

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
Susan R. McMullan, Senior Attorney, 415-865-7990,
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DATE: October 16, 2009

SUBJECT: Civil Law: Disability Access Litigation (approve form DAL-001)
(Action Required)

Issue Statement

Senate Bill 1608 (Corbett; Stats. 2008; Ch. 549) made changes to existing law concerning disability access litigation, including the addition of section 55.3 to the Civil Code. Section 55.3 relates to construction-related accessibility claims in which a plaintiff represented by an attorney has made a monetary demand or has filed or is about to file a civil complaint. It requires the plaintiff's attorney to provide a written advisory to the defendant with each monetary demand or complaint and requires the Judicial Council to adopt a form that may be used for this purpose. (Civ. Code § 55.3(b) and (c).) This provision of section 55.3 is operative contingent on notice from the state Director of Finance that the California Commission on Disability Access is funded and operating. The Director of Finance gave written notice on October 13, 2009.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective immediately, approve *Important Information for Building Owners and Tenants* (form DAL-001), which contains the information required under Civil Code section 55.3(b).

The proposed form is attached at page 4.

Rationale for Recommendation

Civil Code section 55.3(c) provides: "On or before July 1, 2009, the Judicial Council shall adopt a form that may be used by attorneys to comply with the requirements of subdivision (b). The form shall be in substantially the same format and include all of the

text set forth in subdivision (b).”¹ SB 1608 also provides that certain sections of the legislation, including the section requiring this form, “shall become operative only upon the issuance of a notice by the Director of Finance declaring that the California Commission on Disability Access has been funded and has commenced operations. . . .” The Director of Finance issued this notice on October 13, 2009.

Alternative Actions Considered

As discussed below under Comments From Interested Parties, the committee considered whether the form should be mandatory or optional.

Comments From Interested Parties

The proposal was circulated for public comment during the winter comment cycle, from December 12, 2008, to January 21, 2009. Five individuals or entities submitted comments, which are attached at pages 5–6. Two commentators agreed with the proposal, two agreed if the proposal is modified, and one did not indicate a position, but, based on the nature of the comments, appears to agree if the proposal is modified.

The State Bar of California’s Committee on Administration of Justice (CAJ), which did not indicate a position, recommended that a URL be added in an appropriate place on the form for the web page of the *California Access Compliance Reference Manual* of the Division of the State Architect. As circulated for comment, the form includes a URL for the Division of the State Architect, as required by Civil Code section 55.3(c). CAJ stated, however, that the URL is not as useful as it could be because it is not the specific URL of the Web page for the reference manual and it is not in the most logical and helpful place on the form. In response to this comment, the form was modified to include a more specific URL in the location suggested by CAJ. CAJ also noted that the URL for the Certified Access Specialist Program has become outdated. The form has been modified to include the current URL.

CAJ also questioned whether the form should be a mandatory form, as proposed, or an optional form. Staff agrees that it is not clear what was intended. Civil Code section 55.3(b) states, “An attorney *shall provide* a written advisory . . . in the form described in subdivision (c), and on a page or pages that are separate and clearly distinguishable from the demand for money or complaint.” (Italics added.) However, immediately following the text of the form, the statute states, “[T]he Judicial Council shall adopt a form that *may be used* by attorneys to comply with the requirements of subdivision (b).” (Italics added.) Because the statute uses “may” in connection with use of the form and “shall” modifies the written advisory that is required to be on a page or pages separate from the complaint (not necessarily on the form adopted by the council), the committee believes it is reasonable to interpret the statute as calling for an optional form. It has made this change to the form.

¹ The full text of Senate Bill 1608 is attached.

The Superior Court of Los Angeles County suggested that rules be promulgated to require the filing of a proof of service of the written advisory with the filing of the proof of service of the complaint. The committee will consider whether a new rule is necessary for this purpose. The committee notes that the written advisory is not always required to be served,² but when a complaint is served, the written advisory should be served with it.

The California Association of Legal Document Assistants (CALDA) requested that a space be created on the form for a legal document assistant to include his or her name, address, registration number, and other information required by Business and Professions Code section 6408. That statute requires this information on “any papers or documents prepared or used by the registrant.” CALDA submitted the same comment in response to other proposals circulated during the winter comment cycle. The advisory committee will consider developing in the future an optional standalone form that legal document assistants could use to provide this information by attaching it to any other form.

Implementation Requirements and Costs

The form may be used by attorneys to comply with new requirements for construction-related disability access claims. Use of the form will not result in costs to courts.

Attachments

² Civ. Code §, 55.3(b) provides, “An attorney shall *provide* a written advisory with each demand for money or complaint *sent* to or *served* by him or her upon a defendant. . . .” (Italics added.) “ ‚Complaint’ means a civil complaint that is filed or is to be filed with a court and is *sent* to or *served* upon a defendant on the basis of one or more construction-related accessibility claims, as defined in this section.” (Civ. Code, § 55.3(a)(1), italics added.)

IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS

This form is available in English, Spanish, Chinese, Vietnamese, and Korean through the California Courts Web site. Persons with visual impairments can get assistance in viewing this form through the Web site. The Web site is located at www.courtinfo.ca.gov.

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

You Have Important Legal Obligations.

Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect. (See www.dsa.dgs.ca.gov/access/ud_accessmanual.htm.) Commencing September 1, 2009, information will also be available from the California Commission on Disability Access Web site.

You Have Important Legal Rights.

You are not required to pay any money unless and until a court finds you liable. Moreover, **receipt of this advisory does not necessarily mean you will be found liable for anything.**

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

If a complaint has been filed and served on you and your property has been inspected by a Certified Access Specialist (CASp; see www.dsa.dgs.ca.gov/access/casp.htm), you may have the right to a court stay (temporary stoppage) and early evaluation conference to evaluate the merits of the construction-related accessibility claim against you pursuant to Civil Code section 55.54. At your option, you may be, but need not be, represented by an attorney to file a reply and to file an application for a court stay and early evaluation conference. If you choose not to hire an attorney to represent you, you may obtain additional information about how to represent yourself and how to file a reply without hiring an attorney through the California Courts Web site at www.courtinfo.ca.gov/selfhelp. You may also obtain a form to file your reply to the lawsuit, as well as the form and information for filing an application to request the court stay and early evaluation conference, at that same Web site.

