

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

SB 748 (Roth)
Version: April 10, 2023
Hearing Date: April 18, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

Disability access and information: local government: notice

DIGEST

This bill requires applicants for business licenses or renewals to be provided with a specified notice by local governments regarding potential liability under state and federal disability access laws and the importance of obtaining inspection services by Construction-Related Accessibility Standards Compliance Act (CASp) specialists.

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. Indeed, the author introduced this bill because he "has great concern around the number of small businesses in his district and throughout the state that are still facing a high volume of lawsuits for violating state and federal disability access laws, despite existing laws in place that help equip and educate small business owners on how to be in compliance."

Under California's Certified Access Specialist Program, businesses can request a trained inspector to examine their establishment and point out any changes that are needed to ensure compliance with disability access standards. Provided that, if the business proceeds to undertake any necessary upgrades, the business receives temporary immunity from disability access lawsuits.

This bill requires applicants for business licenses or renewals to be provided with a specified notice, by local governments, regarding potential liability under state and federal disability access laws and the importance of obtaining inspection services by Construction-Related Accessibility Standards Compliance Act (CASp) specialists. The

author's office notes that providing "small business owners with more information that can educate them on how to be in compliance with state and federal disability access laws will help reduce the number of lawsuits with which they can be faced and ensure that more places are accessible to those with disabilities."

The bill is author sponsored and there is no opposition to the bill.

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 Construction-Related Accessibility Standards Compliance Act which, among other things, requires the Department of the State Architect (DSA) to establish the Certified Access Specialist Program and develop the specified criteria to have a person qualify as a Certified Access Specialist (CAsp). Requires a local agency to employ or retain building inspectors who are CAsp to provide consultation to 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, as specified. (Gov. Code § 4459.5; Civ. Code §§ 55.51, 55.52.)

- 7) Provides that a business, as defined, shall not be liable for minimum statutory damages in a construction related accessibility claim, with respect to a violation noted in a report by a CASp for a period of 120 days following the date of the inspection if the defendant demonstrates compliance with each of the following:
 - (a) The defendant is a business that, as of the date of inspection, has employed 50 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Employment Development Department.
 - (b) The structure or area of the alleged violation was the subject of an inspection report indicating "CASp determination pending" or "Inspected by a CASp."
 - (c) The inspection predates the filing of the claim by, or receipt of a demand letter from, the plaintiff regarding the alleged violation of a construction-related accessibility standard, and the defendant was not on notice of the alleged violation prior to the CASp inspection.
 - (d) The defendant has corrected, within 120 days of the date of the inspection, all construction-related violations in the structure or area inspected by the CASp that are noted in the CASp report that are the basis of the claim. (Civ. Code sec 55.56(g).)
- 8) Requires a city, county, or city and county to provide to an applicant for the issuance or renewal of a business license or equivalent instrument or permit, the following information relating to obtaining information about the legal obligation to comply with disability access laws: "Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. You may obtain information about your legal obligations and how to comply with disability access laws at the following agencies ..." (Gov. Code § 4469.)

This bill:

- 1) Requires a city, county, or city and county, in a separate document with a specified font and size, to provide to that applicant a statement that the business may be subject to liability for failure to meet the legal obligation to comply with state and federal disability access laws, and information on how to obtain a CASp inspection, as specified. The disclosure shall be entitled "MANDATORY ADA DISCLOSURE."
- 2) Requires the disclosure to read as follows:

ATTENTION: You may be subject to liability for failure to meet your legal obligation to comply with state and federal disability access laws. The recent issuance or renewal of a business license or equivalent instrument or permit does not mean that your business has been determined to be in compliance with state and federal disability access laws.

[. . .] ENSURING EQUAL ACCESS TO YOUR BUSINESS

The State of California wants to ensure that all people have equal access to public and private services. [. . .]

The best way to protect yourself from a lawsuit is to make your business accessible. Here are some important steps you should take:

(1) Schedule an inspection with a Certified Access Specialist. A Certified Access Specialist (CASp) is a person who the State of California recognizes as having specialized knowledge of accessibility standards. They can inspect your business and tell you what changes you need to make for your business to be accessible to disabled people. Getting a CASp inspection has important benefits, like giving you extra protection in a lawsuit.

To find a CASp in your area, contact the CASp Program at the Division of the State Architect. You can also visit [. . .]

COMMENTS

1. Stated need for the bill

According to the author:

Despite longstanding state and federal disability access laws, small businesses still continue to be out of compliance. Oftentimes, small businesses are unknowingly out of compliance, assuming a business license, certificate of occupancy, and/or health inspection implies compliance with all existing laws. When in fact, all the permitting granted to operate a business does not actually guarantee compliance with the law. This lack of knowledge and awareness leaves them vulnerable to ADA lawsuits. Many of these small businesses would, in good faith, address and remediate the ADA violations had they been educated of their responsibilities and the requirements of the law. SB 748 will provide small business owners with more information that can educate them on how to be in compliance with state and federal disability access laws, helping reduce the number of lawsuits with which they can be faced and ensure that more places are accessible to those with disabilities.

2. Certified Access Specialist Program

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. 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 measures in recent years designed to increase compliance and to fortify compliant businesses against liability.

Modern disability law requires that new construction and renovations of a certain scale ensure a certain level of accessibility to people of all physical ability and disability. The requirements vary according to a variety of factors. Even for experienced architects and builders, the rules can be complex. In 2003, responding to the need for specialists who could review existing facilities and assess the construction of new facilities, California enacted legislation creating the Certified Access Specialist Program, or CASp, under the auspices of the Division of the State Architect. (SB 262, Kuehl, Ch. 872, Stats. 2003.) Under the CASp program anyone interested can seek state recognition as a certified access specialist by meeting certain specified criteria.

