

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1404 (Wendy Carrillo)
Version: June 19, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

Disability access: internet website-related accessibility claims

DIGEST

This bill requires a plaintiff's attorneys to provide a copy of a specified notice with each demand letter or complaint sent to or served upon a defendant where the plaintiff alleges an internet website-related accessibility claim.

EXECUTIVE SUMMARY

This bill is a companion measure to AB 1757 (Committee on Judiciary, 2023) and requires a plaintiff's attorneys to provide a copy of a specified notice with each demand letter or complaint sent to or served upon a defendant where the plaintiff alleges an internet website-related accessibility claim.

This bill is supported by the California Apartment Association and numerous business groups, including the California Chamber of Commerce. The bill is also supported by Disability Rights California.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to the federal Americans with Disabilities Act (ADA), that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. § 12182.)
- 2) Pursuant to Section 508 of the federal Rehabilitation Act, all federal agencies, when they develop, procure, maintain, or use electronic and information technology, must give disabled employees and members of the public access to information that is comparable to access available to others. (29 U.S.C. § 794 d.)

- 3) Holds, pursuant to case law, that the websites and apps of businesses that are public places or places of public accommodation are governed by the ADA, which "applies to the services of a place of public accommodation, not services *in* a place of public accommodation." (*Nat'l Fed'n of the Blind v. Target Corp.* (N.D. Cal. 2006) 452 F. Supp. 2d 946, 953.)
- 4) Pursuant to the Unruh Civil Rights Act, provides that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind; provides that a violation of the ADA also constitutes a violation of Unruh; and subjects a person or entity in violation to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civ. Code § 51 *et seq.*)
- 5) Provides, pursuant to the Disabled Persons Act, that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics and physicians' offices, public facilities and other *public places*, and also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civ. Code § 54.)
- 6) Entitles individuals with disabilities to full and equal access to public accommodations, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. (Civ. Code § 54.1.)
- 7) Requires an attorney to provide a written advisory with each demand letter or complaint, as defined, sent to or served upon a defendant or potential defendant for any construction-related accessibility claim.
- 8) Existing law also requires an attorney who sends or serves a complaint alleging that an internet website is not accessible to satisfy specified requirements, including, among other things, sending a copy of the complaint and submitting information about the complaint to the California Commission on Disability Access.

This bill:

- 1) Requires an attorney to provide a copy of a specified written advisory notice as with each demand letter or complaint sent to or served upon a defendant alleging an internet website-related accessibility claim.
- 2) Provides that until the Judicial Council adopts this notice, the attorney shall provide a written statement that replicates the advisory notice.

- 3) Provides that on or before January 1, 2025, the Judicial Council shall adopt a written advisory notice that shall be used by a plaintiff's attorney to comply with the requirements of 1).
- 4) Provides that the advisory notice shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the advisory notice is available in additional languages, and on the Judicial Council's internet website where the different versions of the advisory notice are located.
- 5) Specifies that the requirements of this bill do not apply to an action brought by the Attorney General or any district attorney, city attorney, or county counsel.
- 6) Provides that the requirements of this bill only apply to claims filed on or after January 1, 2024.
- 7) Provides that the provisions of this bill become operative only if AB 1757 (Committee on Judiciary, 2023) is enacted and takes effect on or before January 1, 2024.
- 8) Defines several terms in the bill based on the definitions that would be codified by AB 1757.

COMMENTS

1. Stated need for the bill

According to the author:

Many brick and mortar businesses who did not have websites prior to the Covid-19 Pandemic, have put their businesses online to try and survive to keep their business open during these uniquely hard times. Since then, there has been a significant increase in website accessibility lawsuits against small businesses where plaintiffs claim that they cannot access websites because they are incompatible with assistive technologies. The majority of small businesses do not have legal counsel to advise when they receive one of these Title III lawsuits due to their website and often settle – paying thousands of dollars. Unfortunately, if they don't remedy their website accessibility quickly and correctly they can be sued again and again. Thus, forcing them out of business.

Creating a notice for websites accessibility infractions for small businesses could mean that business get to stay open and get into compliance faster without fear of additional lawsuits than with the current process.