If you choose to hire an attorney to represent you, the attorney who sent you the demand for money or complaint is prohibited from contacting you further unless your attorney has given the other attorney permission to contact you. If the other attorney does try to contact you, you should immediately notify your attorney.

W09-02

Civil Form: Disability Access Litigation (adopt *Important Information for Building Owners and Tenants* (form DAL-001)).

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Association of Legal Document Assistants (CALDA) by Angie Walters Legislative Chairman Roseville, California	AM	California Association of Legal Document Assistants (“CALDA”), Legal Document Assistants (“LDAs”) request a space be created on Judicial Council forms for: name; address; tel.; regis no./exp.; County, which is required by B&PC 6408.	Legal document assistants can add an attachment to the form to provide this information. The committee will consider in the future developing an optional stand alone form that could be used for this purpose as an attachment to any form.
2.	State Bar of California, Committee on Administration of Justice by Saul Bercovitz Staff Attorney	NI	<p>The State Bar of California’s Committee on Administration of Justice (CAJ) has reviewed the proposed new form relating to disability access litigation, and appreciates the opportunity to submit these comments.</p> <p>First, CAJ questions whether this should be a mandatory form (as proposed) or an optional form. Code of Civil Procedure section 55.3(b) states, “An attorney <u>shall provide</u> a written advisory with each demand for money or complaint sent to or served by him or her upon a defendant, <u>in the form described in subdivision (c)</u>, and on a page or pages that are separate and clearly distinguishable from the demand for money or complaint, as follows: ...” (emphasis added). Code of Civil Procedure section 55.3(c) states, “On or before July 1, 2009, the Judicial Council shall adopt a form that <u>may be used</u> by attorneys to comply with the requirements of subdivision (b). The form shall be in substantially the same format and include all of the text set forth in subdivision (b)...” (emphasis added). It is not entirely clear whether these two subdivisions, when read together, result in a mandatory or optional form</p>	The committee agrees that it is not entirely clear whether an optional or a mandatory form was intended but believes it is reasonable to interpret the statute as calling for an optional form.

W09-02**Civil Form: Disability Access Litigation** (adopt *Important Information for Building Owners and Tenants* (form DAL-001)).

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>or whether an attorney reading the statute would conclude that a Judicial Council form must be used.</p> <p>Second, the proposed form includes a URL for the Division of the State Architect, as required by Civil Code section 55.3(c), but that information is not as useful as it could be. The Division of the State Architect is identified in the form in the paragraph under the heading, “You Have Important Legal Obligations.” The form states, “You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect.” This is where a URL would be most useful for persons seeking information about how to comply with their legal obligations, but none is provided here. CAJ recommends inserting the URL to the agency’s California Access Compliance Reference Manual (www.dsa.dgs.ca.gov/Access/ud_accessmanual.htm). CAJ further recommends advising the agency that this form is using that URL, to encourage the agency not to change the URL (as appears to have happened with the URL discussed below) or if a change is made to notify the Judicial Council of the change.</p> <p>Finally, the URL provided for information on the Certified Access Specialist program, in the third paragraph under “You Have Important Legal Rights,” was carried over from the</p>	<p>The URL has been added to the form in the appropriate place.</p> <p>The form has been modified to include the current URL.</p>

W09-02**Civil Form: Disability Access Litigation** (adopt *Important Information for Building Owners and Tenants* (form DAL-001)).

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			legislation, but is currently inoperative. The current URL for information on the program is www.dsa.dgs.ca.gov/Access/casp.htm .	
3.	Superior Court of Kings County by Krystina Cifuentez Deputy Court Administrator III Visalia, California	A	No specific comment.	No response needed.
4.	Superior Court of Los Angeles County	AM	Suggest rules be promulgated to require the filing of a Proof of Service of the written advisory with the filing of the Proof of Service of the complaint.	The committee will consider this for a future comment cycle.
5.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	A	No specific comment.	No response needed.

Senate Bill No. 1608

CHAPTER 549

An act to amend Section 5600 of the Business and Professions Code, to add Section 55.3 to, and to add Part 2.52 (commencing with Section 55.51) and Part 2.53 (commencing with Section 55.55) to Division 1 of, the Civil Code, to amend Sections 4450 and 4459.5 of, and to add Chapter 3.7 (commencing with Section 8299) to Division 1 of Title 2 of, the Government Code, and to amend Section 18949.29 of the Health and Safety Code, relating to disability access, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1608, Corbett. Disabled persons: equal access rights: civil actions.

(1) Existing law provides for the licensure and regulation of persons engaged in the practice of architecture by the California Architects Board.

This bill would require a person licensed to practice architecture, as a condition of license renewal, to complete coursework regarding disability access requirements, as specified, certify that completion to the California Architects Board, and provide specified documentation from the course provider.

(2) Existing law prohibits any person, firm, or corporation from denying or interfering with a disabled person's admittance to or enjoyment of public facilities, or from otherwise interfering with the rights of an individual with a disability, including the right to be accompanied by a guide dog, signal dog, or service dog, as specified. Existing federal law, the Americans with Disabilities Act of 1990, prohibits discrimination against an individual with a disability on the basis of that disability in specified situations, including employment opportunities and access to public accommodations, services, and transportation.

This bill would require an attorney to provide a specified written advisory to a building owner or tenant with each demand for money or complaint for any construction-related accessibility claim, as defined, in a form to be developed by the Judicial Council, and on a separate page clearly distinguishable from the demand for money, as specified.

(3) Existing law authorizes the State Architect to establish a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist with respect to access to buildings for persons with disabilities.

This bill would authorize the State Architect to implement that program with startup funds derived, as a loan, from the reserve of the Public School Planning, Design, and Construction Review Revolving Fund, upon

appropriation by the Legislature, to be repaid as specified. The bill would enact the Construction-Related Accessibility Standards Compliance Act, which would provide for the inspection of sites by certified access specialists and the provision of specified certificates and reports regarding those inspections. The bill would require a local agency, commencing July 1, 2010, to employ or retain at least one building inspector who is a certified access specialist and, commencing January 1, 2014, to employ or retain a sufficient number of building inspectors who are certified access specialists to conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction, as specified. The bill would allow a local agency to charge a permit applicant or member of the public for these services, and would allow a local government to charge or increase inspection fees to the extent necessary to offset the costs of complying with these provisions. By imposing a new requirement on local agencies with respect to building inspectors, the bill would impose a state-mandated local program.

