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AMENDED IN ASSEMBLY FEBRUARY 18, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 54

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**Introduced by Assembly Member Olsen**  
**(Principal coauthor: Assembly Member Gray)**  
(Principal coauthors: Senators Berryhill, Cannella, and Galgiani)  
**(Coauthors: Assembly Members Achadjian, Travis Allen, Baker,**  
**Bigelow, Brough, Chang, Chávez, Cooper, Beth Gaines,**  
**Gallagher, Grove, Lackey, Linder, Maienschein, Mathis, Mayes,**  
**Oberholte, Patterson, Perea, Salas, *Steinorth*, Waldron, and Wilk)**  
(Coauthors: Senators Anderson, Fuller, Gaines, *Huff*, Nielsen, Stone,  
and Vidak)

December 1, 2014

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An act to amend ~~Section~~ *Sections 55.53 and 55.56* of, and to add Section 55.565 to, the Civil Code, *and to amend Sections 17053.42 and 23642 of the Revenue and Taxation Code*, relating to public accommodations.

### LEGISLATIVE COUNSEL'S DIGEST

AB 54, as amended, Olsen. Public accommodations: construction-related accessibility ~~claims~~. *standards: tax credit.*

**Existing**

(1) *Existing* law allows a plaintiff to collect statutory damages in a construction-related accessibility claim against a place of public accommodation only if the plaintiff was denied full and equal access to the place of public accommodation on a particular occasion, as specified. Existing law imposes a \$1,000 limit on statutory damages

when a defendant demonstrates that the defendant has, among other things, cured the construction-related accessibility violation within 60 days of being served with a complaint. Existing law requires a demand letter alleging a construction-related accessibility claim to, among other things, state facts sufficient to allow a reasonable person to identify the basis of the claim.

This bill would, when a plaintiff brings a claim alleging a violation of a construction-related accessibility standard within 3 years of a change in that standard, allow a plaintiff to collect statutory damages only if the plaintiff also provides the owner, agent, or other party responsible for the place in violation with a written notice or demand letter at least 60 days prior to filing any action and the violation is not cured. The bill would require the written notice or demand letter to contain specified information.

*(2) Existing law grants an owner or tenant of a site, defined as a place of public accommodation, that has been inspected by a certified access specialist (CAsp) and determined to meet all applicable construction-related accessibility standards specified rights in an action that includes a construction-related accessibility claim.*

*The Personal Income Tax Law and the Corporation Tax Law, in specified conformity to federal law, allow a credit against the taxes imposed by those laws, to eligible small businesses for 50% of eligible access expenditures, which are defined as those amounts paid or incurred by the taxpayer to comply with the Americans With Disabilities Act of 1990, as provided, not to exceed \$250.*

*This bill, for taxable years beginning on or after January 1, 2016, would include as an eligible access expenditure any amount paid or incurred by a taxpayer to receive an inspection by a CAsp.*

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

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

1     SECTION 1. (a) The Legislature finds and declares that the  
2     federal Americans with Disabilities Act of 1990 (ADA) is a  
3     well-intentioned law empowering private citizens to bring claims  
4     against businesses that do not make their establishments accessible  
5     to those with disabilities. However, because the ADA authorizes  
6     damages of up to \$4,000 on top of legal fees, California is a hotbed

1 *for predatory, serial litigants seeking to win settlements from*  
2 *businesses out of compliance with the ADA.*

3 *(b) The Legislature further finds and declares all of the*  
4 *following:*

5 *(1) Current law permits defendants to request a court stay and*  
6 *an early evaluation conference upon being served with a*  
7 *construction-related accessibility claim if, among other things,*  
8 *the site in question had new construction approved by a local*  
9 *public building department inspector who is a certified access*  
10 *specialist (CAsp), no subsequent modifications or alterations have*  
11 *been made, and all violations are corrected within 60 days.*

12 *(2) The purpose of this tax credit is to promote increased*  
13 *compliance with disabled accessibility building codes throughout*  
14 *the state by encouraging business and property owners to become*  
15 *CAsp certified. Using the relief provided by this tax credit, business*  
16 *and property owners will be more likely to obtain a CAsp*  
17 *inspection whenever modifying or altering a site.*

18 *(c) The California Commission on Disability Access shall*  
19 *include in its annual report to the Legislature the impact the tax*  
20 *credit has had on reducing ADA compliance lawsuits.*

