

CCDA Bill Tracking Report

Text Summary

AB 1521

Title: Disability access: construction-related accessibility claims.

Author: Committee on Judiciary

Current Status: 9/10/15 In Assembly. Concurrence in Senate amendments pending.

Current Location: 9/10/15 A-CONCURRENCE

Summary based on bill dated 09/04/2015

Existing law provides 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, public facilities, and other public places, and allows a person who is aggrieved or potentially aggrieved by a violation of specific provisions of law to bring an action to enjoin the violation. Existing law 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, as specified.

This bill would require the above-described advisory to include additional information regarding the rights and obligations of business owners and commercial tenants, as specified. In addition to the written advisory, the bill would require an attorney to provide a defendant or potential defendant of a construction-related accessibility claim with a verified answer form developed by the Judicial Council, which would allow a defendant to respond in the event a complaint is filed, as specified. The bill would, on or before July 1, 2016, require the Judicial Council to update the advisory form and adopt the answer form, as specified.

Existing law requires a demand letter alleging a violation of a construction-related accessibility standard or asserting a construction-related accessibility claim to include specified information and, among other things, until January 1, 2016, requires an attorney who provides a demand letter to send a copy of the demand letter to the State Bar of California.

This bill would extend that requirement until January 1, 2019.

Existing law requires an attorney who sends or serves a complaint on the basis of a construction-related accessibility claim to also send a copy of the complaint to the California Commission on Disability Access.

This bill would additionally require the attorney to notify the commission within 5

business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of specified information, including, among others, whether or not the construction-related accessibility violations alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter.

Existing law requires every pleading, petition, or other similar paper to be signed by an attorney, or the party in cases where the party is not represented by counsel, as specified. Existing law further provides that an attorney or unrepresented party who presents a pleading, petition, or other similar paper to the court is certifying that specified conditions have been met, including, but not limited to, that the action is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay.

This bill would specify that those requirements and provisions apply to a complaint alleging a construction-related accessibility claim.

Existing law authorizes a defendant to file a request for a court stay and an early evaluation conference in the proceedings under certain circumstances, and tolls the period for responsive pleadings.

This bill would specify that these provisions also apply if a defendant is a business that has been served with a complaint filed by a high-frequency litigant, as defined, or is a business requesting an early evaluation conference.

Existing law, upon the filing of an application for a court stay and an early evaluation conference by a defendant, requires the court to immediately issue an order that does certain things, including, but not limited to, scheduling a mandatory early evaluation conference for a date as soon as possible from the date of the order, but in no event later than 70 days after the issuance of the order.

This bill would, if requested by the defendant, additionally require the court order to direct the parties and their counsel to meet at the premises, or other place as specified, no later than 30 days after issuance of the court order, to jointly inspect the premises, and review any programmatic or policy issues, that are claimed to constitute a violation of a construction-related accessibility standard. The bill would authorize the court to allow a plaintiff who is unable to meet in person at the premises to be excused from participation, or participate by alternative means, for good cause and would provide that a plaintiff or plaintiff's counsel is not required to attend more than one in-person site meeting.

Existing law requires a complaint alleging a construction-related accessibility claim to be verified by the plaintiff or be subject to a motion to strike, and further requires that an allegation of a construction-related accessibility claim in a complaint state facts sufficient to allow a reasonable person to identify the basis of the violation, including, but not limited to, a plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred. This bill would, for cases filed by or on behalf of a high-frequency litigant, require the

complaint to also state whether the complaint is filed by, or on behalf of, a high-frequency litigant, the number of complaints alleging a construction-related accessibility claim that the high-frequency litigant has filed during the 12 months prior to filing the complaint, and the reason why the individual visited the place of public accommodation. By expanding the definition of the crime of perjury, this bill would impose a state-mandated local program.

Existing law imposes a supplemental fee for filing first papers in certain civil proceedings, including, but not limited to, certain complex cases.

This bill would, in addition to the first paper filing fee, require payment of a single high-frequency litigant fee of \$1,000, at the time of the filing of the first paper if the complaint alleges a construction-related accessibility claim and the plaintiff is a high-frequency litigant, and would make conforming changes related to the distribution of those fees. Existing constitutional provisions require a statute that limits the right of public access to meeting or writings of public officials to be adopted with findings demonstrating the interest to be protected by that limitation and the need to protect that interest.

This bill would declare that it includes limitations on access, that the interests to be protected are the privacy rights of the litigants, and that the need to protect those interests is to prevent a chilling effect on litigation.

This bill would also make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.