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AMENDED IN ASSEMBLY APRIL 22, 2015

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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 54

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, Obernolte, Patterson, Perea, Salas, Steinorth, Waldron, and Wilk)

(Coauthors: Senators Anderson, Fuller, Gaines, Huff, Nielsen, Stone, and Vidak)

December 1, 2014

An act to amend Sections ~~17053.42 and 23642~~ of the Revenue and Taxation Code, relating to public accommodations, to take effect immediately, tax levy. 55.32, 55.53, and 55.56 of the Civil Code, and to amend Sections 4459.7, 4459.8, and 8299.06 of, to add Section 65941.6 to, and to add Article 4 (commencing with Section 65946) to Chapter 4.5 of Division 1 of Title 7 of, the Government Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 54, as amended, Olsen. ~~Public accommodations; construction-related accessibility standards; tax credit.~~ *Disability access.*

(1) Existing law prohibits discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards. Existing law requires that a copy of the demand letter and the complaint be sent to the California Commission on Disability Access.

This bill would, in addition, require that information about the demand letter and the complaint be submitted to the commission in a standard format specified by the commission.

(2) Existing law specifies that a violation of construction-related accessibility standards personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.

This bill would exclude certain technical violations from the scope of this provision, if specified conditions are met.

(3) Under existing law, a defendant is liable for actual damages plus minimum statutory damages for each instance of discrimination relating to a construction-related accessibility standard.

This bill would exempt a defendant from liability for minimum statutory damages with respect to a structure or area inspected by a certified access specialist (CASp) for a period of 120 days if specified conditions are met. The bill would require a defendant who claims the benefit of this provision to disclose the date and findings of any CASp inspection to the plaintiff.

(4) Existing law requires the State Architect to establish and publicize a program for the voluntary certification by the state of any person who meets specified criteria as a CASp. Existing law requires the State Architect to annually publish a list of CASps. Existing law requires each applicant for CASp certification or renewal to pay certain fees, and requires the State Architect to periodically review those fees, as specified. Existing law provides for the deposit of those fees into the Certified Access Specialist Fund, which is continuously appropriated for use by the State Architect to implement the CASp program.

This bill would additionally require the State Architect to publish, and regularly update, easily accessible lists of businesses that file prescribed notices of inspection, and businesses which have been inspected by a CASp on or after January 1, 2017, including the date of the inspection. The bill would require the State Architect to develop a process by which a small business may notify the State Architect that a structure or area has had a CASp inspection and to develop a form for businesses to notify the public that the business has obtained a CASp inspection. The bill would also require applicants for CASp certification or renewal to additionally provide to the State Architect the name of the city, county, or city and county in which the applicant intends to provide or has provided services, and would require the Division of the State Architect to post that information on its Internet Web site.

(5) Existing law establishes the California Commission on Disability Access for purposes of developing recommendations to enable persons with disabilities to exercise their right to full and equal access to public facilities and facilitating business compliance with applicable state and federal laws and regulations. Existing law sets forth the powers and duties of the commission, including developing educational materials and information for businesses, building owners, tenants, and building officials, posting that information on the commission's Internet Web site, and coordinating with other state agencies and local building departments to ensure that information provided to the public on disability access requirements is uniform and complete.

This bill would additionally require the commission to provide a link on its Internet Web site to the Internet Web site of the Division of the State Architect's CASp certification program, and make the commission's educational materials and information available to other state agencies and local building departments.

(6) The Permit Streamlining Act establishes procedures for the application, and review of an application, for a development project. Existing law requires a public agency to notify applicants for development permits of specified information, including the time limits established for the review and approval of development permits.

This bill would additionally require local agencies to develop and provide to applicants materials relating to the requirements of the federal Americans with Disabilities Act of 1990, or to instead provide similar materials developed by the California Commission on Disability Access. The bill would require a local agency to notify an applicant that approval of a permit does not signify that the applicant has

complied with that act. The bill would also require local agencies to expedite review of projects for which the applicant provides a copy of a disability access certificate, demonstrates that the project is necessary to address an alleged violation of a construction-related access standard or a violation noted in a CASp report, and, if project plans are necessary for approval, has had a CASp review the project plans for compliance with all applicable construction-related accessibility standards. The bill would declare that these provisions constitute a matter of statewide concern and shall apply to charter cities and charter counties.

By imposing additional duties on local agencies with respect to the receipt and review of applications for development projects, this bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(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.~~

~~This bill would take effect immediately as a tax levy.~~

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

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

1 well-intentioned law empowering private citizens to bring claims
2 against businesses that do not make their establishments accessible
3 to those with disabilities. However, a large number of businesses
4 in California are out of compliance with the ADA.