21 *SEC. 2. Section 55.53 of the Civil Code is amended to read:*

22 *55.53. (a) For purposes of this part, a certified access specialist*  
23 *shall, upon completion of the inspection of a site, comply with the*  
24 *following:*

25 *(1) For a meets applicable standards site, if the CAsp determines*  
26 *the site meets all applicable construction-related accessibility*  
27 *standards, the CAsp shall provide a written inspection report to*  
28 *the requesting party that includes both of the following:*

29 *(A) An identification and description of the inspected structures*  
30 *and areas of the site.*

31 *(B) A signed and dated statement that includes both of the*  
32 *following:*

33 *(i) A statement that, in the opinion of the CAsp, the inspected*  
34 *structures and areas of the site meet construction-related*  
35 *accessibility standards. The statement shall clearly indicate whether*  
36 *the determination of the CAsp includes an assessment of readily*  
37 *achievable barrier removal.*

38 *(ii) If corrections were made as a result of the CAsp inspection,*  
39 *an itemized list of all corrections and dates of completion.*

(2) For an inspected by a CASp site, if the CASp determines that corrections are needed to the site in order for the site to meet all applicable construction-related accessibility standards, the CASp shall provide a signed and dated written inspection report to the requesting party that includes all of the following:

(A) An identification and description of the inspected structures and areas of the site.

(B) A statement that, in the opinion of the CASp, the inspected structures and areas of the site need correction to meet construction-related accessibility standards. This statement shall clearly indicate whether the determination of the CASp includes an assessment of readily achievable barrier removal.

(C) An identification and description of the structures or areas of the site that need correction and the correction needed.

(D) A schedule of completion for each of the corrections within a reasonable timeframe.

(b) For purposes of this section, in determining whether the site meets applicable construction-related accessibility standards when there is a conflict or difference between a state and federal provision, standard, or regulation, the state provision, standard, or regulation shall apply unless the federal provision, standard, or regulation is more protective of accessibility rights.

(c) Every CASp who conducts an inspection of a place of public accommodation shall, upon completing the inspection of the site, provide the building owner or tenant who requested the inspection with the following notice, which the State Architect shall make available as a form on the State Architect's Internet Web site:

NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

YOU ARE ADVISED TO KEEP IN YOUR RECORDS ANY WRITTEN INSPECTION REPORT AND ANY OTHER DOCUMENTATION CONCERNING YOUR PROPERTY SITE THAT IS GIVEN TO YOU BY A CERTIFIED ACCESS SPECIALIST.

IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT INCLUDES A CLAIM CONCERNING A SITE INSPECTED BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE ENTITLED TO A COURT STAY (AN ORDER TEMPORARILY

1 STOPPING ANY LAWSUIT) OF THE CLAIM AND AN EARLY  
2 EVALUATION CONFERENCE.

3 IN ORDER TO REQUEST THE STAY AND EARLY  
4 EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY  
5 THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED  
6 THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU  
7 WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND  
8 THE PLAINTIFF WITH THE COPY OF A WRITTEN  
9 INSPECTION REPORT BY THE CERTIFIED ACCESS  
10 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION  
11 55.54. THE APPLICATION FORM AND INFORMATION ON  
12 HOW TO REQUEST A STAY AND EARLY EVALUATION  
13 CONFERENCE MAY BE OBTAINED AT  
14 [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

15 YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED  
16 ACCESS SPECIALIST WHO HAS CONDUCTED AN  
17 INSPECTION OF YOUR PROPERTY, A WRITTEN  
18 INSPECTION REPORT AND OTHER DOCUMENTATION AS  
19 SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO  
20 ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY  
21 ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY  
22 POST ON YOUR PROPERTY.

23  
24 (d) (1) Commencing July 1, 2010, a local agency shall employ  
25 or retain at least one building inspector who is a certified access  
26 specialist. The certified access specialist shall provide consultation  
27 to the local agency, permit applicants, and members of the public  
28 on compliance with state construction-related accessibility  
29 standards with respect to inspections of a place of public  
30 accommodation that relate to permitting, plan checks, or new  
31 construction, including, but not limited to, inspections relating to  
32 tenant improvements that may impact access. If a local agency  
33 employs or retains two or more certified access specialists to  
34 comply with this subdivision, at least one-half of the certified  
35 access specialists shall be building inspectors who are certified  
36 access specialists.

