

## **New California Senate Bill Protects Businesses from Predatory Construction-Related ADA Lawsuits and Provides Incentives for ADA Compliance**

*SB 1186 reduces statutory damages and provides litigation protections for Defendants who timely correct construction-related accessibility violations of the Unruh Civil Rights Act. The new reform bans the practice of "demand for money" letters, deters Plaintiffs from forcing quick settlements by stacking claims based on alleged repeat violations, and provides incentives for businesses to comply with ADA law.*

### **SIGNIFICANCE OF SB 1186**

On September 19, 2012, Gov. Jerry Brown signed Senate Bill 1186 into law, codified in California Civil Code Section 55.3 et seq., effective immediately. The law was designed to reduce the number of frivolous ADA claims filed in California and to encourage businesses and tenants with buildings open for business to the public to comply with California's construction-related ADA requirements.

The prior ADA legislation allowed for attorneys to make "boilerplate" pre-litigation demand letters to businesses and lessors for construction-related accessibility claims, requesting monetary demands without relaying specific information regarding the alleged ADA violations. Additionally, the existing law provided for statutory damages in a construction-related accessibility claim if a Plaintiff was denied access on a particular occasion for up to a maximum of three times the amount of actual damages. The minimum recovery was set at \$4,000 or, for certain violations, \$1,000 for each offense.

### **KEY PROTECTIONS AND INCENTIVES UNDER THE NEW LAW**

The Legislature designed the new law to protect California businesses from abusive demand for money letters and lawsuits and to encourage businesses and tenants to correct any ADA violations at their properties. Highlights of the new law include the following:

**Pre-Litigation Procedures:** With the passage of SB 1186, counsel for claimants must provide a written advisory to potential Defendants or Defendants with each demand letter or complaint alerting the business owner or tenant to the basis of the claim(s). Letters must describe the barriers to access encountered with enough detail about the location of each barrier to allow the business or tenant to identify it. Claimants must also explain how the barriers interfered with their use of or access to the public accommodations and state the date(s) on which the barriers were encountered. The new law also prohibits claimants from requesting money or issuing a demand in the pre-litigation demand letter.

**Filing Requirements:** Plaintiffs must now verify their Complaints. Further, they must serve any Defendant with an advisory note regarding the Defendant's right to request a stay of proceedings and an early evaluation conference. The new law also imposes a duty to mitigate damages. In an effort to curb stacking of claims, the legislation requires Plaintiffs to explain why they visited the same business with a known uncorrected barrier to access repeatedly. The Court will weigh the reasonableness of Plaintiff's conduct.

**Potential Reduced Penalties and Stay of Proceedings:** The new law reduces statutory penalties for businesses and lessors who make good faith efforts to comply with construction-related ADA laws. The minimum exposure of

Defendants with reports from a certified access specialist or with new construction after January 1, 2008, drops to \$1,000 per offense if the Defendants correct all construction-related violations that are the subject of the claim within 60 days of being served with the complaint and meet other related requirements in the law. For small businesses and tenants, the bill would reduce the minimum liability to \$2,000 per offense if the Defendant makes all repairs within 30 days of being served with the complaint. (Small businesses are defined as having fewer than 25 employees and no more than \$3.5 million in gross receipts.) Small businesses may also be entitled to a court stay and early evaluation conference.

**Benefits of Inspections by Certified Access Specialists:** Certified access specialist ("CASp") certification may entitle Defendants to receive a stay of proceedings and an early evaluation conference.

A CASp must provide a written report upon completion of an inspection. The report must either (1) state the site meets all applicable construction-related accessibility standards or (2) identify any corrections needed to meet the standards along with a schedule of completion for each of the corrections within a reasonable time. The property owner should maintain copies of the reports and documentation regarding any corrections made.

In addition to potentially entitling the business or lessor to a stay and early evaluation conference, the CASp report may reduce the property owner's exposure as discussed above. This is true even if the owner has not completed the corrections as of the time suit is filed.

**New Lease Requirements:** In an effort to ensure ADA compliance, the bill requires a commercial property owner to state on a lease or rental agreement executed on or after July 1, 2013, whether the property being leased or rented has undergone inspection by a CASp.

## **IMPLICATIONS OF SB 1186 FOR BUSINESS AND PROPERTY OWNERS**

The goal of SB 1186 is to limit disability access suits against California businesses and tenants which make good faith efforts to comply with construction-related ADA guidelines. To maximize the benefit of the new law, businesses should consider taking the proactive step of hiring a Certified Accessibility Specialist to inspect their properties and prepare inspection reports. Watch this well-intentioned law closely to see if it meets its goal of discouraging predatory claims.



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