5 (b) The Legislature further finds and declares all of the
6 following:

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

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

20 ~~(e) The California Commission on Disability Access shall post~~
21 ~~information about this tax credit on its Internet Web site and~~
22 ~~include in its annual report to the Legislature the impact the tax~~
23 ~~credit has had on reducing ADA compliance lawsuits.~~

24 ~~SEC. 2. Section 17053.42 of the Revenue and Taxation Code~~
25 ~~is amended to read:~~

26 ~~17053.42. (a) For each taxable year beginning on or after~~
27 ~~January 1, 1996, there shall be allowed as a credit against the “net~~
28 ~~tax,” as defined in Section 17039, the amount paid or incurred for~~
29 ~~eligible access expenditures. The credit shall be allowed in~~
30 ~~accordance with Section 44 of the Internal Revenue Code, relating~~
31 ~~to expenditures to provide access to disabled individuals, except~~
32 ~~that the credit amount specified in subdivision (b) shall be~~
33 ~~substituted for the credit amount specified in Section 44(a) of the~~
34 ~~Internal Revenue Code, relating to general rule.~~

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

38 ~~(c) (1) For taxable years beginning on or after January 1, 2016,~~
39 ~~Section 44(c)(2) of the Internal Revenue Code, relating to certain~~
40 ~~expenditures included, is modified to include the amount paid or~~

1 incurred for a site to be inspected by a CAsp, which is a certified
2 access specialist.

3 (2) ~~“Certified access specialist,” “inspected by a CAsp,” and~~
4 ~~“site” shall have the same meanings as those terms are defined in~~
5 ~~subdivision (a) of Section 55.52 of the Civil Code.~~

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

10 SEC. 3. ~~Section 23642 of the Revenue and Taxation Code is~~
11 ~~amended to read:~~

12 23642. (a) ~~For each taxable year beginning on or after January~~
13 ~~1, 1996, there shall be allowed as a credit against the “tax,” as~~
14 ~~defined in Section 23036, the amount paid or incurred for eligible~~
15 ~~access expenditures. The credit shall be allowed in accordance~~
16 ~~with Section 44 of the Internal Revenue Code, relating to~~
17 ~~expenditures to provide access to disabled individuals, except that~~
18 ~~the credit amount specified in subdivision (b) shall be substituted~~
19 ~~for the credit amount specified in Section 44(a) of the Internal~~
20 ~~Revenue Code, relating to general rule.~~

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

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

29 (2) ~~“Certified access specialist,” “inspected by a CAsp,” and~~
30 ~~“site” shall have the same meanings as those terms are defined in~~
31 ~~subdivision (a) of Section 55.52 of the Civil Code.~~

32 (d) ~~In the case where the credit allowed by this section exceeds~~
33 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
34 ~~the following year, and succeeding years if necessary, until the~~
35 ~~credit is exhausted.~~

36 SEC. 4. ~~This act provides for a tax levy within the meaning of~~
37 ~~Article IV of the Constitution and shall go into immediate effect.~~

38 SEC. 2. *Section 55.32 of the Civil Code, as amended by Section*
39 *3 of Chapter 755 of the Statutes of 2015, is amended to read:*

1 55.32. (a) An attorney who provides a demand letter, as defined
2 in subdivision (a) of Section 55.3, shall do all of the following:

3 (1) Include the attorney's State Bar license number in the
4 demand letter.

5 (2) Within five business days of providing the demand letter,
6 send a copy of the demand letter ~~to letter, and submit information~~
7 *about the demand letter in a standard format specified by the*
8 *California Commission on Disability Access. Access, to the*
9 *commission.*

10 (b) An attorney who sends or serves a complaint, as defined in
11 subdivision (a) of Section 55.3, shall do both of the following:

12 (1) Send a copy of the complaint ~~to and submit information~~
13 *about the complaint in a standard format specified by the California*
14 *Commission on Disability Access to the commission* within five
15 business days of sending or serving the complaint.

16 (2) Notify the California Commission on Disability Access
17 within five business days of judgment, settlement, or dismissal of
18 the claim or claims alleged in the complaint of the following
19 information in a standard format specified by the commission:

20 (A) The date of the judgment, settlement, or dismissal.

21 (B) Whether or not the construction-related accessibility
22 violations alleged in the complaint were remedied in whole or in
23 part after the plaintiff filed a complaint or provided a demand
24 letter, as defined by Section 55.3.

25 (C) If the construction-related accessibility violations alleged
26 in the complaint were not remedied in whole or in part after the
27 plaintiff filed a complaint or provided a demand letter, as defined
28 by Section 55.3, whether or not another favorable result was
29 achieved after the plaintiff filed the complaint or provided the
30 demand letter.

