

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1848**

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**Introduced by Assembly Member Allen**

February 19, 2014

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An act to amend Section 55.56 of, *and to add Section 55.56.1 to*, the Civil Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as amended, Allen. Public accommodations:—access: ~~damages~~ *construction-related accessibility claims: notice.*

Existing law provides that a plaintiff may recover statutory damages in a construction-related accessibility claim against a place of public accommodation only if a violation of construction-related accessibility standards denied the plaintiff full and equal access to that site on a particular occasion, as specified. *Existing law also requires a demand letter, as defined, alleging such a construction-related accessibility claim, to state facts sufficient to allow a reasonable person to identify the basis of the violation or violations supporting the claim.*

*This bill would require an alleged aggrieved party to undertake prescribed notice procedures at least 30 days before filing an action against a business for an alleged violation of the above-described provisions. The notice would advise the recipient of the nature of the accessibility violation and that the recipient may be civilly liable for actual and statutory damages if the access barriers that constitute the basis of the construction-related accessibility claim are not removed during the 30-day time period. This bill would further specify the required content of the notice and would declare that a demand letter that includes specified prelitigation settlement negotiations, sent within*

*the bill's 30-day time period, constitutes compliance with the requirements of the bill.*

~~This bill would make a nonsubstantive change to these provisions.~~

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. Section 55.56 of the Civil Code is amended to  
2 read:

3 55.56. (a) Statutory damages under either subdivision (a) of  
4 Section 52 or subdivision (a) of Section 54.3 may be recovered in  
5 a construction-related accessibility claim against a place of public  
6 accommodation only if a violation or violations of one or more  
7 construction-related accessibility standards denied the plaintiff  
8 full and equal access to the place of public accommodation on a  
9 particular occasion *and the access barriers that constitute the basis*  
10 *of the construction-related accessibility claim have not been*  
11 *removed following the notification provided for in Section 55.56.1.*

12 (b) A plaintiff is denied full and equal access only if the plaintiff  
13 personally encountered the violation on a particular occasion, or  
14 the plaintiff was deterred from accessing a place of public  
15 accommodation on a particular occasion.

16 (c) A violation personally encountered by a plaintiff may be  
17 sufficient to cause a denial of full and equal access if the plaintiff  
18 experienced difficulty, discomfort, or embarrassment because of  
19 the violation.

20 (d) A plaintiff demonstrates that he or she was deterred from  
21 accessing a place of public accommodation on a particular occasion  
22 only if both of the following apply:

23 (1) The plaintiff had actual knowledge of a violation or  
24 violations that prevented or reasonably dissuaded the plaintiff from  
25 accessing a place of public accommodation that the plaintiff  
26 intended to use on a particular occasion.

27 (2) The violation or violations would have actually denied the  
28 plaintiff full and equal access if the plaintiff had accessed the place  
29 of public accommodation on that particular occasion.

30 (e) Statutory damages may be assessed pursuant to subdivision  
31 (a) based on each particular occasion that the plaintiff was denied  
32 full and equal access, and not upon the number of violations of

1 construction-related accessibility standards identified at the place  
2 of public accommodation where the denial of full and equal access  
3 occurred. If the place of public accommodation consists of distinct  
4 facilities that offer distinct services, statutory damages may be  
5 assessed based on each denial of full and equal access to the distinct  
6 facility, and not upon the number of violations of  
7 construction-related accessibility standards identified at the place  
8 of public accommodation where the denial of full and equal access  
9 occurred.

10 (f) (1) Notwithstanding any other law, a defendant’s liability  
11 for statutory damages in a construction-related accessibility claim  
12 against a place of public accommodation is reduced to a minimum  
13 of one thousand dollars (\$1,000) for each offense if the defendant  
14 demonstrates that it has corrected all construction-related violations  
15 that are the basis of a claim within 60 days of being served with  
16 the complaint, and the defendant demonstrates any of the following:

17 (A) The structure or area of the alleged violation was determined  
18 to be “CASp-inspected” or “meets applicable standards” and, to  
19 the best of the defendant’s knowledge, there were no modifications  
20 or alterations that impacted compliance with construction-related  
21 accessibility standards with respect to the plaintiff’s claim that  
22 were completed or commenced between the date of that  
23 determination and the particular occasion on which the plaintiff  
24 was allegedly denied full and equal access.

25 (B) The structure or area of the alleged violation was the subject  
26 of an inspection report indicating “CASp determination pending”  
27 or “Inspected by a CASp,” and the defendant has either  
28 implemented reasonable measures to correct the alleged violation  
29 before the particular occasion on which the plaintiff was allegedly  
30 denied full and equal access, or the defendant was in the process  
31 of correcting the alleged violation within a reasonable time and  
32 manner before the particular occasion on which the plaintiff was  
33 allegedly denied full and equal access.