37 (2) Commencing January 1, 2014, a local agency shall employ  
38 or retain a sufficient number of building inspectors who are  
39 certified access specialists to conduct permitting and plan check  
40 services to review for compliance with state construction-related

1 accessibility standards by a place of public accommodation with  
2 respect to new construction, including, but not limited to, projects  
3 relating to tenant improvements that may impact access. If a local  
4 agency employs or retains two or more certified access specialists  
5 to comply with this subdivision, at least one-half of the certified  
6 access specialists shall be building inspectors who are certified  
7 access specialists.

8 (3) If a permit applicant or member of the public requests  
9 consultation from a certified access specialist, the local agency  
10 may charge an amount limited to a reasonable hourly rate, an  
11 estimate of which shall be provided upon request in advance of  
12 the consultation. A local government may additionally charge or  
13 increase permitting, plan check, or inspection fees to the extent  
14 necessary to offset the costs of complying with this subdivision.  
15 Any revenues generated from an hourly or other charge or fee  
16 increase under this subdivision shall be used solely to offset the  
17 costs incurred to comply with this subdivision. A CASp inspection  
18 pursuant to subdivision (a) by a building inspector who is a  
19 certified access specialist shall be treated equally for legal and  
20 evidentiary purposes as an inspection conducted by a private CASp.  
21 Nothing in this subdivision shall preclude permit applicants or any  
22 other person with a legal interest in the property from retaining a  
23 private CASp at any time.

24 (e) (1) Every CASp who completes an inspection of a place of  
25 public accommodation shall, upon a determination that the site  
26 meets applicable standards pursuant to paragraph (1) of subdivision  
27 (a) or is inspected by a CASp pursuant to paragraph (2) of  
28 subdivision (a), provide the building owner or tenant requesting  
29 the inspection with a numbered disability access inspection  
30 certificate indicating that the site has undergone inspection by a  
31 certified access specialist. The disability access inspection  
32 certificate shall be dated and signed by the CASp inspector, and  
33 shall contain the inspector's name and license number. Upon  
34 issuance of a certificate, the CASp shall record the issuance of the  
35 numbered certificate, the name and address of the recipient, and  
36 the type of report issued pursuant to subdivision (a) in a record  
37 book the CASp shall maintain for that purpose.

38 (2) Beginning March 1, 2009, the State Architect shall make  
39 available for purchase by any local building department or CASp  
40 sequentially numbered disability access inspection certificates that

1 are printed with a watermark or other feature to deter forgery and  
2 that comply with the information requirements specified in  
3 subdivision (a).

4 (3) The disability access inspection certificate may be posted  
5 on the premises of the place of public accommodation, unless,  
6 following the date of inspection, the inspected site has been  
7 modified or construction has commenced to modify the inspected  
8 site in a way that may impact compliance with construction-related  
9 accessibility standards.

10 (f) Nothing in this section or any other law is intended to require  
11 a property owner or tenant to hire a CASp. A property owner's or  
12 tenant's election not to hire a CASp shall not be admissible to  
13 prove that person's lack of intent to comply with the law.

14 (g) *An owner or tenant of a site that a CASp has determined*  
15 *meets applicable standards may be allowed for a tax credit, as*  
16 *described in Section 17053.43 or 23643 of the Revenue and*  
17 *Taxation Code, to offset a portion of the costs of obtaining the*  
18 *CASp inspection.*

19 **SECTION 1.**

20 **SEC. 3.** Section 55.56 of the Civil Code is amended to read:

21 55.56. (a) Statutory damages under either subdivision (a) of  
22 Section 52 or subdivision (a) of Section 54.3 may be recovered in  
23 a construction-related accessibility claim against a place of public  
24 accommodation only if a violation or violations of one or more  
25 construction-related accessibility standards denied the plaintiff  
26 full and equal access to the place of public accommodation on a  
27 particular occasion, and the requirements of Section 55.565 have  
28 been met, if applicable.

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

33 (c) A violation personally encountered by a plaintiff may be  
34 sufficient to cause a denial of full and equal access if the plaintiff  
35 experienced difficulty, discomfort, or embarrassment because of  
36 the violation.