31 (D) Whether or not the defendant submitted an application for
32 an early evaluation conference and stay pursuant to Section 55.54,
33 whether the defendant requested a site inspection, the date of any
34 early evaluation conference, and the date of any site inspection.

35 (c) A violation of paragraph (2) of subdivision (a) or subdivision
36 (b) shall constitute cause for the imposition of discipline of an
37 attorney if a copy of the demand letter, complaint, or notification
38 of a case outcome is not sent to the California Commission on
39 Disability Access within five business days. In the event the State
40 Bar receives information indicating that an attorney has failed to

1 send a copy of the demand letter, complaint, or notification of a
2 case outcome to the California Commission on Disability Access
3 within five business days, the State Bar shall investigate to
4 determine whether paragraph (2) of subdivision (a) or subdivision
5 (b) has been violated.

6 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
7 required to send to the California Commission on Disability Access
8 a copy of any subsequent demand letter or amended complaint in
9 the same dispute following the initial demand letter or complaint,
10 unless that subsequent demand letter or amended complaint alleges
11 a new construction-related accessibility claim.

12 (e) A demand letter or notification of a case outcome sent to
13 the California Commission on Disability Access shall be for the
14 informational purposes of Section 8299.08 of the Government
15 Code. A demand letter received by the State Bar from the recipient
16 of the demand letter shall be reviewed by the State Bar to determine
17 whether subdivision (b) or (c) of Section 55.31 has been violated.

18 (f) (1) Notwithstanding Section 10231.5 of the Government
19 Code, on or before July 31, 2019, and annually thereafter, the State
20 Bar shall report to the Legislature and the Chairs of the Senate and
21 Assembly Judiciary Committees, both of the following with respect
22 to demand letters received by the State Bar:

23 (A) The number of investigations opened to date on a suspected
24 violation of subdivision (b) or (c) of Section 55.31.

25 (B) Whether any disciplinary action resulted from the
26 investigation, and the results of that disciplinary action.

27 (2) A report to be submitted pursuant to this subdivision shall
28 be submitted in compliance with Section 9795 of the Government
29 Code.

30 (g) The California Commission on Disability Access shall
31 review and report on the demand letters, complaints, and
32 notifications of case outcomes it receives as provided in Section
33 8299.08 of the Government Code.

34 (h) The expiration of any ground for discipline of an attorney
35 shall not affect the imposition of discipline for any act prior to the
36 expiration. An act or omission that constituted cause for imposition
37 of discipline of an attorney when committed or omitted prior to
38 January 1, 2019, shall continue to constitute cause for the
39 imposition of discipline of that attorney on and after January 1,
40 2019.

(i) Paragraph (2) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

(j) This section shall become operative on January 1, 2019.

SEC. 3. Section 55.53 of the Civil Code is amended to read:

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

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

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

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

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

(ii) If corrections were made as a result of the CASp inspection, 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

1 all applicable construction-related accessibility standards, the
2 CASp shall provide a signed and dated written inspection report
3 to the requesting party that includes all of the following:

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

6 (B) *The date of the inspection.*

7 ~~(B)~~

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

13 ~~(C)~~

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

16 ~~(D)~~

17 (E) A schedule of completion for each of the corrections within
18 a reasonable timeframe.

19 (3) *The CASp shall provide, within 30 days of the date of the*
20 *inspection of a business that qualifies for the provisions of*
21 *subparagraph (A) of paragraph (3) of subdivision (g) of Section*
22 *55.56, a copy of a report prepared pursuant to that subparagraph*
23 *to the business.*

24 (4) *The CASp shall file, within 10 days of inspecting a business*
25 *pursuant to subparagraph (A) of paragraph (3) of subdivision (g)*
26 *of Section 55.56, a notice with the State Architect for listing on*
27 *the State Architect's Internet Web site, as provided by subdivision*
28 *(d) of Section 4459.7 of the Government Code, indicating that the*
29 *CASp has inspected the business, the name and address of the*
30 *business, the date of the filing, the date of the inspection of the*
31 *business, the name and license number of the CASp, and a*
32 *description of the structure or area inspected by the CASp.*

33 (5) *The CASp shall post the notice described in paragraph (4),*
34 *in a form prescribed by the State Architect, in a conspicuous*
35 *location within five feet of all public entrances to the building on*
36 *the date of the inspection and instruct the business to keep it in*
37 *place until the earlier of either of the following:*

38 (A) *One hundred twenty days after the date of the inspection.*

39 (B) *The date when all of the construction-related violations in*
40 *the structure or area inspected by the CASp are corrected.*

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

7 (c) Every CASp who conducts an inspection of a place of public
8 accommodation shall, upon completing the inspection of the site,
9 provide the building owner or tenant who requested the inspection
10 with the following notice, which the State Architect shall make
11 available as a form on the State Architect's Internet Web site:
12

13 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:
14

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

20 IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT
21 INCLUDES A CLAIM CONCERNING A SITE INSPECTED
22 BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE
23 ENTITLED TO A COURT STAY (AN ORDER TEMPORARILY
24 STOPPING ANY LAWSUIT) OF THE CLAIM AND AN EARLY
25 EVALUATION CONFERENCE.