A CASp is a professional who has passed an examination and has been certified by the State of California to have specialized knowledge of the applicability of state and federal construction-related accessibility standards. A CASp will know which standards apply to a property based on the age of the facility and its history of improvements. Obtaining a CASp inspection thus allows a business owner to know whether the physical layout of the business complies with disability access laws and, if not, what adjustments need to be made to it. The program benefits the disabled community by increasing accessibility around the state. At the same time, the program assists businesses to avoid costly lawsuits by helping to ensure that the businesses are compliant with accessibility requirements.

3. Legal impact of the CASp program

Anti-discrimination laws allow aggrieved plaintiffs to sue businesses and other entities if their facilities violate building and construction codes that are designed to ensure accessibility to all, regardless of disability. On the one hand, these laws have sometimes been criticized for diverting resources to legal costs that could otherwise be spent on making the necessary changes. These criticisms have been exacerbated by the perception that some disability access attorneys engage in “gotcha” lawsuits, in which plaintiffs go out searching for even minor accessibility violations and then demand hefty penalties and fees in addition to accessibility upgrades. On the other hand, without some teeth behind these laws, the pace of progress toward greater disability access would almost certainly be slower.

The CASp program is part of an ongoing state effort to incentivize and facilitate California businesses to take proactive steps to ensure full accessibility, rather than merely responding to litigation. The availability of certified access specialists enables businesses to check for themselves whether or not their facilities are fully compliant with the applicable accessibility laws, rather than finding out through a lawsuit. Originally, having a CASp inspection only benefited businesses and entities by informing them of any violations, thus enabling them to take steps to cure them. More recent laws have gone farther and connected CASp inspections with certain legal benefits. Specifically, undergoing a CASp inspection now can help a business reduce liability exposure in the event that the business is sued in relation to disability access. (Civ. Code Sec. 55.56(g).)

In an attempt to encourage business owners to comply with disability law and avoid litigation, this bill increases disclosures to businesses when they apply for and renew business licenses. Specifically, this bill requires applicants for business licenses or renewals to be provided with a specified notice, by local governments, regarding potential liability under state and federal disability access laws and the importance of obtaining inspection services by CASp specialists.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 3002 (Grayson, Ch. 680, Stats. 2018) promoted disability access at commercial businesses and places of public accommodation by requiring local government agencies to provide building permit applicants with an advisory about federal and state disability access laws, encouragement to obtain an inspection from a CASp, information about how to contact a CASp, and notice regarding the availability of state and federal programs to assist small businesses with disability access expenditures.

AB 1379 (Thurmond, Ch. 667, Stats. 2017) increased CASp funding by requiring, on January 1, 2018 and through December 31, 2023, any applicant for a local business license or equivalent instrument or permit, and any applicant for the renewal of a business license or equivalent instrument or permit, to pay an additional fee of four dollars (rather than one dollar) for that license, instrument, or permit, in order to fund CASp services by the city, county, or city and county that issued the license, instrument, or permit. At the same time, the bill allowed local jurisdictions to retain a larger percentage of the revenue -- 90 percent -- generated by the fees for CASp training and disability access purposes. Finally, where the local jurisdiction did not charge for business licenses, AB 1379 imposed a fee on building permits. After five years, the fees were scheduled to revert back to the pre-AB 1379 amount of one dollar and the local rate of retention would return to the pre-AB 1379 amount of 70 percent. The goal of AB 1379 was to increase the availability of CASp services and ultimately improve overall business compliance with state and federal construction-related accessibility standards.

SB 269 (Roth, Ch. 13, Stats. 2016) protected a business with 50 or fewer employees from liability for minimum statutory damages in a construction-related accessibility claim during the 120-day period immediately after the business has obtained an inspection of its premises by a CASp. SB 269 also established a presumption that certain "technical violations" of construction-related accessibility standards (such as faded paint on parking spaces or missing signage) do not constitute grounds for a complaint under the Unruh Civil Rights Act or the Disabled Persons Act as long as those violations are corrected within 15 days of notification to the business owner.

AB 2093 (Steinorth Ch. 379, Stats. 2016) increased the information available to the public and to prospective tenants of commercial property about the ADA and a commercial property's compliance with construction-related accessibility standards and created a presumption that the responsibility for making any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a CASp report is the responsibility of the commercial property owner or lessor, unless otherwise mutually agreed upon by the commercial property owner or lessor and the lessee or tenant.

AB 1230 (Gomez, Ch. 787, Stats. 2015) established the California Americans With Disabilities Act Small Business Capital Access Loan Program (Small Business ADA

Program) within the California Capital Access Loan Program in order to create a self-sustaining program to provide loans to assist small businesses in financing the costs of projects that alter or retrofit existing small business facilities according to certain criteria, to comply with the federal Americans with Disabilities Act.

AB 1521 (Committee on Judiciary, Ch. 755, Stats. 2015) made various changes to the law as it pertains to construction-related accessibility claims.

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 California Commission on Disability Access and required a \$1 additional fee to be paid by any applicant for a local business license, permit, or similar instrument when it is issue or renewed.

SB 1608 (Corbett, Ch. 549, Stats. 2008) enacted various reforms intended to increase voluntary compliance with longstanding state and federal laws requiring access to the disabled in any place of public accommodation.

SB 262 (Kuehl, Ch. 872, Stats. 2003) required the DSA to establish and publicize the CASp Program for voluntary certification by the state of any person who meets specified criteria as a CASp.
