

SUMMARY OF PROVISIONS OF SB 1186 (STEINBERG-DUTTON)

1. *Reduced statutory damages and litigation protections for defendants who correct violations*

- A defendant who had hired a certified access specialist (CAsp) and had met applicable compliance standards, or a person who had new construction or an improvement approved by the local building department on or after January 1, 2008, would be liable for minimum statutory damages of \$1,000 per offense, instead of \$4,000, when the defendant corrects the alleged construction related accessibility violation within 60 days of being served the complaint.
- A small business defendant (defined as having 25 or fewer employees and no more than \$3.5 million in gross receipts) could have minimum statutory damages liability reduced to \$2,000 for each offense, instead of \$4,000, when defendant corrects an alleged physical accessibility violation within 30 days of being served the complaint.
- These provisions would not apply to reduce statutory damages where the violation was intentional or where the defendant had made or knew of modifications made to the property that was the basis of the plaintiff's claim.
- Does not affect the awarding of actual damages or treble actual damages.
- Defendants who promise to correct a violation within the specified time period also have the option to request an early evaluation conference (EEC) and an immediate mandatory stay of the proceedings, similar to the litigation protections now given to a qualified defendant who had hired a CAsp to inspect the property and issue a report on its compliance status.
- Intent is to incentivize defendants to correct violations rather than to settle and fix nothing.

2. *New provisions to prevent stacking of multiple claims to increase statutory damages*

- Requires that in assessing statutory damages in a deterrence claim, the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation (if any) to mitigate damages must be considered by the court in any action alleging multiple claims for the same construction-related accessibility violation on different particular occasions.
- Uncodified intent language states that this new provision reiterates that where multiple claims are asserted for the same conduct on different occasions, a plaintiff must have a reasonable explanation for the asserted need for multiple visits to a site where a known barrier violation would deny full and equal access, in light of the obligation to mitigate damages. The uncodified intent language recognizes also that a case involving multiple claims for the same violation may be appropriate where there is a reasonable explanation, and there are clear instances where the needs of a person with a disability and circumstances may make any mitigation futile or impossible.

3. *Ban on demands for money and new rules for demand letters*

- Bans prelitigation demands for money, where the plaintiff alleges a construction-related accessibility violation and makes a request or demand for money or an offer or agreement to accept money.
- Provides that a demand letter alleging a construction-related violation or asserting a claim may offer prelitigation settlement negotiations, but may not include a specific request or demand for money. A demand letter may not state any specific potential monetary liability

for any asserted claim or claims, and may only state: “The property owner or tenant, or both, may be civilly liable for actual and statutory damages for a violation of a construction-related accessibility requirement.”

- Uncodified legislative intent language states the Legislature’s policy that the abusive use of the right to petition under Section 52 and Section 54.3, does not promote compliance with the accessibility requirements and erodes public support for and confidence in our laws.

4. *New pleading with specificity requirement for demand letters and complaints*

- Requires any demand letter or complaint asserting a construction-related accessibility claim to state facts sufficient to allow the defendant to identify the basis for the claim, including an explanation of the specific access barrier or barriers the claimant encountered or by which the claimant is allegedly deterred, the date or dates of the alleged violations, and the manner in which the barrier was encountered or in which the claimant was deterred.

5. *State Bar review of demand letters; violation of demand letter and demand for money provisions would be grounds for attorney discipline*

- For a three-year period, requires any demand letter alleging a construction-related accessibility violation to be sent to the State Bar. Requires the demand letter to include the attorney’s State Bar license number.
- Provides that a violation of the ban on making a demand for money in a construction-related accessibility claim, or for sending a demand letter that makes a request or demand for money or an offer or agreement to accept money would be cause for attorney discipline.

6. *Mandatory evaluation conference at option of either defendant of plaintiff*

- Allows either party to request a mandatory evaluation conference (MEC) conducted by the court within 90 to 120 days of the request. Similar to the EEC under existing law.
- These defendants would not be eligible for a court stay of the proceedings.

7. *Mandatory notice to property tenant of CASp status of the property*

- Requires property owner and lessor to notify the tenant in the lease form or rental agreement executed on or after July 1, 2013, whether the property being leased or rented has undergone inspection by a CASp, and if so, whether the property has been or has not been determined to meet all applicable construction-related accessibility standards.

8. *California Commission on Disability Access (CCDA) to receive copies of complaints and demand letters and tabulate data on top ten types of violations alleged*

- Requires a copy of any demand letter and any complaint filed in state or federal court that alleges a construction-related accessibility violation to be sent to CCDA. CCDA tabulates the types and frequency of violations alleged and compiles a list of the top ten frequently alleged violations which would be posted on its website. CCDA would also be directed to report the tabulated data to the Legislature.

9. **CCDA to promote and facilitate accessibility compliance**

- Makes it a priority of the commission to develop and disseminate educational materials and information to promote and facilitate disability access compliance.
- Requires CCDA to work with other government agencies to gather, develop, and post education materials on its website.
- Requires CCDA to develop and post on its website, or work with other agencies to develop, toolkits or educational modules to assist businesses to understand its obligations under the law and to facilitate compliance with the top 10 alleged construction-related violations by type.

10. **Required information regarding disability access compliance to businesses upon renewal of business license**

- Requires a city, county, or city and county, to inform the licensee that under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public.
- Requires the local entity to inform the licensee that information about the compliance requirements and how to comply is available at various state agencies, and to list the website addresses of those agencies.

11. **New add-on fee of \$1 to business license fee to strengthen CASp program and develop educational and training resources at state and local level to promote compliance**

- Requires cities and counties to collect a \$1 fee upon issuance or renewal of a business license or similar instrument to pay for more CASp in local building departments, to reduce costs of CASp testing and certification to encourage more private CASp, to strengthen the CASp program by enabling the Division of State Architect (DSA) to develop audit procedures for the CASp program to maintain quality control, develop “best practices” guidelines, and pay for development of more educational and training resources at state and local level to promote compliance.
- Monies collected split 70% to locals, 30% to DSA.
- Local public entities could use 5% of monies for administration costs and the rest would go to pay for hiring and training of more CASp for local building departments. The other 30% would go to newly created Disability Access and Education revolving fund in DSA for the purposes noted above.
- Requires the State Architect to periodically review the CASp certification and examination fees to ensure they are not excessive, while still covering the cost to administer the program.
- Reduces the application fee for a licensed architect, landscape architect, civil engineer, or structural engineer to a maximum of \$250.