26 IN ORDER TO REQUEST THE STAY AND EARLY
27 EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY
28 THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED
29 THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU
30 WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND
31 THE PLAINTIFF WITH THE COPY OF A WRITTEN
32 INSPECTION REPORT BY THE CERTIFIED ACCESS
33 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION
34 55.54. THE APPLICATION FORM AND INFORMATION ON
35 HOW TO REQUEST A STAY AND EARLY EVALUATION
36 CONFERENCE MAY BE OBTAINED AT
37 www.courts.ca.gov/selfhelp-start.htm.

38 YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED
39 ACCESS SPECIALIST WHO HAS CONDUCTED AN
40 INSPECTION OF YOUR PROPERTY, A WRITTEN

1 INSPECTION REPORT AND OTHER DOCUMENTATION AS
2 SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO
3 ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY
4 ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY
5 POST ON YOUR PROPERTY.
6

7 (d) (1) Commencing July 1, 2010, a local agency shall employ
8 or retain at least one building inspector who is a certified access
9 specialist. The certified access specialist shall provide consultation
10 to the local agency, permit applicants, and members of the public
11 on compliance with state construction-related accessibility
12 standards with respect to inspections of a place of public
13 accommodation that relate to permitting, plan checks, or new
14 construction, including, but not limited to, inspections relating to
15 tenant improvements that may impact access. If a local agency
16 employs or retains two or more certified access specialists to
17 comply with this subdivision, at least one-half of the certified
18 access specialists shall be building inspectors who are certified
19 access specialists.

20 (2) Commencing January 1, 2014, a local agency shall employ
21 or retain a sufficient number of building inspectors who are
22 certified access specialists to conduct permitting and plan check
23 services to review for compliance with state construction-related
24 accessibility standards by a place of public accommodation with
25 respect to new construction, including, but not limited to, projects
26 relating to tenant improvements that may impact access. If a local
27 agency employs or retains two or more certified access specialists
28 to comply with this subdivision, at least one-half of the certified
29 access specialists shall be building inspectors who are certified
30 access specialists.

31 (3) If a permit applicant or member of the public requests
32 consultation from a certified access specialist, the local agency
33 may charge an amount limited to a reasonable hourly rate, an
34 estimate of which shall be provided upon request in advance of
35 the consultation. A local government may additionally charge or
36 increase permitting, plan check, or inspection fees to the extent
37 necessary to offset the costs of complying with this subdivision.
38 Any revenues generated from an hourly or other charge or fee
39 increase under this subdivision shall be used solely to offset the
40 costs incurred to comply with this subdivision. A CASp inspection

1 pursuant to subdivision (a) by a building inspector who is a
2 certified access specialist shall be treated equally for legal and
3 evidentiary purposes as an inspection conducted by a private CASp.
4 Nothing in this subdivision shall preclude permit applicants or any
5 other person with a legal interest in the property from retaining a
6 private CASp at any time.

7 (e) (1) Every CASp who completes an inspection of a place of
8 public accommodation shall, upon a determination that the site
9 meets applicable standards pursuant to paragraph (1) of subdivision
10 (a) or is inspected by a CASp pursuant to paragraph (2) of
11 subdivision (a), provide the building owner or tenant requesting
12 the inspection with a numbered disability access inspection
13 certificate indicating that the site has undergone inspection by a
14 certified access specialist. The disability access inspection
15 certificate shall be dated and signed by the CASp inspector, and
16 shall contain the inspector's name and license number. Upon
17 issuance of a certificate, the CASp shall record the issuance of the
18 numbered certificate, the name and address of the recipient, and
19 the type of report issued pursuant to subdivision (a) in a record
20 book the CASp shall maintain for that purpose.

21 (2) Beginning March 1, 2009, the State Architect shall make
22 available for purchase by any local building department or CASp
23 sequentially numbered disability access inspection certificates that
24 are printed with a watermark or other feature to deter forgery and
25 that comply with the information requirements specified in
26 subdivision (a).