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

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

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

8 (e) Statutory damages may be assessed pursuant to subdivision  
9 (a) based on each particular occasion that the plaintiff was denied  
10 full and equal access, and not upon the number of violations of  
11 construction-related accessibility standards identified at the place  
12 of public accommodation where the denial of full and equal access  
13 occurred. If the place of public accommodation consists of distinct  
14 facilities that offer distinct services, statutory damages may be  
15 assessed based on each denial of full and equal access to the distinct  
16 facility, and not upon the number of violations of  
17 construction-related accessibility standards identified at the place  
18 of public accommodation where the denial of full and equal access  
19 occurred.

20 (f) (1) Notwithstanding any other law, a defendant's liability  
21 for statutory damages in a construction-related accessibility claim  
22 against a place of public accommodation is reduced to a minimum  
23 of one thousand dollars (\$1,000) for each offense if the defendant  
24 demonstrates that it has corrected all construction-related violations  
25 that are the basis of a claim within 60 days of being served with  
26 the complaint, and the defendant demonstrates any of the following:

27 (A) The structure or area of the alleged violation was determined  
28 to be "CAsp-inspected" or "meets applicable standards" and, to  
29 the best of the defendant's knowledge, there were no modifications  
30 or alterations that impacted compliance with construction-related  
31 accessibility standards with respect to the plaintiff's claim that  
32 were completed or commenced between the date of that  
33 determination and the particular occasion on which the plaintiff  
34 was allegedly denied full and equal access.

35 (B) The structure or area of the alleged violation was the subject  
36 of an inspection report indicating "CAsp determination pending"  
37 or "inspected by a CAsp," and the defendant has either  
38 implemented reasonable measures to correct the alleged violation  
39 before the particular occasion on which the plaintiff was allegedly  
40 denied full and equal access, or the defendant was in the process



1 of correcting the alleged violation within a reasonable time and  
2 manner before the particular occasion on which the plaintiff was  
3 allegedly denied full and equal access.

4 (C) For a claim alleging a construction-related accessibility  
5 violation filed before January 1, 2018, the structure or area of the  
6 alleged violation was a new construction or an improvement that  
7 was approved by, and passed inspection by, the local building  
8 department permit and inspection process on or after January 1,  
9 2008, and before January 1, 2016, and, to the best of the  
10 defendant's knowledge, there were no modifications or alterations  
11 that impacted compliance with respect to the plaintiff's claim that  
12 were completed or commenced between the completion date of  
13 the new construction or improvement and the particular occasion  
14 on which the plaintiff was allegedly denied full and equal access.

15 (D) The structure or area of the alleged violation was new  
16 construction or an improvement that was approved by, and passed  
17 inspection by, a local building department official who is a certified  
18 access specialist, and, to the best of the defendant's knowledge,  
19 there were no modifications or alterations that affected compliance  
20 with respect to the plaintiff's claim that were completed or  
21 commenced between the completion date of the new construction  
22 or improvement and the particular occasion on which the plaintiff  
23 was allegedly denied full and equal access.

24 (2) Notwithstanding any other law, a defendant's liability for  
25 statutory damages in a construction-related accessibility claim  
26 against a place of public accommodation is reduced to a minimum  
27 of two thousand dollars (\$2,000) for each offense if the defendant  
28 demonstrates both of the following:

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

32 (B) The defendant is a small business that has employed 25 or  
33 fewer employees on average over the past three years, or for the  
34 years it has been in existence if less than three years, as evidenced  
35 by wage report forms filed with the ~~Economic~~ *Economic* Employment  
36 Development Department, and has average annual gross receipts  
37 of less than three million five hundred thousand dollars  
38 (\$3,500,000) over the previous three years, or for the years it has  
39 been in existence if less than three years, as evidenced by federal  
40 or state income tax returns. The average annual gross receipts

dollar amount shall be adjusted biannually by the Department of General Services for changes in the California Consumer Price Index for All Urban Consumers, as compiled by the Department of Industrial Relations. The Department of General Services shall post that adjusted amount on its Internet Web site.

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

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

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

(g) This section does not alter the applicable law for the awarding of injunctive or other equitable relief for a violation or violations of one or more construction-related accessibility standards, nor alter any legal obligation of a party to mitigate damages.

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

~~SEC. 2.~~

*SEC. 4.* Section 55.565 is added to the Civil Code, to read:

55.565. (a) When a plaintiff brings a construction-related accessibility claim alleging a violation of a construction-related accessibility standard within three years of a change in that standard, statutory damages under subdivision (a) of Section 52 or subdivision (a) of Section 54.3 may be recovered against a place of public accommodation only if the plaintiff provides the owner, agent, or other party responsible for the place of public accommodation where the alleged violation occurred with sufficient written notice of the allegations and alleged access barriers on which the claim is based at least 60 days prior to the filing of any action and the alleged access barriers are not removed.