34 (C) For a claim alleging a construction-related accessibility  
35 violation filed before January 1, 2018, the structure or area of the  
36 alleged violation was a new construction or an improvement that  
37 was approved by, and passed inspection by, the local building  
38 department permit and inspection process on or after January 1,  
39 2008, and before January 1, 2016, and, to the best of the  
40 defendant’s knowledge, there were no modifications or alterations

1 that impacted compliance with respect to the plaintiff’s claim that  
2 were completed or commenced between the completion date of  
3 the new construction or improvement and the particular occasion  
4 on which the plaintiff was allegedly denied full and equal access.

5 (D) The structure or area of the alleged violation was new  
6 construction or an improvement that was approved by, and passed  
7 inspection by, a local building department official who is a certified  
8 access specialist, and, to the best of the defendant’s knowledge,  
9 there were no modifications or alterations that affected compliance  
10 with respect to the plaintiff’s claim that were completed or  
11 commenced between the completion date of the new construction  
12 or improvement and the particular occasion on which the plaintiff  
13 was allegedly denied full and equal access.

14 (2) Notwithstanding any other law, a defendant’s liability for  
15 statutory damages in a construction-related accessibility claim  
16 against a place of public accommodation is reduced to a minimum  
17 of two thousand dollars (\$2,000) for each offense if the defendant  
18 demonstrates both of the following:

19 (A) The defendant has corrected all construction-related  
20 violations that are the basis of a claim within 30 days of being  
21 served with the complaint.

22 (B) The defendant is a small business that has employed 25 or  
23 fewer employees on average over the past three years, or for the  
24 years it has been in existence if less than three years, as evidenced  
25 by wage report forms filed with the Economic Development  
26 Department, and has average annual gross receipts of less than  
27 three million five hundred thousand dollars (\$3,500,000) over the  
28 previous three years, or for the years it has been in existence if  
29 less than three years, as evidenced by federal or state income tax  
30 returns. The average annual gross receipts dollar amount shall be  
31 adjusted biannually by the Department of General Services for  
32 changes in the California Consumer Price Index for All Urban  
33 Consumers, as compiled by the Department of Industrial Relations.  
34 The Department of General Services shall post that adjusted  
35 amount on its Internet Web site.

36 (3) This subdivision shall not be applicable to intentional  
37 violations.

38 (4) Nothing in this subdivision affects the awarding of actual  
39 damages, or affects the awarding of treble actual damages.

1 (5) This subdivision shall apply only to claims filed on or after  
2 the effective date of Senate Bill 1186 of the 2011–12 Regular  
3 Session of the Legislature. Nothing in this subdivision is intended  
4 to affect a complaint filed before that date.

5 (g) This section does not alter the applicable law for the  
6 awarding of injunctive or other equitable relief for a violation or  
7 violations of one or more construction-related accessibility  
8 standards or alter any legal obligation of a party to mitigate  
9 damages.

10 (h) In assessing liability under subdivision (d), in an action  
11 alleging multiple claims for the same construction-related  
12 accessibility violation on different particular occasions, the court  
13 shall consider the reasonableness of the plaintiff’s conduct in light  
14 of the plaintiff’s obligation, if any, to mitigate damages.

15 *SEC. 2. Section 55.56.1 is added to the Civil Code, to read:*

16 *55.56.1. (a) Statutory damages under either subdivision (a)*  
17 *of Section 52 or subdivision (a) of Section 54.3 may be recovered*  
18 *in a lawsuit alleging the existence of a construction-related*  
19 *accessibility claim, as that term is defined in Section 55.52, against*  
20 *a place of public accommodation only if the alleged aggrieved*  
21 *party provides the owner of the property, agent, or other*  
22 *responsible party where the alleged violation occurred with written*  
23 *notice of the allegations on which the claim is based, at least 30*  
24 *days prior to the filing of any action. The notice shall be prepared*  
25 *with the specificity required by subdivision (a) of Section 55.31,*  
26 *sufficient to allow a reasonable person to identify the basis of the*  
27 *construction-related accessibility claim. The notice also shall state*  
28 *that the recipient may be civilly liable for actual and statutory*  
29 *damages for a violation of a construction-related accessibility*  
30 *requirement if the access barriers that constitute the basis of the*  
31 *construction-related accessibility claim are not removed within*  
32 *the 30-day time period.*

33 *(b) A written demand letter that offers prelitigation settlement*  
34 *negotiations, in accordance with subdivision (b) of Section 55.31,*  
35 *that is provided within the 30-day time period required by this*  
36 *section, shall constitute compliance with the notice requirement*  
37 *described in subdivision (a).*

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