27 (3) The disability access inspection certificate may be posted
28 on the premises of the place of public accommodation, unless,
29 following the date of inspection, the inspected site has been
30 modified or construction has commenced to modify the inspected
31 site in a way that may impact compliance with construction-related
32 accessibility standards.

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

37 *SEC. 4. Section 55.56 of the Civil Code is amended to read:*

38 55.56. (a) Statutory damages under either subdivision (a) of
39 Section 52 or subdivision (a) of Section 54.3 may be recovered in
40 a construction-related accessibility claim against a place of public

1 accommodation only if a violation or violations of one or more
2 construction-related accessibility standards denied the plaintiff
3 full and equal access to the place of public accommodation on a
4 particular occasion.

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

9 (c) A violation personally encountered by a plaintiff may be
10 sufficient to cause a denial of full and equal access if the plaintiff
11 experienced difficulty, discomfort, or embarrassment because of
12 the violation.

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

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

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

23 (e) (1) *The following technical violations are presumed to not*
24 *cause a person difficulty, discomfort, or embarrassment for the*
25 *purpose of an award of minimum statutory damages in a*
26 *construction-related accessibility claim, as set forth in subdivision*
27 *(c), where the defendant is a small business, as described by*
28 *subparagraph (B) of paragraph (2) of subdivision (g), the*
29 *defendant has corrected, within 15 days of the service of a*
30 *summons and complaint asserting a construction-related*
31 *accessibility claim or receipt of a written notice, whichever is*
32 *earlier, all of the technical violations that are the basis of the*
33 *claim, and the claim is based on one or more of the following*
34 *violations:*

35 (A) *Interior signs, other than directional signs or signs that*
36 *identify the location of accessible elements, facilities, or features,*
37 *when not all such elements, facilities, or features are accessible.*

38 (B) *The lack of exterior signs, other than parking signs and*
39 *directional signs, including signs that indicate the location of*

1 *accessible pathways or entrance and exit doors when not all*
2 *pathways, entrance and exit doors are accessible.*

3 *(C) The order in which parking signs are placed or the exact*
4 *location or wording of parking signs, provided that the parking*
5 *signs are clearly visible and indicate the location of accessible*
6 *parking and van-accessible parking.*

7 *(D) The color of parking signs, provided that the color of the*
8 *background contrasts with the color of the information on the sign.*

9 *(E) The color of parking lot striping, provided that it exists and*
10 *provides sufficient contrast with the surface upon which it is*
11 *applied to be reasonably visible.*

12 *(F) Faded, chipped, damaged, or deteriorated paint in otherwise*
13 *fully compliant parking spaces and passenger access aisles in*
14 *parking lots, provided that it indicates the required dimensions of*
15 *a parking space or access aisle in a manner that is reasonably*
16 *visible.*

17 *(G) The presence or condition of detectable warning surfaces*
18 *on ramps, except where the ramp is part of a pedestrian path of*
19 *travel that intersects with a vehicular lane or other hazardous*
20 *area.*

21 *(2) The presumption set forth in paragraph (1) affects the*
22 *plaintiff's burden of proof and is rebuttable by evidence showing,*
23 *by a preponderance of the evidence, that the plaintiff did, in fact,*
24 *experience difficulty, discomfort, or embarrassment on the*
25 *particular occasion as a result of one or more of the technical*
26 *violations listed in paragraph (1).*

27 ~~(e)~~

28 *(f) Statutory damages may be assessed pursuant to subdivision*
29 *(a) based on each particular occasion that the plaintiff was denied*
30 *full and equal access, and not upon the number of violations of*
31 *construction-related accessibility standards identified at the place*
32 *of public accommodation where the denial of full and equal access*
33 *occurred. If the place of public accommodation consists of distinct*
34 *facilities that offer distinct services, statutory damages may be*
35 *assessed based on each denial of full and equal access to the distinct*
36 *facility, and not upon the number of violations of*
37 *construction-related accessibility standards identified at the place*
38 *of public accommodation where the denial of full and equal access*
39 *occurred.*

40 ~~(f)~~

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

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

(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," and the defendant has either implemented reasonable measures to correct the alleged violation before the particular occasion on which the plaintiff was allegedly denied full and equal access, or the defendant was in the process of correcting the alleged violation within a reasonable time and manner before the particular occasion on which the plaintiff was allegedly denied full and equal access.