2. Requires a written advisory notice to be provided by an attorney with each demand letter or complaint sent to or served upon a defendant alleging an internet website-related accessibility claim

AB 1757 (Committee on Judiciary) is scheduled to be heard in this Committee on the same day as AB 1404. They are companion measures. AB 1757 creates a presumption in state law that a website of a business entity that meets WCAG 2.1 Level AA standard, as specified, is presumed to provide equally effective communication for the purpose of determining whether an award of statutory damages is warranted under specified website accessibility laws.

This bill requires the advisory notice to state all of the following:

“ADVISORY NOTICE TO DEFENDANT
STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY
INFORMATION

This information 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’s internet website at www.courts.ca.gov.

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that your internet website does not comply with one or more existing accessibility laws or regulations protecting the civil rights of persons with disabilities.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. Compliance with disability access laws is a serious and significant responsibility that applies to all California business owners with places of public accommodation. You may obtain information about your legal obligations and how to comply with disability access laws from the California Commission on Disability Access by accessing the commission’s internet website at www.ccda.ca.gov/guide.htm or from the Department of Rehabilitation by accessing its internet website at <https://www.dor.ca.gov/Home/DisabilityAccessServices>.

YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING.

You have the right to seek assistance or advice about this demand letter or complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also

represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

ADDITIONAL THINGS YOU SHOULD KNOW

YOU MAY NOT BE LIABLE FOR ANY DAMAGES IF YOUR INTERNET WEBSITE COMPLIES WITH SPECIFIED STANDARDS: If you are a small business owner and receive a written notice claiming that your internet website does not comply with one or more existing accessibility laws or regulations protecting the civil rights of persons with disabilities, you should be aware that an internet website is presumed to provide equally effective communication for the purpose of determining whether an award of minimum statutory damages is warranted if the internet website complies with the internet website-related accessibility standard defined in state law. You may wish to consult an attorney to obtain legal advice. You may also wish to contact the California Commission on Disability Access for additional information about the rights and obligations of business owners.”

3. Amendments

Amendments are required to make this bill consistent with the current version of AB 1757.

Amendment 1

Change the Department of Rehabilitation website reference to read as follows:

<https://dor.ca.gov/Home/DAS>

Amendment 2

Change the last paragraph of the advisory to read as follows:

YOU MAY NOT BE LIABLE FOR ANY DAMAGES IF YOUR INTERNET WEBSITE ~~COMPLIES WITH~~ CONFORMS TO SPECIFIED STANDARDS: If you are a small business owner and receive a written notice claiming that your internet website does not comply with one or more existing accessibility laws or regulations protecting the civil rights of persons with disabilities, you should be aware that an internet website is presumed to provide equally effective communication for the purpose of determining whether an award of minimum statutory damages is warranted if the internet website ~~complies with~~ conforms to the internet website-related accessibility standard defined in state law. You may wish to consult an attorney to obtain legal advice. You may also wish to contact the California Commission on Disability Access for additional information about the rights and obligations of business owners.

4. Support

The California Apartment Association, in support, writes:

On behalf of the members of the California Apartment Association, I extend to you the Association's continued support for AB 1404, your bill that requires when a civil complaint is served on a business alleging a website accessibility violation, that the business also receive a notice informing the business of important legal rights and obligations relating to the accessibility of internet websites, including the fact that the business may not be liable for any damages if its website complies with a specified website accessibility standard.

As you know, some litigious attorneys are abusing state and federal accessibility laws, suing businesses that may not understand how their internet websites are not legally accessible to the public. AB 1404 addresses this problem by providing more information to businesses that are sued because their websites may not be accessible to all users.

SUPPORT

California Apartment Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1757 (Committee on Judiciary, 2023) *See* Comment 2.

Prior Legislation:

AB 2917 (Mike Fong, Ch. 559, Stats. 2022) required more information about disability access lawsuits based on the inaccessibility of internet websites to be reported by attorneys to the California Commission on Disability Access (CCDA) and included in CCDA's annual report to the Legislature

AB 2123 (Chau, 2020) would have created a presumption in state law that if the website or mobile application of a business which is a public place or a place of public accommodation meets a specified standard of accessibility, it does not violate California's Unruh Civil Rights Act or Disabled Persons Act. AB 2123 died in the Assembly Judiciary Committee.

SB 1186 (Steinberg, Ch. 383, Stats. 2012) among other things, required an attorney who sends a demand letter or files a lawsuit alleging a violation of construction related

disability access laws to submit a copy and report specified information about the claim and its outcome to the CCDA.

PRIOR VOTES:

Assembly Floor (Ayes 74, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
