

## New California Law Targets Frivolous Disability Access Lawsuits

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California Governor Jerry Brown has signed into law a bi-partisan measure that seeks to curb rampant, frivolous Americans with Disabilities Act access lawsuits in the state and expand access to businesses for those with disabilities. This is good news for California businesses. The state reportedly has 12 percent of the country's disabled population, but 40 percent of the nation's ADA lawsuits.

State Senator Bob Dutton (R-Rancho Cucamonga), who introduced the measure (SB 1186) together with Senate President Pro Tem Darrell Steinberg (D-Sacramento), said the new law addresses a serious problem, "where unscrupulous attorneys are filing shakedown lawsuits against businesses in an effort to gain an easy payday with no intention of improving access for the disabled community."

Highlights of the new law, effective September 20, include:

- An end to "demand for money" letters from attorneys in access cases. Letters can still be sent to a business alerting it of a potential violation or infraction, but that letter cannot include a "demand for money." Attorneys sending those letters must send a copy of the letter to the California State Bar. The Bar will examine the letter to make sure it meets the requirements of the law.
- Attorneys also must send a copy of letters sent to businesses to the California Commission on Disability Access (CCDA). CCDA will compile a "Top 10" list of violations to be posted on its website by July 1, 2013. It also will post a list of those attorneys and law firms who are filing the bulk of the lawsuits.
- If a business in a location that was completed after January 1, 2008, or any business in California that has received a Certified Access Specialist (CASP) inspection, that business will have 60 days to fix a violation and their statutory damages may be reduced from \$4,000 to \$1,000 – a 75 percent reduction.
- Small businesses with 25 or fewer employees that have not had a CASp inspection will have 30 days to fix violations and can see their statutory damages reduced from \$4,000 to \$2,000 – a 50 percent reduction.
- To prevent "stacking" of multiple claims to increase statutory damages, courts will assess the reasonableness of a plaintiff's actions in light of the obligation to mitigate damages when she or he seeks to recover damages for multiple visits to the same place of public accommodation, thereby potentially limiting application of the \$4,000 statutory minimum damage award.
- Business licenses and renewals will include \$1 to support local cities and counties to expand the CASp program in the businesses' communities, to help bring local businesses into ADA compliance and to develop tools to help educate the business community in expanding ADA access.

Jackson Lewis attorneys are available to answer inquiries regarding this new law.

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