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

(D) The structure or area of the alleged violation was new construction or an improvement that was approved by, and passed inspection by, a local building department official who is a certified access specialist, and, to the best of the defendant's knowledge, there were no modifications or alterations that affected compliance

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

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

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

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

27 (3) (A) *Notwithstanding any other law, a defendant shall not*
28 *be liable for minimum statutory damages in a construction-related*
29 *accessibility claim, with respect to a violation noted in a report*
30 *by a certified access specialist (CAsp), for a period of 120 days*
31 *following the date of the inspection if the defendant demonstrates*
32 *compliance with each of the following:*

33 (i) *The defendant is a business that has employed 100 or fewer*
34 *employees on average over the past three years, or for the years*
35 *it has been in existence if less than three years, as evidenced by*
36 *wage report forms filed with the Employment Development*
37 *Department.*

38 (ii) *The structure or area of the alleged violation was the subject*
39 *of an inspection report indicating "CAsp determination pending"*
40 *or "Inspected by a CAsp."*

1 (iii) *The inspection predates the filing of the claim by, or receipt*
2 *of a demand letter from, the plaintiff regarding the alleged*
3 *violation of a construction-related accessibility standard, and the*
4 *defendant was not on notice of the alleged violation prior to the*
5 *CASp inspection.*

6 (iv) *The defendant has corrected, within 120 days of the date*
7 *of the inspection, all construction-related violations in the structure*
8 *or area inspected by the CASp that are noted in the CASp report*
9 *that are the basis of the claim.*

10 (B) *Notwithstanding any other law, a defendant who claims the*
11 *benefit of the reduction of minimum statutory damages under this*
12 *subdivision shall disclose the date and findings of any CASp*
13 *inspection to a plaintiff if relevant to a claim or defense in an*
14 *action.*

15 (4) *A defendant may assert the reduction of minimum statutory*
16 *damages under this subdivision only once for each structure or*
17 *area inspected by a CASp, unless the inspected structure or area*
18 *has undergone modifications or alterations that affect the*
19 *compliance with construction-related accessibility standards of*
20 *those structures or areas after the date of the last inspection, and*
21 *the defendant obtains an additional CASp inspection within 30*
22 *days of final approval by the building department or certificate of*
23 *occupancy, as appropriate, regarding the modification or*
24 *alterations.*

25 (5) *If the defendant has failed to correct, within 120 days of the*
26 *date of the inspection, all construction-related violations in the*
27 *structure or area inspected by the CASp that are noted in the CASp*
28 *report, the defendant shall not receive any reduction of minimum*
29 *statutory damages, unless a building permit is required for the*
30 *repairs which cannot reasonably be completed by the defendant*
31 *within 120 days and the defendant is in the process of correcting*
32 *the violations noted in the CASp report, as evidenced by having,*
33 *at least, an active building permit necessary for the repairs to*
34 *correct the violation that was noted, but not corrected, in the CASp*
35 *report and all of the repairs are completed within 180 days of the*
36 *date of the inspection.*

37 ~~(3)~~

38 (6) *This subdivision shall not be applicable to intentional*
39 *violations.*

40 ~~(4)~~

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

3 ~~(5)~~

4 (8) This subdivision shall apply only to claims filed on or after
5 the effective date of ~~Senate Bill 1186 of the 2011–12 Regular~~
6 ~~Session of the Legislature. Chapter 383 of the Statutes of 2012,~~
7 *except for paragraphs (3), (4), and (5), which shall apply to claims*
8 *filed on or after January 1, 2017.* Nothing in this subdivision is
9 intended to affect a complaint filed before that date.

10 ~~(g)~~

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

16 ~~(h)~~

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

22 (j) *For purposes of this section, the "structure or area*
23 *inspected" means one of the following: the interior of the premises,*
24 *the exterior of the premises, or both the interior and exterior.*

25 SEC. 5. *Section 4459.7 of the Government Code is amended*
26 *to read:*

27 4459.7. (a) (1) No later than October 31 of each year, the
28 State Architect shall publish and make available to the public a
29 list of certified access specialists who have met the requirements
30 of Section 4459.5. ~~This list shall include a written disclaimer of~~
31 ~~liability as specified in subdivision (b).~~

32 (2) *The State Architect shall publish and regularly update on*
33 *its Internet Web site easily accessible lists of all of the following:*

34 (A) *Businesses that have obtained a CASp inspection and have*
35 *filed, or a CASp has filed on their behalf, a notice pursuant to*
36 *paragraph (4) of subdivision (a) of Section 55.53 of the Civil Code.*

37 (B) *Businesses which have been inspected by a certified access*
38 *specialist on or after January 1, 2017, including the date of the*
39 *inspection.*

1 (3) *The lists required pursuant to this section shall include a*
2 *written disclaimer of liability as specified in subdivision (b).*

3 (b) Notwithstanding any other provision of law, a state agency
4 or employee of a state agency may not be held liable for any injury
5 or damages resulting from any service provided by a certified
6 access specialist whose name appears on the list published pursuant
7 to subdivision (a).