The bill would require a court, with respect to an action involving a construction-related accessibility claim, to issue an order that, among other things, grants a 90-day stay of the proceedings with respect to that claim, schedules an early evaluation conference, and directs the defendant to file with the court under seal and serve on the plaintiff a copy of any relevant Certified Access Specialist inspection report, which shall be subject to a protective court order, as specified, if the defendant has satisfied certain requirements relating to inspection of the site at issue. The bill would require that early evaluation conferences be conducted by a superior court judge or commissioner, or a court early evaluation conference officer, as defined. The bill would provide that damages may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation of construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion, as specified.

(4) Existing law establishes various boards and commissions within state government.

The bill would establish the California Commission on Disability Access for certain purposes relating to disability access, and would require the commission to conduct studies and make reports to the Legislature, as specified. The bill would provide that these provisions shall not be implemented, and shall not remain operative, unless funds are appropriated for that purpose. The bill would appropriate \$80,000 from the General Fund to the commission, which would be available May 1, 2009, to fund its startup, as specified.

(5) Existing law requires all construction inspectors, plans examiners, and building officials to complete a minimum of 45 hours of continuing education for every 3-year period, as specified.

This bill would require that at least 8 of those hours of continuing education relate to disability access requirements, as specified. The bill

would allow a local government to charge or increase inspection fees to the extent necessary to offset any added costs incurred in complying with these provisions.

(6) 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.

(7) The bill would provide that certain provisions described above shall become operative only upon the issuance of a notice by the Director of Finance declaring that the California Commission on Disability Access has been funded and has commenced operations, and certain of those provisions shall cease to be operative if the commission loses funding, or for any other reason ceases operations, as specified.

Appropriation: yes.

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

SECTION 1. Section 5600 of the Business and Professions Code is amended to read:

5600. (a) All licenses issued or renewed under this chapter shall expire at 12 midnight on the last day of the birth month of the licenseholder in each odd-numbered year following the issuance or renewal of the license.

(b) To renew an unexpired license, the licenseholder shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(c) The renewal form shall include a statement specifying whether the licensee was convicted of a crime or disciplined by another public agency during the preceding renewal period and that the licensee's representations on the renewal form are true, correct, and contain no material omissions of fact, to the best knowledge and belief of the licensee.

(d) (1) As a condition of license renewal, a licensee shall have completed coursework regarding disability access requirements pursuant to paragraphs (2) and (3). A licensee shall certify to the board, as a part of the license renewal process, that he or she has completed the required coursework prior to approval of his or her license renewal and shall provide documentation from the course provider that shall include the course title, subjects covered, name of provider and trainer or educator, date of completion, number of hours completed, and a statement about the trainer or educator's knowledge and experience background.

(2) (A) For licenses renewed on and after July 1, 2009, and before January 1, 2010, a licensee shall have completed one hour of coursework.

(B) For licenses renewed on and after January 1, 2010, and before January 1, 2011, a licensee shall have completed two and one-half hours of coursework.

(C) For licenses renewed on and after January 1, 2011, a licensee shall have completed five hours of coursework within the previous two years.

(3) Coursework regarding disability access requirements shall include information and practical guidance concerning requirements imposed by the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Coursework provided pursuant to this paragraph shall be presented by trainers or educators with knowledge and expertise in these requirements. The board shall require that a licensee certify that he or she has satisfied the requirements of this subdivision as a condition of license renewal.

SEC. 2. Section 55.3 is added to the Civil Code, to read:

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

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

(2) “Demand for money” means a written document that is provided to a building owner or tenant, or an agent or employee of a building owner or tenant, that contains a request for money on the basis of one or more construction-related accessibility claims, as defined in paragraph (3).

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

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

IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS

This form is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the Judicial Council Internet Web site at <http://www.courtinfo.ca.gov>.

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

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect. Commencing September 1, 2009, information will also be available from the California Commission on Disability Access Internet Web site.

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

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

If a complaint has been filed and served on you and your property has been inspected by a Certified Access Specialist (CASp; see www.dsa.dgs.ca.gov/casp), you may have the right to a court stay (temporary stoppage) and early evaluation conference to evaluate the merits of the construction-related accessibility claim against you pursuant to Civil Code Section 55.54. At your option, you may be, but need not be, represented by an attorney to file a reply and to file an application for a court stay and early evaluation conference. If you choose not to hire an attorney to represent you, you may obtain additional information about how to represent yourself and how to file a reply without hiring an attorney through the Judicial Council Internet Web site at <http://www.courtinfo.ca.gov/selfhelp/>. You may also obtain a form to file your reply to the lawsuit, as well as the form and information for filing an application to request the court stay and early evaluation conference at that same Web site.

If you choose to hire an attorney to represent you, the attorney who sent you the demand for money or complaint is prohibited from contacting you further unless your attorney has given the other attorney permission to contact you. If the other attorney does try to contact you, you should immediately notify your attorney.

- (c) On or before July 1, 2009, the Judicial Council shall adopt a form that may be used by attorneys to comply with the requirements of subdivision (b). The form shall be in substantially the same format and include all of the text set forth in subdivision (b). The form shall be available in English,

Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the form is available in additional languages, and the Judicial Council Internet Web site address where the different versions of the form may be located. The form shall include Internet Web site information for the Division of the State Architect and, when operational, the California Commission on Disability Access.

(d) Subdivision (b) shall apply only to a demand for money or complaint made by an attorney. Nothing in this section is intended to affect the right to file a civil complaint under any other law or regulation protecting the physical access rights of persons with disabilities. Additionally, nothing in this section requires a party acting in propria persona to provide or send a demand for money to another party before proceeding against that party with a civil complaint.

