

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 2917 (Mike Fong)  
Version: March 17, 2022  
Hearing Date: June 8, 2022  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

State law: disability access

**DIGEST**

This bill: (1) requires plaintiffs' attorneys to report specified information to the California Commission on Disability Access (CCDA) when sending demand letters or filing lawsuits alleging that a website is not adequately accessible to people with disabilities; and (2) directs the CCDA to develop and compile education materials regarding website accessibility.

**EXECUTIVE SUMMARY**

California's disability access laws have long operated to ensure that people with disabilities can utilize businesses and places of public accommodation in the state. In spite of their important civil rights functions, these laws have sometimes generated controversy due to high-volume claims made by a relatively small group of litigants and law firms. To address these concerns and monitor the situation, the Legislature created the CCDA in 2008 and tasked it with developing and compiling education materials related to disability access. The Legislature also began requiring attorneys to report certain information to the CCDA whenever they pursue legal claims based on construction-related disability access violations. As online commerce has increasingly gained market share in recent years, a new variety of disability access litigation has emerged seeking to ensure the accessibility of applications and websites to people with disabilities. Accordingly, this bill extends the reporting requirements for construction-related disability access claims to claims based on insufficient website accessibility. Similarly, the bill directs the CCDA to develop and compile educational materials relating to online accessibility just as it does for brick-and-mortar disability access.

The bill is author-sponsored. Support comes from a variety of stakeholders who applaud the proactive monitoring of this emerging legal field. There is no known opposition. The bill passed off of the Assembly Floor on a vote of 63-0. If the bill passes out of this Committee, it will next be heard by the Senate Appropriations Committee.

**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) Provides, pursuant to the state Unruh Civil Rights Act, that all persons, regardless of disability or medical condition, among other things, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind. (Civ. Code § 51(b).)
- 3) Specifies that a violation of the ADA also constitutes a violation of the Unruh Act; 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(f) and 52(a).)
- 4) Provides that, pursuant to the Disabled Persons Act, individuals with disabilities or medical conditions have the same rights as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, and 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.)
- 5) 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.)
- 6) Establishes the CCDA, an independent state agency composed of 17 members, with responsibility for monitoring disability access compliance in California and the authority to hold hearings and make recommendations to the Legislature for necessary changes to existing state law in order to facilitate implementation of state and federal laws on disability access. (Gov. Code §§ 14985 *et seq.*)
- 7) Directs CCDA to work with other state agencies, including the Division of the State Architect and the Department of Rehabilitation, to develop educational materials and information for use by businesses to understand their obligations to provide disability access and to facilitate compliance with construction-related accessibility standards. (Gov. Code § 14985.6(b).)

- 8) Directs CCDA to develop and compile toolkits or educational modules and to make them available on its website in order to assist California businesses to understand their obligations under the law and to facilitate compliance with accessibility requirements. (Gov. Code § 14985.6(c).)
- 9) Requires an attorney who sends a demand letter alleging a violation of construction-related disability access laws, to:
  - a) include the attorney's State Bar license number in the demand letter;
  - b) send a copy of the demand letter to the CCDA within five days; and
  - c) submit specified information about the demand letter to the CCDA within five days. (Civ. Code § 55.32(b).)
- 10) Requires an attorney who sends or serves a complaint alleging a violation of construction-related disability access laws to send a copy of the complaint and submit all of the following information to the CCDA within five business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint:
  - a) the date of the judgment, settlement, or dismissal;
  - b) whether or not the construction-related accessibility violations were remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter;
  - c) if the construction-related accessibility alleged in the complaint were not remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, whether or not another favorable result was achieved after the plaintiff filed the complaint or provided the demand letter; and
  - d) whether or not the defendant submitted an application for an early evaluation conference and stay as permitted by law, whether the defendant requested a site inspection, inspection of an alleged construction-related accessibility violation, the date of any early evaluation conference, and the date of any site inspection. (Civ. Code § 55.32(c).)