8 (c) The State Architect may perform periodic audits of work
9 performed by a certified access specialist as deemed necessary to
10 ensure the desired standard of performance. A certified access
11 specialist shall provide an authorized representative of the State
12 Architect with complete access, at any reasonable hour of the day,
13 to all technical data, reports, records, photographs, design outlines
14 and plans, and files used in building inspection and plan review,
15 with the exception of proprietary and confidential information.

16 (d) *By January 1, 2017, the State Architect shall develop a*
17 *process by which a certified access specialist (CAsp) may notify*
18 *the State Architect that a structure or area on the premises of a*
19 *business has been inspected by a CAsp and to notify the public*
20 *that the business has a “CAsp determination pending,” or has*
21 *been “Inspected by a CAsp,” as provided by paragraph (3) of*
22 *subdivision (g) of Section 55.56 of the Civil Code, which shall*
23 *include the name and address of the business, the date of the*
24 *notification, the date of the inspection of the business, the name*
25 *and license number of the CAsp, and a description of the structure*
26 *or area inspected by a CAsp.*

27 (e) *By January 1, 2017, the State Architect shall develop a form*
28 *for a business to notify the public that the business has obtained*
29 *a CAsp inspection pursuant to paragraph (3) of subdivision (g)*
30 *of Section 55.56 of the Civil Code, which shall include the date of*
31 *the notification, the date of the inspection, and a description of*
32 *the structure or area inspected by a CAsp.*

33 (f) *For purposes of this section, the “structure or area*
34 *inspected” means one of the following: the interior of the premises,*
35 *the exterior of the premises, or both the interior and exterior.*

36 SEC. 6. *Section 4459.8 of the Government Code is amended*
37 *to read:*

38 4459.8. (a) The certification authorized by Section 4459.5 is
39 effective for three years from the date of initial certification and
40 expires if not renewed. The State Architect, upon consideration of

1 any factual complaints regarding the work of a certified access
2 specialist or of other relevant information, may suspend
3 certification or deny renewal of certification.

4 (b) (1) The State Architect shall require each applicant for
5 certification as a certified access specialist to ~~pay~~ *do both of the*
6 *following*:

7 (A) Pay fees, including an application and course fee and an
8 examination fee, at a level sufficient to meet the costs of application
9 processing, registration, publishing a list, and other activities that
10 are reasonably necessary to implement and administer the certified
11 access specialist program. ~~The~~

12 (B) *Provide to the State Architect the name of the city, county,*
13 *or city and county in which the applicant intends to provide*
14 *services.*

15 (2) The State Architect shall require each applicant for renewal
16 of certification to ~~pay~~ *do both of the following*:

17 (A) Pay a fee sufficient to cover the reasonable costs of
18 reassessing qualifications of renewal applicants.

19 (B) *Provide to the State Architect the name of the city, county,*
20 *or city and county in which the applicant has provided services*
21 *since the last day of certification by the State Architect.*

22 ~~(2)~~

23 (3) The State Architect shall periodically review ~~its~~ *his or her*
24 schedule of fees to ensure that ~~its~~ *the* fees for certification are not
25 excessive while covering the costs to administer the certified access
26 specialist program. The application fee for a California licensed
27 architect, landscape architect, civil engineer, or structural engineer
28 shall not exceed two hundred fifty dollars (\$250).

29 (c) All fees collected pursuant to this section shall be deposited
30 into the Certified Access Specialist Fund, which is hereby created
31 in the State Treasury. Notwithstanding Section 13340, this fund
32 is continuously appropriated without regard to fiscal years for use
33 by the State Architect to implement Sections 4459.5 to 4459.8,
34 inclusive.

35 (d) *The State Architect shall post on his or her Internet Web*
36 *site the name of the city, county, or city and county in which each*
37 *certified access specialist provides or intends to provide services.*

38 SEC. 7. Section 8299.06 of the Government Code is amended
39 to read:

1 8299.06. (a) A priority of the commission shall be the
2 development and dissemination of educational materials and
3 information to promote and facilitate disability access compliance.

4 (b) The commission shall work with other state agencies,
5 including the Division of the State Architect and the Department
6 of Rehabilitation, to develop educational materials and information
7 for use by businesses to understand its obligations to provide
8 disability access and to facilitate compliance with
9 construction-related accessibility standards.

10 (c) The commission shall develop and make available on its
11 Internet Web site, or make available on its Internet Web site if
12 developed by another governmental agency, including Americans
13 with Disabilities Act centers, toolkits or educational modules to
14 assist a California business to understand its obligations under the
15 law and to facilitate compliance with respect to the top 10 alleged
16 construction-related violations, by type, as specified in subdivision
17 (a) of Section 8299.08. Upon completion of this requirement, the
18 commission shall develop and make available on its Internet Web
19 site, or work with another agency to develop, other toolkits or
20 educational modules that would educate businesses of the
21 accessibility requirements and to facilitate compliance with that
22 requirement.