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

SEC. 3. Part 2.52 (commencing with Section 55.51) is added to Division 1 of the Civil Code, to read:

**PART 2.52. CONSTRUCTION-RELATED ACCESSIBILITY
STANDARDS COMPLIANCE**

55.51. This part shall be known, and may be cited, as the Construction-Related Accessibility Standards Compliance Act. Notwithstanding any other provision of law, the provisions of this part shall apply to any construction-related accessibility claim, as defined in this part, including, but not limited to, any claim brought under Section 51, 54, 54.1, or 55.

55.52. (a) For purposes of this part, the following definitions apply:

(1) “Construction-related accessibility claim” means any civil claim in a civil action with respect to a place of public accommodation, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, based wholly or in part on an alleged violation of any construction-related accessibility standard, as defined in paragraph (6).

(2) “Application for stay and early evaluation conference” means an application to be filed with the court that meets the requirements of subdivision (c) of Section 55.54.

(3) “Certified access specialist” or “CASp” means any person who has been certified pursuant to Section 4459.5 of the Government Code.

(4) “CASp-inspected” means the site was inspected by a CASp and determined to meet all applicable construction-related accessibility standards pursuant to paragraph (1) of subdivision (a) of Section 55.53.

(5) “CASp determination pending” means the site was inspected by a CASp and is pending a determination by the CASp that the site meets applicable construction-related accessibility standards pursuant to paragraph (2) of subdivision (a) of Section 55.53.

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

(7) “Place of public accommodation” has the same meaning as “public accommodation,” as set forth in Section 12181(7) of Title 42 of the United States Code and the federal regulations adopted pursuant to that section.

(8) “Qualified defendant” means a defendant in an action that includes a construction-related accessibility claim that is asserted against a place of public accommodation that met the requirements of “CASp-inspected” or “CASp determination pending” prior to the date the defendant was served with the summons and complaint in that action. To be a qualified defendant, the defendant is not required to have been the party who hired any CASp, so long as the basis of the alleged liability of the defendant is a construction-related accessibility claim. To determine whether a defendant is a qualified defendant, the court need not make a finding that the place of public accommodation complies with all applicable construction-related accessibility standards as a matter of law. The court need only determine that the place of public accommodation has a status of “CASp-inspected” or “CASp determination pending.”

(9) “Site” means a place of public accommodation.

(b) Unless otherwise indicated, terms used in this part relating to civil procedure have the same meanings that those terms have in the Code of Civil Procedure.

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 CASp-inspected 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 of compliance 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 a CASp determination pending 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 STAY (TEMPORARY STOPPAGE) OF THE CLAIM AND AN EARLY EVALUATION CONFERENCE.

IN ORDER TO REQUEST THE STAY AND EARLY EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND THE PLAINTIFF WITH THE COPY OF A WRITTEN INSPECTION REPORT BY THE CERTIFIED ACCESS SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION 55.54. THE APPLICATION FORM AND INFORMATION ON HOW TO REQUEST A STAY

AND EARLY EVALUATION CONFERENCE MAY BE OBTAINED AT <http://www.courtinfo.ca.gov/selfhelp/>.

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

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

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

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

(e) (1) Every CASp who completes an inspection of a place of public accommodation shall, upon a determination that the site either meets applicable construction-related accessibility standards pursuant to paragraph

(1) of subdivision (a) or is “CASp determination pending” pursuant to paragraph (2) of subdivision (a), provide the building owner or tenant requesting the inspection with a numbered disability access inspection certificate indicating that the site has been inspected by a certified access specialist. The disability access inspection certificate shall be dated and signed by the CASp inspector, and shall contain the inspector’s name and license number. Upon issuance of a certificate, the CASp shall record the issuance of the numbered certificate, the name and address of the recipient, and the type of report issued pursuant to subdivision (a) in a record book the CASp shall maintain for that purpose.

(2) Beginning March 1, 2009, the State Architect shall make available for purchase by any local building department or CASp sequentially numbered disability access inspection certificates that are printed with a watermark or other feature to deter forgery and that comply with the information requirements specified in subdivision (a). The certificate shall be in substantially the following form:

PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE INSERTED

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

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

55.54. (a) (1) An attorney who causes a summons and complaint to be served in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the following notice to the defendant on separate papers that shall be served with the summons and complaint:

NOTICE TO DEFENDANT

YOU MAY BE ENTITLED TO ASK FOR A STAY (TEMPORARY STOPPAGE) AND EARLY EVALUATION CONFERENCE IN THIS LAWSUIT.

If the construction-related accessibility claim pertains to a site that has been inspected by a Certified Access Specialist (CASp) and you have an inspection report for that site, you may make an immediate request for a court stay and early evaluation conference in the construction-related accessibility claim by filing the attached application form with the court. You may be entitled to the court stay and early evaluation conference regarding the accessibility claim only if ALL of the statements in the application form are true.

The court will schedule the conference to be held within 50 days after you file the attached application form. The court will also issue an immediate stay of the proceedings unless the plaintiff has obtained a temporary restraining order in the construction-related accessibility claim. At your option, you may be, but need not be, represented by an attorney to file the application to request the early evaluation conference. You may obtain a copy of the application form, filing instructions, and additional information about the stay and early evaluation conference through the Judicial Council Internet Web site at <http://www.courtinfo.ca.gov/selfhelp/>.

You may file the application after you are served with a summons and complaint, but no later than your first court pleading or appearance in this case, which is due within 30 days after you receive the summons and complaint. If you do not have an attorney, you will need to file the application within 30 days after you receive the summons and complaint to request the stay and early evaluation conference. If you do not file the application, you will still need to file your reply to the lawsuit within

30 days after you receive the summons and complaint to contest it. You may obtain more information about how to represent yourself and how to file a reply without hiring an attorney at <http://www.courtinfo.ca.gov/selfhelp/>. If a plaintiff representing himself or herself hires an attorney after the case is filed, you will have 30 days to file an application for a court stay and early evaluation conference after you receive a Notice of Substitution of Counsel, unless an early evaluation conference or settlement conference has already been held.

You may file the application form without the assistance of an attorney, but it may be in your best interest to immediately seek the assistance of an attorney experienced in disability access laws when you receive a summons and complaint. You may make an offer to settle the case, and it may be in your interest to put that offer in writing so that it may be considered under Civil Code Section 55.55.