This bill:

- 1) Requires attorneys filing a lawsuit based on allegations that a website is insufficiently accessible to people with disabilities to provide copies of the complaint and to submit similar information to CCDA as attorneys must currently do with respect to a lawsuit alleging construction-related disability access violations pursuant to (9) and (10) under Existing Law, above.
- 2) Directs CCDA to develop, compile, and post on its website education materials for California businesses to help facilitate their compliance with internet website accessibility standards.

## COMMENTS

### 1. Background on disability access laws and litigation in California

With the goal of ensuring that people with disabilities have the opportunity to participate fully and equally in society, California law includes robust disability access requirements for businesses and other places of public accommodation. California's Unruh Civil Rights Act (Civ. Code § 51) and Disabled Persons Act (Civ. Code §§ 54 *et seq.*) both enable disabled individuals to enforce these rights in the courts. Among other potential remedies, courts can oblige defendants found to provide insufficient access to people with disabilities to fix the issue, to pay damages of at least \$4,000, and to pay the attorney's fees of the person bringing the claim. (Civ. Code § 52.)

While these laws have played a critical role in expanding disability access throughout the state, their use by a small number of high-volume litigants and law firms has drawn scrutiny in the past. Some businesses contend that these litigants and law firms engage in so-called "drive by" lawsuits in which they hunt for businesses that are not in strict compliance with disability access laws and then immediately demand settlement payments.

To curb true abuses of the state's disability access laws without sacrificing its disability access goals, California has instituted a number of measures in recent years designed to increase compliance and to fortify compliant businesses against liability. (*See* Prior Legislation, below, for brief summaries of several of those measures).

Two of those initiatives are of particular relevance to this bill. First, in 2008, California established the California Commission on Disability Access (CCDA) and tasked it, among other things, with developing materials, information, and tools that businesses can use to understand their rights and obligations pursuant to disability access law. (SB 1608, Corbett, Ch. 549, Stats. 2008.) Second, in 2012, California instituted a set of procedures that attorneys must follow when they are making legal claims against a business for disability access violations. Those procedures require attorneys to notify the CCDA whenever they issue a demand letter or file a lawsuit alleging that a business is in violation of the construction-related disability access laws. (Civ. Code § 55.32.) The procedures also require the attorneys to provide follow-up information about the outcome of the legal claim. (Civ. Code § 55.32(c).) This system enables the CCDA to monitor trends in construction-related disability access legal claims, identify any potential patterns of abuse, and track whether or not the legal claims being made are having their intended effect: to maintain and expand disability access in the state.

### 2. Emerging field of website accessibility

Until relatively recently, disability access considerations primarily focused on brick-and-mortar operations. With the increasing importance of online commerce and interaction to many aspects of life, the accessibility of applications and websites for

people with disabilities has emerged as the latest frontier in disability access law and has reportedly become the subject of a rising amount of litigation. According to a 2018 Los Angeles Times inquiry into the issue, “lawsuits alleging website accessibility violations totaled 1,053 in the first six months [of 2018], a number that is projected to rise to 2,000 by year’s end, up 90% from 2017.”<sup>1</sup> Subsequent reports appear to indicate that this trajectory continues.<sup>2</sup>

As has been the case with construction-related disability access laws, legal claims involving the accessibility of applications and websites have also produced accusations that a small cadre of attorneys and litigants are taking advantage of the system to hunt for businesses whose websites and applications are non-compliant and demand settlements from them. For example, in its letter supporting this bill, the California Apartment Association alleges that:

California’s rental housing industry continues to face increased scrutiny over the accessibility of company websites. Plaintiffs’ attorneys have been contacting landlords throughout California, alleging violations of accessibility requirements under California fair housing law. Website accessibility lawsuits can bring minimum penalties of \$4,000 per violation, creating an incentive for “drive by” lawsuits.

### 3. Inclusion of website accessibility into existing disability access

In recognition that the existing law’s exclusive focus on brick-and-mortar disability access is now out of date, this bill proposes to extend those laws to cover online accessibility as well. The bill has two primary components.

