bill would provide that a violation of these requirements may subject the attorney to disciplinary action.

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. Existing law provides for the inspection of places of public accommodation by certified access specialists to determine if the sites meet all applicable construction-related accessibility standards, and the provision of specified certificates and reports regarding those inspections. Existing law regulates the hiring of real property.

This bill would require a commercial property owner to state on a lease form or rental agreement if the property being leased or rented has been inspected by a certified access specialist.

Existing law establishes the California Commission on Disability Access to develop recommendations that will enable persons with disabilities to exercise their right to full and equal access to public facilities, and that will facilitate business compliance with disability access laws and regulations to avoid unnecessary litigation. Existing law requires the commission to study specified disability access issues, and to make reports on those issues to the Legislature.

This bill would provide that the functions and responsibilities of the commission include the concurrent and prospective review of legislative measures, including this measure, and recommendations on any additional ideas or options to promote disability access and reduce unnecessary litigation.

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

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

SECTION 1. Section 55.3 of the Civil Code is amended to read:

55.3. (a) For purposes of this section, the following shall apply:

(1) “Complaint” means a civil complaint that is filed with a court and is sent to or served upon a defendant on the basis of one or more construction-related accessibility claims, as defined in this section.

(2) “Settlement demand” means a written document or oral statement that is provided to a building owner or tenant, or an agent or employee of a building owner or tenant, that contains a request for money on the basis of one or more construction-related accessibility claims, as defined in paragraph (3), where the attorney or party has filed a complaint or eventually files a complaint in state or federal court on the basis of one or more construction-related accessibility claims.

(3) “Construction-related accessibility claim” means any claim of a violation of any construction-related accessibility standard, as defined by paragraph (6) of subdivision (a) of Section 55.52, with respect to a place of public accommodation. “Construction-related accessibility claim” does not include a claim of interference with housing within the meaning of paragraph (2) of subdivision (b) of Section 54.1, or any claim of interference caused by something other than the construction-related accessibility condition of the property, including, but not limited to, the conduct of any person.

(b) An attorney shall provide a written advisory with each complaint or settlement demand sent to or served by him or her upon a defendant, in the form described in subdivision (c), and on a page or pages that are separate and clearly distinguishable from the complaint or settlement demand, as follows:

**IMPORTANT INFORMATION FOR BUILDING OWNERS
AND TENANTS**

This form is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form

1 through the Judicial Council Internet Web site at
2 www.courts.ca.gov.

3 Existing law requires that you receive this information because
4 the complaint or settlement demand you received with this
5 document claims that your building or property does not comply
6 with one or more existing construction-related accessibility laws
7 or regulations protecting the civil rights of persons with disabilities
8 to access public places.

9 **YOU HAVE IMPORTANT LEGAL OBLIGATIONS.**

10 Compliance with disability access laws is a serious and significant
11 responsibility that applies to all California building owners and
12 tenants with buildings open for business to the public. You may
13 obtain information about your legal obligations and how to comply
14 with disability access laws through the Division of the State
15 Architect. Information is also available from the California
16 Commission on Disability Access at www.ccda.ca.gov/guide.htm.

17 **YOU HAVE IMPORTANT LEGAL RIGHTS.** You are not
18 required to pay any money unless and until a court finds you liable.
19 Moreover, **RECEIPT OF THIS ADVISORY DOES NOT**
20 **NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR**
21 **ANYTHING.**

22 You may wish to promptly consult an attorney experienced in
23 this area of the law to get helpful legal advice or representation in
24 responding to the complaint or settlement demand you received.
25 You may contact the local bar association in your county for
26 information on available attorneys in your area. If you have
27 insurance, you may also wish to contact your insurance provider.
28 You have the right to seek assistance or advice about this complaint
29 or settlement demand from any person of your choice, and no one
30 may instruct you otherwise. Your best interest may be served by
31 seeking legal advice or representation from an attorney.