(2) An attorney who files a Notice of Substitution of Counsel to appear as counsel for a plaintiff who, acting in *propria persona*, had previously filed a complaint in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the notice specified in paragraph (1) upon the defendant on separate pages that shall be attached to the Notice of Substitution of Counsel.

(b) (1) Notwithstanding any other provision of law, upon being served with a summons and complaint asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant may file a request for a court stay and early evaluation conference in the proceedings of that claim prior to or simultaneous with the qualified defendant's responsive pleading or other initial appearance in the action that includes the claim. If the qualified defendant filed a timely request for stay and early evaluation conference before a responsive pleading was due, the period for filing a responsive pleading shall be tolled until the stay is lifted. Any responsive pleading filed simultaneously with a request for stay and early evaluation conference may be amended without prejudice, and the period for filing that amendment shall be tolled until the stay is lifted.

(2) Notwithstanding any other provision of law, if the plaintiff had acted in *propria persona* in filing a complaint that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant who is served with a Notice of Substitution of Counsel shall have 30 days to file an application for a stay and an early evaluation conference. The application may be filed prior to or after the defendant's filing of a responsive pleading or other initial appearance in the action that includes the claim, except that an application may not be filed in a claim in which an early evaluation conference or settlement conference has already been held on the claim.

(c) (1) An application for an early evaluation conference and stay shall include a signed declaration that declares both of the following:

(A) The site identified in the complaint has been CASp-inspected or is CASp determination pending and, if the site is CASp-inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of the defendant's knowledge.

(B) An inspection report pertaining to the site has been issued by a CASp. The inspection report shall be provided to the court and the plaintiff at least 15 days prior to the court date set for the early evaluation conference.

(2) The following provisional request form may be used and filed by a qualified defendant until a form is adopted by the Judicial Council for that purpose pursuant to subdivision (k):

PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE INSERTED

(3) The provisional form and any replacement Judicial Council form shall also provide space for the court's order pursuant to subdivision (d), the defendant's declaration of proof of service of the application, and the notice of the court's order.

(d) Upon the filing of an application for stay and early evaluation conference by a qualified defendant, the court shall immediately issue an order that does all of the following:

(1) Grants a 90-day stay of the proceedings with respect to the construction-related accessibility claim, unless the plaintiff has obtained temporary injunctive relief that is still in place for the construction-related accessibility claim.

(2) Schedules a mandatory early evaluation conference for a date as soon as possible from the date of the order, but in no event later than 50 days after issuance of the order, and in no event earlier than 21 days after the filing of the request.

(3) Directs the parties, and any other person whose authority is required to negotiate and enter into settlement, to appear in person at the time set for the conference. Appearance by counsel shall not satisfy the requirement that the parties or those with negotiation and settlement authority personally appear, provided, however, that the court may allow a party who is unable to attend in person due to his or her disability to participate in the hearing by telephone or other alternative means or through a representative authorized to settle the case.

(4) Directs the defendant to file with the court under seal and serve on the plaintiff a copy of any relevant CASp inspection report at least 15 days before the date of the conference, which shall be subject to a protective court order maintaining the confidentiality of the report.

(5) Directs the plaintiff to file with the court and serve on the defendant at least 15 days before the date of the conference a statement that includes, to the extent reasonably known, for use solely for the purpose of the early evaluation conference, all of the following:

(A) An itemized list of specific conditions on the subject premises that are the basis of the claimed violations of construction-related accessibility standards in the plaintiff's complaint.

(B) The amount of damages claimed.

(C) The amount of attorney's fees and costs incurred to date, if any, that are being claimed.

(D) Any demand for settlement of the case in its entirety.

(e) (1) A party failing to comply with any court order may be subject to court sanction at the court's discretion.

(2) The court shall lift the stay when the defendant has failed to file and serve the CASp inspection report prior to the early evaluation conference and has failed also to produce the report at the time of the early evaluation conference, unless the defendant shows good cause for that failure.

(3) The court may lift the stay at the conclusion of the early evaluation conference upon a showing of good cause by the plaintiff. Good cause may

include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp.

(4) The court may lift the seal and protective order on a CASp inspection report filed and served pursuant to subdivision (d) at the conclusion of the stay or a later time upon a showing of good cause by any party. Good cause may include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp. Any protective order or court seal imposed pursuant to subdivision (d) shall terminate upon the conclusion of the claim.

(f) All discussions at the early evaluation conference shall be subject to Section 1152 of the Evidence Code. It is the intent of the Legislature that the purpose of the evaluation conference shall include, but not be limited to, evaluation of all of the following:

(1) Whether the defendant is entitled to the 90-day stay for some or all of the identified issues in the case, as a qualified defendant.

(2) The current condition of the site and the status of any plan of corrections, including whether the qualified defendant has corrected or is willing to correct the alleged violations, and the timeline for doing so.

(3) Whether the case, including any claim for damages or injunctive relief, can be settled in whole or in part.

(4) Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute.

(g) Nothing in this section precludes any party from making an offer to compromise pursuant to Section 998 of the Code of Civil Procedure.

(h) The court may schedule additional conferences and may extend the 90-day stay for good cause shown, but not to exceed one additional 90-day extension.

(i) Early evaluation conferences shall be conducted by a superior court judge or commissioner, or a court early evaluation conference officer. A commissioner shall not be qualified to conduct early evaluation conferences pursuant to this subdivision unless he or she has received training regarding disability access requirements imposed by the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. For purposes of this subdivision, a "court early evaluation conference officer" means an attorney employed by the court who has received training regarding disability access requirements imposed by the Americans with Disabilities Act of 1990, state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Attorneys serving in this capacity may also be utilized by the court for other purposes not related to these proceedings.

(j) Nothing in this part shall be deemed to make any inspection report, opinion, statement, or other finding or conclusion of a CASp binding on the court, or to abrogate in any manner the ultimate authority of the court to make all appropriate findings of fact and law. The CASp inspection report and any opinion, statement, finding, or conclusion therein shall be given the weight the trier of fact finds that it deserves.

