

AB 1521 (Assembly Judiciary Committee) High-Frequency Litigants in Construction- Related Accessibility Claims

PROBLEM

According to the California Commission on Disability Access (CCDA), more than half (54%) of all complaints filed in the state between September 2012 and October 2014 alleging violations of construction-related accessibility standards were filed by *just two law firms*. Forty-six percent of all complaints were filed by *just 14 parties*.

EXISTING LAW

Under the federal Americans with Disabilities Act (ADA), a business that constitutes a place of public accommodation (e.g. places of lodging, entertainment, recreation, restaurants, bars, theaters, stores, and health clubs) is prohibited from discriminating on the basis of disability if its operations affect interstate commerce.

Public accommodations in California are required to comply with not only the ADA, but also with the state's Unruh Act, which incorporates the ADA into its provisions and makes a violation of the ADA punishable as a violation of Unruh. (Section 51.) All violations of Unruh are subject to statutory damages of at least four thousand dollars per violation, except some cases where the violation is based on a construction-related accessibility claim, in which case lower damages (a minimum of one thousand or two thousand dollars, depending on the circumstances of the case) apply.

SUMMARY

AB 1521 seeks to give new tools to small businesses for responding to construction-related accessibility claims and to limit the practice of high-volume lawsuits motivated by the goal of obtaining quick settlements with business owners, rather than correcting violations of construction-related accessibility standards. AB 1521 will help small businesses

combat the problem of serial Unruh-ADA litigation in a number of ways:

- Revises the notice received by business owners when a lawsuit is filed to better describe their rights and responsibilities.
- Creates a new answer form, which will allow business owners to respond to lawsuits and, in cases where it's necessary or appropriate, to do so without hiring an attorney.
- Defines "high-frequency litigant" (HFL) as either a plaintiff who has filed 10 or more complaints alleging violations of construction-related accessibility standards in the past 12 months; or an attorney who has represented 10 or more such plaintiffs in the past year.
- Imposes new procedural requirements on HFLs, including the following: (1) A higher filing fee for filing such cases; (2) Special pleading requirements; (3) If the litigant is represented by an attorney, certification by the attorney that, among other things, the complaint is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- Requires attorneys who file construction-related accessibility claims to notify CCDA about how their claims are resolved.

STATUS

Senate Floor

SUPPORT

Consumer Attorneys of California
California Business Properties Association
Civil Justice Association of California
International Council of Shopping Centers (ICSC)

NAIOP of California, the Commercial Real Estate
Developers Association (NAIOP)
Building Owners and Managers Association of
California (BOMA)
Retail Industry Leaders Association (RILA)
Institute of Real Estate Management (IREM)
California Downtown Association (CDA)
Association of Commercial Real Estate Northern
and Southern California (ACRE) *
National Association of Real Estate Investment
Trusts (NAREIT)
California Association for Local Economic
Development (CALED)
California Grocers Association

FOR MORE INFORMATION

Contact: Alison Merrilees
Assembly Judiciary Committee
(916) 319-2334
Alison.merrilees@asm.ca.gov