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THIRD READING

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Bill No: AB 2093  
Author: Steinorth (R), et al.  
Amended: 5/25/16 in Senate  
Vote: 27 - Urgency

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SENATE JUDICIARY COMMITTEE: 7-0, 6/14/16  
AYES: Jackson, Moorlach, Anderson, Hertzberg, Leno, Monning, Wieckowski

ASSEMBLY FLOOR: 79-0, 4/21/16 (Consent) - See last page for vote

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**SUBJECT:** Disability access

**SOURCE:** Author

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**DIGEST:** This bill makes various changes to the law as it pertains to commercial rental agreements and construction-related access violations.

**ANALYSIS:** Existing federal law provides, under 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. Sec. 12182.)

Existing state law:

- 1) Declares, under the Unruh Civil Rights Act, that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ. Code Sec. 51 et seq.)

- 2) 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, including hospitals, clinics and physicians' offices, public facilities, and other public places. It also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civ. Code Secs. 54, 54.1.)
- 3) Provides that a violation of the ADA also constitutes a violation of Sections 54 or 54.1, and entitles a prevailing party to recover reasonable attorney's fees. (Civ. Code Sec. 55.)
- 4) Establishes the California Commission on Disability Access (CCDA), an independent state agency composed of 17 members, to monitor disability access compliance in California, and make recommendations to the Legislature for necessary changes in order to facilitate implementation of state and federal laws on disability access. (Gov. Code Sec. 8299 et seq.)
- 5) Requires a commercial property owner to state on a lease form or rental agreement executed on or after July 1, 2013, if the property being leased or rented has undergone inspection by a Certified Access Specialist (CASp). (Civ. Code Sec. 1938.)
- 6) Requires the State Architect to establish the CASp Program and develop the specified criteria to have a person qualify as a CASp. (Gov. Code Sec. 4459.5; Civ. Code Sec. 55.52.)
- 7) Requires, commencing January 1, 2010, a local agency to employ or retain at least one building inspector who is a CASp, and, commencing on January 1, 2014, to employ or retain a sufficient number of building inspectors who are CASp to conduct inspections with respect to new construction. (Civ. Code Sec. 55.53(d).)

This bill:

- 1) Requires the CCDA to provide a link on its Internet Web site to the Internet Web site of the Division of the State Architect's CASp certification program and to make the CCDA's educational materials and information available to other state agencies and local building departments.
- 2) Requires a commercial property owner, for every lease or rental agreement executed on or after January 1, 2017, to state on the lease or rental agreement whether the subject premises have undergone a CASp inspection.

- 3) Requires, for properties that have undergone a CASp inspection and there have been no subsequent modifications or alterations, the commercial property owner to provide the lessee or tenant with a copy of the CASp inspection report. This report shall remain confidential, except as necessary for the tenant to complete repairs, as specified.
- 4) Creates a presumption that repairs necessary to correct violations noted in a CASp report are the responsibility of the commercial property owner unless otherwise mutually agreed to by the owner and prospective tenant, and requires the following:
  - That the prospective tenant have an opportunity to review any CASp report prior to the execution of the lease or rental agreement;
  - That if the CASp report is not provided to the prospective tenant at least 48 hours prior to the execution of the lease or rental agreement, he or she shall have the right to rescind the lease or rental agreement, based on information contained in the report, for up to 72 hours after the execution of the agreement;
  - That the property owner provide any available disability access certificate (indicating that the premises passed a CASp inspection) to the tenant within seven days of the execution of the lease or rental agreement; and
  - A notice on the lease or rental agreement, for a building that has not had a CASp inspection, providing that a property owner may not prohibit a tenant from obtaining a CASp inspection, and that the parties shall mutually agree on the arrangements for the CASp inspection, including the payment of the fee, and the cost of making any repairs necessary to correct violations noted in the report.
- 5) Requires applicants for CASp certification or renewal to additionally provide to the State Architect information about the city, county, or city and county in which the applicant intends to provide or has provided services, and requires the State Architect to post that information on his or her Internet Web site.

## **Background**

Since 1969, persons with disabilities have enjoyed protection under Civil Code Sections 54 and 54.1, which entitle individuals with disabilities and medical conditions to full and free access to, and use of, roadways, sidewalks, buildings, and facilities open to the public, hospitals and medical facilities, and housing. After

Congress enacted the ADA in 1990, California made a violation of the ADA also a violation of Section 54 or 54.1. The protections provided to disabled persons under California law are comparatively higher than those provided under the ADA and are independent of the ADA.

Additionally, under the Unruh Civil Rights Act, 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 whatsoever. (Civ. Code Sec. 51.) A violation of the ADA also constitutes a violation of Section 51. A violation of that section subjects a person to actual damages incurred by an injured party, plus treble actual damages, but in no event less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civ. Code Sec. 52.)

The CCDA, established in 2008, is charged with promoting disability access in California through dialogue and collaboration with stakeholders including, but not limited to, the disability and business community, and all levels of government. Accordingly, the CCDA is authorized to act as an information resource; to research and prepare advisory reports of findings to the Legislature on issues related to disability access, compliance inspections and continuing education; to increase coordination between stakeholders; to make recommendations to promote compliance with federal and state laws and regulations; and to provide uniform information about programmatic and architectural disability access requirements to the stakeholders.

Seeking to better achieve compliance with disability access requirements in California, this bill requires specific disclosures to commercial tenants with regard to the compliance status of a rental property, allows a tenant to rescind the lease based on information in a CASp report, and requires certain information to be made publicly available by the CCDA.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 6/17/16)

American Institute of Architects California Council  
Building Owners and Managers Association of California  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
Civil Justice Association of California

Commercial Real Estate Development Association, NAIOP of California  
Consumer Attorneys of California  
International Council of Shopping Centers  
National Federation of Independent Businesses

**OPPOSITION:** (Verified 6/17/16)

None received

**ARGUMENTS IN SUPPORT:** In support, the Civil Justice Association of California writes:

Prospective commercial tenants may be unaware of existing construction-related accessibility standards or compliance issues. Property owners and tenants alike may be unaware of the local availability of CASp services.

AB 2093 will improve the ability of property owners to arrange for CASp inspections, and promote awareness by both owners and tenants of accessibility requirements and any access issues with leased property. This bill will promote compliance with construction-related accessibility standards, improving access and discouraging abusive lawsuits. For these reasons we support AB 2093.

**ASSEMBLY FLOOR:** 79-0, 4/21/16

**AYES:** Achadjian, Alejo, Travis Allen, Arambula, Atkins, Baker, Bigelow, Bloom, Bonilla, Bonta, Brough, Brown, Burke, Calderon, Campos, Chang, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Dahle, Daly, Dodd, Eggman, Frazier, Beth Gaines, Gallagher, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Grove, Hadley, Harper, Roger Hernández, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Quirk, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Weber, Wilk, Williams, Wood, Rendon

**NO VOTE RECORDED:** Ridley-Thomas

Prepared by: Nichole Rapier / JUD. / (916) 651-4113  
6/17/16 15:03:44

\*\*\*\* END \*\*\*\*