(k) Nothing in this part shall be construed to invalidate or limit any California construction-related accessibility standard that provides greater or equal protection for the rights of individuals with disabilities than is afforded by the Americans with Disabilities Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the federal regulations adopted pursuant to that act.

(l) (1) The Judicial Council shall prepare and post on its Internet Web site instructions and a form for a qualified defendant to use to file an application for stay and early evaluation conference as provided in subdivisions (b) and (c), and a form for the court's notice of stay and early evaluation conference. Until those forms are adopted, the Judicial Council shall post on its Internet Web site the provisional forms set forth in subdivision (c).

(2) The Judicial Council shall also prepare and post on its Internet Web site instructions and a cover page to assist plaintiffs and defendants, respectively, to comply with their filing responsibilities under subdivision (d). The cover page shall also provide for the party's declaration of proof of service of the pertinent document served under the court order.

(m) The stay provisions shall not apply to any construction-related accessibility claim in which the plaintiff has been granted temporary injunctive relief that remains in place.

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

(o) This part shall apply only to claims filed on or after January 1, 2009. Nothing in this part is intended to affect litigation filed before that date.

(p) Nothing in this part is intended to affect existing law regarding class action requirements.

SEC. 4. Part 2.53 (commencing with Section 55.55) is added to Division 1 of the Civil Code, to read:

PART 2.53. ATTORNEY'S FEES AND STATUTORY DAMAGES IN CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS CLAIMS

55.55. Notwithstanding subdivision (f) of Section 55.54, in determining an award of reasonable attorney's fees and recoverable costs with respect to any construction-related accessibility claim, the court may consider, along with other relevant information, written settlement offers made and rejected by the parties. Nothing in this section affects or modifies the inadmissibility of evidence regarding offers of compromise pursuant to Section 1152 of the Evidence Code, including, but not limited to, inadmissibility to prove injury or damage.

55.56. (a) Statutory damages under either subdivision (a) of Section 52 or subdivision (a) of Section 54.3 may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation or violations of one or more construction-related accessibility

standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion.

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

(c) A violation 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.

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

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

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

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

(f) 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.

55.57. (a) This part shall apply only to claims filed on or after January 1, 2009. Nothing in this part is intended to affect litigation filed before that date, and no inference shall be drawn from provisions contained in this part concerning the state of the law as it existed prior to January 1, 2009.

(b) Nothing in this part is intended to affect existing law regarding class action requirements.

SEC. 5. Section 4450 of the Government Code is amended to read:

4450. (a) It is the purpose of this chapter to ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities.

(b) The State Architect shall develop and submit proposed building standards to the California Building Standards Commission for approval

and adoption pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and shall develop other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities. The regulations and building standards relating to access for persons with disabilities shall be consistent with the standards for buildings and structures that are contained in pertinent provisions of the latest edition of the selected model code, as adopted by the California Building Standards Commission, and these regulations and building standards shall contain additional requirements relating to buildings, structures, sidewalks, curbs, and other related facilities the State Architect determines are necessary to assure access and usability for persons with disabilities. In developing and revising these additional requirements, the State Architect shall consult with the Department of Rehabilitation, the League of California Cities, the California State Association of Counties, and at least one private organization representing and comprised of persons with disabilities.

(c) In no case shall the State Architect's regulations and building standards prescribe a lesser standard of accessibility or usability than provided by the Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336).

(d) On or before December 31, 2010, the Division of the State Architect shall prepare and submit to the United States Department of Justice for certification proposed amendments to Part 2 of Title 24 of the California Code of Regulations that would ensure California's building standards for disability access in commercial occupancies are consistent with the federal regulations cited in subdivision (c).

SEC. 6. Section 4459.5 of the Government Code is amended to read:

4459.5. (a) The State Architect shall establish and publicize a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. No later than January 1, 2005, the State Architect shall determine minimum criteria a person is required to meet in order to be a certified access specialist, which may include knowledge sufficient to review, inspect, or advocate universal design requirements, completion of specified training, and testing on standards governing access to buildings for persons with disabilities.

(b) The State Architect may implement the program described in subdivision (a) with startup funds derived, as a loan, from the reserve of the Public School Planning, Design, and Construction Review Revolving Fund, upon appropriation by the Legislature. That loan shall be repaid when sufficient fees have been collected pursuant to Section 4459.8.

SEC. 7. Chapter 3.7 (commencing with Section 8299) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 3.7. THE CALIFORNIA COMMISSION ON DISABILITY ACCESS

8299. The Legislature finds and declares that, despite the fact that state law has provided persons with disabilities the right to full and equal access to public facilities since 1968, and that a violation of the right of any person under the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) has also constituted a violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) since 1992, persons with disabilities are still being denied full and equal access to public facilities in many instances. The Legislature further finds and declares that businesses in California have the responsibility to provide full and equal access to public facilities as required in the laws and regulations, but that compliance may be thwarted in some cases by conflicting state and federal regulations, which in turn results in unnecessary litigation. With a view to developing recommendations that will enable persons with disabilities to exercise their right to full and equal access to public facilities, and that will facilitate business compliance with the laws and regulations to avoid unnecessary litigation, the Legislature has created the California Commission on Disability Access.

8299.01. (a) There shall be established in the state government, on or before May 1, 2009, the California Commission on Disability Access. The commission shall consist of 11 public members, and six ex officio nonvoting members, appointed as follows:

(1) Two public members appointed by the Senate Committee on Rules, with one appointee from the business community and one appointee from the disability community. The Senate Committee on Rules shall request and consider nominations from the business community and the disability community for these appointments.

(2) Two public members appointed by the Speaker of the Assembly, with one appointee from the business community and one appointee from the disability community. The Speaker of the Assembly shall request and consider nominations from the business community and the disability community for these appointments.

(3) Seven public members appointed by the Governor, with the consent of the Senate. Four of the Governor's appointees shall be from the disability community. Three appointees shall be from the business community, including an appointee representative from the California Business Properties Association. The Governor shall request and consider nominations from the business community and the disability community for these appointments.

(4) The State Architect, or his or her representative, as a nonvoting ex officio member.