(b) A written notice is sufficient for the purposes of subdivision (a) if either of the following conditions is met:

(1) The notice states facts sufficient to allow a reasonable person to identify the basis of the construction-related accessibility claim

1 under subdivision (a) of Section 55.31 and states that the recipient  
2 may be civilly liable for actual and statutory damages for a  
3 violation of a construction-related accessibility requirement if the  
4 access barriers that constitute the basis of the construction-related  
5 accessibility claim are not removed within 60 days.

6 (2) The notice is a written demand letter that offers prelitigation  
7 settlement negotiations in accordance with subdivision (b) of  
8 Section 55.31.

9 (c) For the purposes of this section, “construction-related  
10 accessibility claim,” “construction-related accessibility standard,”  
11 and “place of public accommodation” have the meanings set forth  
12 in Section 55.52.

13 *SEC. 5. Section 17053.42 of the Revenue and Taxation Code*  
14 *is amended to read:*

15 17053.42. (a) For each taxable year beginning on or after  
16 January 1, 1996, there shall be allowed as a credit against the “net  
17 tax,” as defined in Section 17039, the amount paid or incurred for  
18 eligible access expenditures. The credit shall be allowed in  
19 accordance with Section 44 of the Internal Revenue Code, relating  
20 to expenditures to provide access to disabled individuals, except  
21 that the credit amount specified in subdivision (b) shall be  
22 substituted for the credit amount specified in Section 44(a) of the  
23 Internal Revenue Code. *Code, relating to general rule.*

24 (b) The credit amount allowed under this section shall be 50  
25 percent of so much of the eligible access expenditures for the  
26 taxable year as do not exceed two hundred fifty dollars (\$250).

27 (c) (1) *For taxable years beginning on or after January 1, 2016,*  
28 *Section 44 (c)(2) of the Internal Revenue Code, relating to certain*  
29 *expenditures included, is modified to include the amount paid or*  
30 *incurred for a site to be inspected by a CASp, which is a certified*  
31 *access specialist.*

32 (2) *Certified access specialist,” “inspected by a CASp,” and*  
33 *“site” shall have the same meanings as those terms are defined*  
34 *in subdivision (a) of Section 55.52 of the Civil Code.*

35 (e)

36 (d) In the case where the credit allowed by this section exceeds  
37 the “net tax,” the excess may be carried over to reduce the “net  
38 tax” in the following year, and succeeding years if necessary, until  
39 the credit is exhausted.

1     *SEC. 6. Section 23642 of the Revenue and Taxation Code is*  
2     *amended to read:*

3     23642. (a) For each taxable year beginning on or after January  
4     1, 1996, there shall be allowed as a credit against the “tax,” as  
5     defined in Section 23036, the amount paid or incurred for eligible  
6     access expenditures. The credit shall be allowed in accordance  
7     with Section 44 of the Internal Revenue Code, relating to  
8     expenditures to provide access to disabled individuals, except that  
9     the credit amount specified in subdivision (b) shall be substituted  
10    for the credit amount specified in Section 44(a) of the Internal  
11    Revenue ~~Code~~. *Code, relating to general rule.*

12    (b) The credit amount allowed under this section shall be 50  
13    percent of so much of the eligible access expenditures for the  
14    taxable year as do not exceed two hundred fifty dollars (\$250).

15    (c) (1) *For taxable years beginning on or after January 1, 2016,*  
16    *Section 44 (c)(2) of the Internal Revenue Code, relating to certain*  
17    *expenditures included, is modified to include the amount paid or*  
18    *incurred for a site to be inspected by a CASp, which is a certified*  
19    *access specialist.*

20    (2) *“Certified access specialist,” “inspected by a CASp,” and*  
21    *“site” shall have the same meanings as those terms are defined*  
22    *in subdivision (a) of Section 55.52 of the Civil Code.*

23    ~~(e)~~  
24    (d) In the case where the credit allowed by this section exceeds  
25    the “tax,” the excess may be carried over to reduce the “tax” in  
26    the following year, and succeeding years if necessary, until the  
27    credit is exhausted.