32 If a complaint has been filed and served on you and your property
33 has been inspected by a Certified Access Specialist (CASP; see
34 www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx), you may
35 have the right to a court stay (temporary stoppage) and early
36 evaluation conference to evaluate the merits of the
37 construction-related accessibility claim against you pursuant to
38 Civil Code Section 55.54. At your option, you may be, but need
39 not be, represented by an attorney to file a reply and to file an
40 application for a court stay and early evaluation conference. If you

1 choose not to hire an attorney to represent you, you may obtain
2 additional information about how to represent yourself and how
3 to file a reply without hiring an attorney through the Judicial
4 Council Internet Web site at www.courts.ca.gov/selfhelp-start.htm.
5 You may also obtain a form to file your reply to the lawsuit, as
6 well as the form and information for filing an application to request
7 the court stay and early evaluation conference at that same Internet
8 Web site.

9 If you choose to hire an attorney to represent you, the attorney
10 who sent you the complaint or settlement demand is prohibited
11 from contacting you further unless your attorney has given the
12 other attorney permission to contact you. If the other attorney does
13 try to contact you, you should immediately notify your attorney.
14

15 (c) On or before July 1, 2009, the Judicial Council shall adopt
16 a form that may be used by attorneys to comply with the
17 requirements of subdivision (b). The form shall be in substantially
18 the same format and include all of the text set forth in subdivision
19 (b). The form shall be available in English, Spanish, Chinese,
20 Vietnamese, and Korean, and shall include a statement that the
21 form is available in additional languages, and the Judicial Council
22 Internet Web site address where the different versions of the form
23 may be located. The form shall include Internet Web site
24 information for the Division of the State Architect and the
25 California Commission on Disability Access.

26 (d) Subdivision (b) shall apply to a complaint or settlement
27 demand made by an attorney. Nothing in this section is intended
28 to affect the right to file a civil complaint under any other law or
29 regulation protecting the physical access rights of persons with
30 disabilities.

31 (e) This section shall not apply to any action brought by the
32 Attorney General, or by any district attorney, city attorney, or
33 county counsel.

34 SEC. 2. Section 55.31 is added to the Civil Code, to read:

35 55.31. (a) "Demand for money" means a written document or
36 oral statement that is provided or issued to a building owner or
37 tenant, or an agent or employee of a building owner or tenant, that
38 meets all of the following requirements:

39 (1) Alleges one or more construction-related accessibility
40 violations as the basis of one or more construction-related

1 accessibility claims, as defined in paragraph (3) of subdivision (a)
2 of Section 55.3.

3 (2) Contains or makes a request for money, or states or implies
4 that the building owner or tenant is liable for damages or attorney's
5 fees, or both, on the basis of one or more construction-related
6 accessibility violations.

7 (3) Is provided or issued without or prior to the filing of a
8 complaint in state or federal court on the basis of one or more
9 construction-related accessibility violations.

10 (b) An attorney or person shall not issue a demand for money
11 to a building owner or tenant, or an agent or employee of a building
12 owner or tenant, or receive any payment, settlement, compensation,
13 or other remuneration pursuant to a demand for money, as defined
14 in subdivision (a).

15 ~~(c) An attorney shall provide to a building owner or tenant, or~~
16 ~~an agent or employee of a building owner or tenant, a document~~
17 ~~that notifies the recipient of any alleged construction-related~~
18 ~~accessibility violation that may be a basis for a damages claim at~~
19 ~~least 30 days prior to filing any claim for damages based on an~~
20 ~~alleged construction-related accessibility violation or violations.~~
21 ~~Nothing in this document or any document accompanying the~~
22 ~~document shall demand or request any money to settle or forgo a~~
23 ~~claim or potential claim for damages based upon an alleged~~
24 ~~violation or violations, or state or imply the building owner's or~~
25 ~~tenant's liability for damages or attorney's fees, or both, on the~~
26 ~~basis of the alleged construction-related accessibility violation or~~
27 ~~violations identified in the notice. This requirement shall apply~~
28 ~~whether the attorney intends to file in state or federal court. This~~
29 ~~subdivision shall not apply in a case solely seeking injunctive~~
30 ~~relief.~~

31 ~~(d)~~

32 (c) A violation of subdivision (b) ~~or (c)~~ shall be cause for the
33 imposition of disciplinary action against an attorney.