(5) The Attorney General, or his or her representative, as a nonvoting ex officio member.

(6) Two members of the Senate, appointed by the Senate Committee on Rules as nonvoting ex officio members. One member shall be from the majority party and one member shall be from the minority party.

(7) Two members of the Assembly, appointed by the Speaker of the Assembly, as nonvoting ex officio members. One member shall be from the majority party, and one member shall be from the minority party.

(b) It is the intent of this section that the commission shall be broadly representative of the ethnic, gender, and racial diversity of the population of California. It is further the intent of this section that both of the following apply:

(1) The appointees from the disability community shall be persons with a disability relating to, but not limited to, vision, hearing, mobility, breathing, speech, cognitive, cardiac, emotional, developmental, learning, psychological, or immunological disabilities.

(2) The commission recruitment and appointment process engage in identifying qualified disability community representatives who should possess elements of the following qualifications:

(A) Identify as people with disabilities, activity limitations, or both.

(B) Have personal experience with disability and disability advocacy and the ability to speak broadly on disability access issues.

(C) Are knowledgeable about cross-disability access issues, including, but not limited to, hearing, vision, mobility, speech, and cognitive limitations.

(D) Are knowledgeable about a variety of physical, communication, and program access issues.

(E) Are involved with segments of national, state, or local constituencies of the disability community, such as active involvement in broad-based disability organizations.

(F) Have in place and use communication networks to facilitate communication with the segments of the disability community they are representing, including, but not limited to, segments of diverse ethnic, cultural, sex, sexual orientation, age, and linguistic communities that are representative of the diverse population of Californians with disabilities.

(c) Public members shall be appointed for three-year terms, except that, with respect to the initial appointees, the Governor shall appoint three members for a one-year term, two members for a two-year term, and two members for a three-year term. The Senate Committee on Rules and the Speaker of the Assembly shall each initially appoint one member for a two-year term and one member for a three-year term. Public members may be reappointed for additional terms.

(d) Vacancies shall be filled by the appointing authority for the unexpired portion of the terms.

8299.02. (a) Public members of the commission shall receive one hundred dollars (\$100) per diem while on official business of the commission, not to exceed 12 days per year. Each member of the commission shall also be entitled to receive his or her actual necessary traveling expenses while on official business of the commission.

(b) The commission shall select annually from its membership a chairperson who shall be a representative from the disability community, and a vice chairperson who shall be a representative from the business community.

8299.03. Meetings of the commission shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

8299.04. The commission shall have the powers and authority necessary to carry out the duties imposed upon it by this chapter, including, but not limited to, the following:

(a) To employ any administrative, technical, or other personnel that may be necessary for the performance of its powers and duties.

(b) To hold hearings, make and sign any agreement, and do or perform any act, including the collection of relevant information, that may be necessary, desirable, or proper to carry out the purposes of this chapter.

(c) To cooperate with, and secure the cooperation of, any department, division, board, bureau, commission, or other agency of the state to facilitate the proper execution of its powers and duties under this chapter.

(d) To appoint advisers or advisory committees from time to time when the commission determines that the experience or expertise of those advisers or advisory committees is needed for projects of the commission. Section 11009 shall apply to advisers or advisory committees.

(e) To accept any federal funds granted by an act of Congress or by executive order for any purpose of this chapter.

(f) To accept any gift, donation, grant, or bequest for any purpose of this chapter.

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

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

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

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

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

(b) (1) The commission shall act as an information center on the status of compliance in California with state laws and regulations providing persons with disabilities full and equal access to public facilities. To this end, it shall publish a biennial report, which may be combined with the biennial report required in odd-numbered years pursuant to subdivision (e), on the state of disability access compliance by both the public and private sector. The

report shall be written in general terms and shall not identify any particular violators.

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

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

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

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

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

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

8299.06. The commission, as soon as practicable, but in no event later than July 1, 2010, shall develop, in consultation with the staff of the California Building Standards Commission, a master checklist for disability access compliance that may be used by building inspectors.

8299.07. The commission shall study the operation of Section 55.54 of the Civil Code to assess whether it is operating to achieve its desired goal of reducing unnecessary civil actions that seek attorney's fees and damages but that do not facilitate compliance with state laws and regulations governing disability access, and whether that section is unduly impacting claims brought to facilitate compliance. The commission shall report its findings and any recommendations to the Legislature no earlier than July 1, 2013, and no later than July 1, 2014.

8299.08. (a) The commission, within its purview, is expressly authorized to inform the Legislature of its position on any legislative proposal pending before the Legislature and to urge the introduction of legislative proposals.

(b) The commission is expressly authorized to state its position and viewpoint on issues developed in the performance of its duties and responsibilities as specified in this chapter.

8299.09. With respect to its duties, the commission shall be an advisory commission only, and there shall be no right or obligation on the part of the state to implement the findings of the commission without further legislation that specifically authorizes that the evaluations, determinations, and findings of the commission be implemented.

8299.10. The commission shall hire staff or contract for those experts or technical and professional services that may be required for the completion of any task authorized or study required by this chapter. Staff hired pursuant

to this section shall be hired in compliance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2). Contracts awarded pursuant to this section shall be in compliance with Section 19130. The commission is expressly encouraged and authorized to seek the technical and legal assistance of other state agencies and departments in fulfilling its statutory responsibilities.

8299.11. This chapter shall not be implemented, and shall not remain operative, unless funds are appropriated for that purpose by the Legislature in the annual Budget Act or another statute.

SEC. 8. Section 18949.29 of the Health and Safety Code is amended to read:

18949.29. (a) All construction inspectors, plans examiners, and building officials shall complete a minimum of 45 hours of continuing education for every three-year period, with at least eight hours regarding disability access requirements pursuant to subdivision (d). A local government may charge or increase inspection fees to the extent necessary to offset any added costs incurred in complying with this section.

(b) Providers of continuing education may include any organizations affiliated with the code enforcement profession, community colleges, or other providers of similar quality, as determined by the local agency.

(c) For purposes of this section, “continuing education” is defined as that education relating to the enforcement of Title 24 of the California Code of Regulations, and any other locally enforced building and construction standards, including, but not limited to, the model uniform codes adopted by the state. When a local agency selects a model code organization as a provider of continuing education or certification programs regarding the enforcement of a model code adopted by the state, the local agency shall give preference to the organization responsible for promulgating or drafting that model code.