First, it requires attorneys sending demand letters or filing lawsuits alleging online disability access violations to follow the same procedures, summarized above, that existing law obligates them to follow with respect to legal claims based on allegations of construction-related disability access. This expansion should allow CCDA to better track claims related to insufficient online accessibility and what impact those claims are having. The resulting information, which CCDA is mandated to report to the Legislature, should also serve to inform future policy-making in this area.

This aspect of the bill pleases stakeholders with very different perspectives on the system. To the Consumer Attorneys of California, the bill will provide CCDA with “the

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<sup>1</sup> Martin, *Lawsuits Targeting Business Websites Over ADA Violations Are on the Rise* (Nov. 11, 2018) Los Angeles Times <https://www.latimes.com/business/la-fi-hotels-ada-compliance-20181111-story.html> (as of May 28, 2022).

<sup>2</sup> See, e.g., Launey & Vu, *Federal Website Accessibility Lawsuits Increased in 2021 Despite Mid-Year Pandemic Lull* (March 21, 2022) <https://www.adatitleiii.com/2022/03/federal-website-accessibility-lawsuits-increased-in-2021-despite-mid-year-pandemic-lull/> (as of May 28, 2022).

information it needs to evaluate the amount and success of online accessibility compliance litigation.” For its parts, the California Apartment Association lauds what it views as the bill’s potential to curb what it describes as “drive by” lawsuits alleging that its members’ websites are insufficiently accessible to people with disabilities.

Second, the bill directs the CCDA to develop and compile educational materials relating to online accessibility just as it does for brick-and-mortar disability access. The addition of these tools to CCDA’s offerings should aid the business community’s efforts to ascertain what their rights and duties are. The free and public availability of these resources is likely to be of particular relevance to small business owners since they typically operate without ready access to legal counsel.

4. Evolving nature of website accessibility standards make the bill’s mandate to CCDA both important and challenging

As described in detail in the Assembly Judiciary Committee’s analysis of this bill, while the courts have ruled that the applications and websites of businesses and other public accommodations that connect customers with goods and services are subject to disability access laws, the precise standard for what constitutes legally sufficient accessibility is a work in progress.<sup>3</sup> Standards for accessibility exist, but neither the courts nor government regulators have yet endorsed any particular one as the legal threshold. The lack of a clear standard will likely complicate CCDA’s assignment under this bill to provide educational materials to businesses to help them navigate compliance with online disability access. By the same token, any guidance that CCDA can provide should prove especially valuable in light of the evolving nature of the legal standard in question.

5. Arguments in support of the bill

According to the author:

[...] [T]he Civil Code already requires attorneys to send information on lawsuits involving construction-related restrictions that violate the rights of such individuals. AB 2917 merely places similar reporting requirements on lawsuits involving website inaccessibility, which will help in determining how common these lawsuits have become, as well as their outcomes. [...] In addition, AB 2917 would require the CCDA to develop educational information on business’s obligations for providing disability access on their websites.

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<sup>3</sup> See Assem. Com. on Judiciary Analysis of Assem. Bill No. 2245 (2021-2022 Reg. Sess.) as amended Mar. 17, 2022 at p. 4, citing *Robles v. Domino’s Pizza, LLC* (9th Cir. 2019) 913 F.3d 898, 905-906.

In support, the Association of Regional Center Agencies writes:

This [bill] is [...] part of a long history of changes, refinements, and reforms that both directly and indirectly impact our service system. It will help improve the lives of people with developmental disabilities, and by virtue of benefiting them, it will strengthen our service system.

**SUPPORT**

Association of Regional Center Agencies  
California Apartment Association  
California Association of Realtors  
California Special Districts Association  
Consumer Attorneys of California

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

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.

SB 1608 (Corbett, Ch. 549, Stats. 2008) established the California Commission on Disability Access and tasked it with conducting studies and making reports to the Legislature regarding the state of disability access in California.

**PRIOR VOTES:**

Assembly Floor (Ayes 63, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)

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