23 (d) The commission shall post *the following* on its Internet Web
24 ~~site-educational site~~:

25 (1) *Educational* materials and information that will assist
26 building owners, tenants, building officials, and building inspectors
27 to understand the disability accessibility requirements and to
28 facilitate compliance with disability access laws. The commission
29 shall at least annually review the educational materials and
30 information on disability access requirements and compliance
31 available on the Internet Web site of other local, state, or federal
32 agencies, including Americans with Disabilities Act centers, to
33 augment the educational materials and information developed by
34 the commission.

35 (2) *A link to the Internet Web site of the Division of the State*
36 *Architect's certified access specialist (CASp) program to assist*
37 *building owners and tenants in locating or hiring a CASp.*

38 (e) The commission shall, to the extent feasible, coordinate with
39 other state agencies and local building departments to ensure that
40 information provided to the public on disability access requirements

1 is uniform and ~~complete~~. *complete, and make its educational*
2 *materials and information available to those agencies and*
3 *departments.*

4 SEC. 8. *Section 65941.6 is added to the Government Code, to*
5 *read:*

6 65941.6. (a) *Each local agency shall develop materials*
7 *relating to the requirements of the federal Americans with*
8 *Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.). The local*
9 *agency shall provide these materials to an applicant along with*
10 *notice that approval of a permit does not signify that the applicant*
11 *has complied with the federal Americans with Disabilities Act of*
12 *1990.*

13 (b) *For the purposes of complying with the requirements of*
14 *subdivision (a), a local agency may, in lieu of developing its own*
15 *materials, provide applicants with those materials which the*
16 *California Commission on Disability Access has developed and*
17 *made available pursuant to Section 8299.06.*

18 SEC. 9. *Article 4 (commencing with Section 65946) is added*
19 *to Chapter 4.5 of Division 1 of Title 7 of the Government Code,*
20 *to read:*

21
22 *Article 4. Expedited Review*
23

24 65946. (a) *For the purposes of this section, the following*
25 *definitions shall apply:*

26 (1) *“Certified access specialist” or “CAsp” means any person*
27 *who has been certified pursuant to Section 4459.5.*

28 (2) *“Construction-related accessibility standard” means a*
29 *provision, standard, or regulation under state or federal law*
30 *requiring compliance with standards for making new construction*
31 *and existing facilities accessible to persons with disabilities,*
32 *including, but not limited to, any provision, standard, or regulation*
33 *set forth in Section 51, 54, 54.1, or 55 of the Civil Code, Section*
34 *19955.5 of the Health and Safety Code, the California Building*
35 *Standards Code (Title 24 of the California Code of Regulations),*
36 *the federal Americans with Disabilities Act of 1990 (Public Law*
37 *101-336; 42 U.S.C. Sec. 12101 et seq.), and the federal Americans*
38 *with Disabilities Act Accessibility Guidelines (Appendix A to Part*
39 *36 of Title 28 of the Code of Federal Regulations).*

1 (3) “Written inspection report” means the CASp report required
2 to be provided pursuant to subdivision (a) of Section 55.53 of the
3 Civil Code.

4 (b) A local agency shall expedite review of a project application
5 if the project applicant meets all of the following conditions:

6 (1) The applicant provides a copy of a disability access
7 inspection certificate, provided by a CASp pursuant to subdivision
8 (e) of Section 55.53 of the Civil Code, pertaining to the site of the
9 proposed project.

10 (2) The applicant demonstrates that the proposed project is
11 necessary to address either an alleged violation of a
12 construction-related accessibility standard or a violation noted in
13 a written inspection report.

14 (3) If project plans are necessary for the approval of a project,
15 the applicant has had a CASp review the project plans for
16 compliance with all applicable construction-related accessibility
17 standards.

18 SEC. 10. The Legislature finds and declares that Sections 8
19 and 9 of this act, pertaining to the review and approval of
20 development permit applications, constitute matters of statewide
21 concern, and shall apply to charter cities and charter counties.
22 These sections shall supersede any inconsistent provisions in the
23 charter of any city, county, or city and county.

24 SEC. 11. No reimbursement is required by this act pursuant
25 to Section 6 of Article XIII B of the California Constitution for
26 certain costs because a local agency or school district has the
27 authority to levy service charges, fees, or assessments sufficient
28 to pay for the program or level of service mandated by this act,
29 within the meaning of Section 17556 of the Government Code.