(d) Continuing education regarding disability access requirements shall include information and practical guidance concerning requirements imposed by the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Continuing education provided pursuant to this subdivision shall be presented by trainers or educators with knowledge and expertise in these requirements.

SEC. 9. The Legislature finds and declares all of the following:

(a) Section 55.55 of the Civil Code, as added by Section 4 of this act, is intended to reflect the longstanding principle that when a party prevails in a civil rights case the amount of attorney’s fees to be awarded is based upon equitable considerations and a variety of factors, including, but not limited to, any written settlement offers made and rejected and whether the prevailing party failed to obtain a more favorable judgment or award than the settlements offered.

(b) Section 55.56 of the Civil Code, as added by Section 4 of this act, concerns eligibility to recover statutory damages under the Unruh Civil Rights Act or the Disabled Persons Act. It provides that those damages may

be recovered in a construction-related accessibility claim only when the plaintiff either personally encounters a violation on a particular occasion or is deterred from accessing a place of public accommodation on a particular occasion. With respect to deterrence, a plaintiff must, among other requirements, have had actual knowledge of the violation or violations in order to be deterred, based on the circumstances of the individual's experience. This statement is intended to reflect current case law.

(c) The term “full and equal access,” as used in Section 55.56 of the Civil Code, as added by Section 4 of this act, is intended to encompass without change the existing obligations of both Section 51 of the Civil Code, including full and equal accommodations, advantages, facilities, privileges, and services, and Section 54.3 of the Civil Code, including full and equal access to accommodations, advantages, facilities, and privileges. “Full and equal access” is also intended to mean “equal access” as that term is used in case law, and therefore, is not an expansion of existing law.

(d) Subdivision (e) of Section 55.56 of the Civil Code, as added by Section 4 of this act, provides that not every violation of a construction-related accessibility standard constitutes a separate offense entitling a plaintiff to a separate award of statutory damages, even if the plaintiff personally encountered more than one violation. A restaurant, convenience store, or theater normally serves only one function — a place to eat, shop, or watch a movie — and multiple violations of one or more construction-related accessibility standards at such a place do not constitute separate denials of full and equal access. By contrast, other places of public accommodation offer more than one type of service, facility, or other function. For example, a hotel or resort may offer sleeping rooms, a restaurant, a golf course, and a spa. Likewise, a shopping center may consist of one large common area and many separate stores and restaurants. If the place of public accommodation consists of such distinct facilities offering distinct services, statutory damages may be assessed based on each denial of full and equal access to the distinct facility, but not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred.

(e) (1) Section 55.54 of the Civil Code, as added by Section 3 of this act, requires a qualified defendant to file a copy of the relevant certified access specialist report with the court, which is to be maintained under seal and kept confidential during the litigation, except upon a showing of good cause. Similarly, a protective order is granted to the certified access specialist report that the qualified defendant is required to provide to the plaintiff.

(2) This act uniquely requires the submittal to the court of a document at a very early stage of the proceedings, whereas that document might not otherwise become a court record until the trial of the claim. Although court records are normally presumed to be public and open, statutorily mandated confidentiality is necessary for these reports because of the unique and special circumstances involved here. Specifically, there is an overriding interest in promoting greater compliance with construction-related

accessibility standards by encouraging businesses to voluntarily obtain CASp reports and protecting those qualified defendants from unnecessary litigation. Thus, there is an overriding interest supporting the sealing of the CASp report that overcomes the normally paramount right of public access to the record, and there is a substantial probability that this interest will be prejudiced if the record is not sealed. In addition, the proposed sealing is narrowly tailored to the duration of the litigation, and there are no less restrictive means to achieve the overriding interest.

(3) This act also uniquely requires the defendant to provide the CASp report to the plaintiff at a very early stage of the proceedings. Normally, the exchange of potential evidence is handled through the discovery process, in which case a CASp report might not be furnished except pursuant to a protective order issued by the court or pursuant to a stipulation of the parties. In order to enhance the utility of the early evaluation conference and to avoid unnecessary court proceedings for a protective order, this act requires a qualified defendant to provide the plaintiff with the CASp report at a very early stage of the proceedings, but subject to a protective order for the duration of the proceedings, unless good cause is shown by any party for the court to lift the protective order.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 11. There is hereby appropriated eighty thousand dollars (\$80,000) from the General Fund to the California Commission on Disability Access, which shall be available May 1, 2009, to fund the startup of the commission pursuant to Section 8299.01 of the Government Code.

SEC. 12. (a) Sections 2, 3, and 4 of this act shall become operative only upon issuance of a notice by the Director of Finance declaring that the California Commission on Disability Access has been funded and has commenced operations.

(b) If the commission loses funding, or for any other reason ceases operations, both of the following shall apply:

(1) Sections 55.51 and 55.52, subdivision (c) of Section 55.53, and subdivision (a) of Section 55.54 of the Civil Code, as added by Section 3 of this act, shall become inoperative.

(2) The remaining provisions of Section 55.54 shall remain operative as follows:

(A) Subdivisions (j) and (k) shall have general application.

(B) The remaining subdivisions shall be available only to a defendant in a construction-related accessibility claim relating to a place of public accommodation for which a CASp inspection and report was obtained prior to the date of the commission ceasing operations.

(c) If the commission loses funding or ceases operations for any other reason on or before January 1, 2014, Sections 55.55 and 55.56 of the Civil Code, as added by Section 4 of this act shall become inoperative on the date

the commission ceases operations, except as to a construction-related accessibility claim that was filed before the date the commission ceased operations.

(d) The commission shall issue a notice of its date of ceasing operation upon the occurrence of that event. The Director of Finance also shall issue a notice within 30 days of the commission losing its funding or ceasing operations.

(e) Any notice required under this section shall be sent to the chairs of the Committee on Judiciary of the Senate and the Assembly, the Judicial Council, and the State Bar of California, and posted on the respective Internet Web sites of the Department of Finance, the Division of the State Architect, and the Commission on Disability Access.