34 SEC. 3. Section 1938 is added to the Civil Code, to read:

35 1938. A commercial property owner shall state on the lease
36 form or rental agreement if the property being leased or rented "is
37 CASp-inspected" or "is not CASp-inspected." For the purpose of
38 this section, "CASp-inspected" is defined in paragraph (4) of
39 subdivision (a) of Section 55.52.

1 SEC. 4. Section 8299.05 of the Government Code is amended
2 to read:

3 8299.05. (a) The commission shall study and make reports to
4 the Legislature on the following:

5 (1) Issues regarding compliance with state laws and regulations
6 that are raised by either persons with disabilities or businesses,
7 and any recommendations that would promote compliance.

8 (2) Whether public and private inspection programs, including
9 the Certified Access Specialist Program, are meeting the needs of
10 both the business community and the disability community,
11 including by the provision of timely, competent inspections that
12 properly identify violations and recommend appropriate remedial
13 measures.

14 (3) Whether existing training and continuing education
15 requirements for personnel involved in designing, plan checking,
16 building, or inspecting a structure are sufficient to provide the
17 personnel with sufficient knowledge of the state and federal
18 disability access laws and regulations.

19 (4) Whether training and continuing education requirements
20 should be enacted for landscape architects, professional engineers,
21 and contractors to provide these professionals with sufficient
22 knowledge of the state and federal disability access laws and
23 regulations. This study and report shall be completed and delivered
24 to the Legislature no later than January 1, 2011.

25 (b) (1) The commission shall act as an information center on
26 the status of compliance in California with state laws and
27 regulations providing persons with disabilities full and equal access
28 to public facilities. To this end, it shall publish a biennial report,
29 which may be combined with the biennial report required in
30 odd-numbered years pursuant to subdivision (e), on the state of
31 disability access compliance by both the public and private sector.
32 The report shall be written in general terms and shall not identify
33 any particular violators.

34 (2) The commission shall, to the extent feasible, coordinate with
35 other state agencies and local building departments to ensure that
36 information provided to the public on disability access requirements
37 is uniform and complete.

38 (c) The functions and responsibilities of the commission include
39 the concurrent and prospective review of legislative measures,
40 including Senate Bill 1186 of the 2011–12 Regular Session of the

1 Legislature, and recommendations on any additional ideas or
2 options to promote disability access and reduce unnecessary
3 litigation.

4 (d) The commission may recommend, develop, prepare, or
5 coordinate materials, projects, or other activities, as appropriate,
6 relating to any subject within its jurisdiction.

7 (e) The commission shall provide, within its resources, technical
8 information regarding any of the following:

9 (1) Preventing or minimizing problems of compliance by
10 California businesses by engaging in educational outreach efforts
11 and by preparing and hosting on its Internet Web site a Guide to
12 Compliance with State Laws and Regulations Regarding Disability
13 Access Requirements.

14 (2) Recommending programs to enable persons with disabilities
15 to obtain full and equal access to public facilities.

16 (f) The commission shall make reports on its activities, findings,
17 and recommendations to the Legislature from time to time, but not
18 less often than once during every odd-numbered year, on or before
19 May 1 of that year, commencing in 2011.

20 SEC. 5. It is the intent of the Legislature to do all of the
21 following:

22 (a) Examine the federal and state laws that provide persons with
23 disabilities the right to full and equal access to places of public
24 accommodation, and to address any conflict between those laws
25 in construction-related accessibility standards that may lead to
26 unnecessary litigation.

27 (b) Facilitate compliance by increased education regarding the
28 accessibility laws, including requiring the California Commission
29 on Disability Access to develop tools for use by businesses and
30 building inspectors, and to post those tools on its public Internet
31 Web site to facilitate greater compliance.

32 (c) Examine measures that would lead to greater compliance,
33 to the benefit of both business and the disability community
34 through reducing litigation and improving access for the disabled,
35 without discouraging early compliance efforts and without affecting
36 the right to sue for uncorrected and other violations. This effort
37 shall examine and address issues many small businesses face from
38 litigation and tactics pursued primarily for private gain under the
39 state and federal disability access laws, rather than to rectify a
40 disability access violation.

1		_____
2	CORRECTIONS:	
3	Digest—Pages 1 and 2.	
4		_____

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