

## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

As introduced, \_\_\_\_\_

General Subject: Disability access: construction-related access barrier: civil actions.

Existing law prohibits discrimination on the basis of various specified personal characteristics, including disability. Existing law imposes civil liability upon any person or persons, firm, or corporation who denies or interferes with admittance to or enjoyment of public facilities or otherwise interferes with the rights of an individual with a disability, as specified. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards.

This bill would prohibit a cause of action on the basis of a construction-related access barrier in an existing public accommodation by an individual who alleges to have been aggrieved by the existence of the access barrier from accruing unless specified conditions are met, including that a written notice has been sent to the owner or operator, as specified. The bill would create a specified 90-day period and an additional 30-day period during which the owner or operator of the public accommodation shall be permitted to remove the barrier or to make substantial progress toward removing the barrier, or to make a good faith effort to remove the barrier, as defined, before a cause of action accrues. The bill would also specify that a cause of action against an owner or operator of a public accommodation on the basis of a construction-related access barrier by an individual who alleges to have been aggrieved by the existence of the access barrier shall not accrue under the Unruh Civil Rights Act, provisions that impose civil liability upon those who deny or interfere with admittance to or enjoyment of public facilities or otherwise interfere with the rights of an individual with a disability, or the Construction-Related Accessibility Standards Compliance Act during a 90-day period, and, if applicable, the additional 30-day period, if a civil action relating to the same construction-related access barrier is pending. The bill would also require the California Commission on Disability Access to submit a report to the Legislature on or before January 1, 2021, that analyzes the impact of these provisions, as specified.

Existing law establishes the Department of Rehabilitation in the California Health and Human Services Agency to provide vocational rehabilitation services to individuals with disabilities, and directs the department to cooperate with the federal government in carrying out the purposes of federal statutes pertaining to those individuals. Existing law provides for the inspection of places of public accommodation by certified access specialists to determine if the sites meet all applicable construction-related accessibility standards, and the provision of specified certificates and reports regarding those inspections.

This bill would require the department to develop a program to educate cities, counties, cities and counties, local government agencies, and private property owners on effective and efficient strategies for promoting access to public accommodations for individuals with

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disabilities by engaging certified access specialists to provide guidance for remediation of potential violations of the federal Americans with Disabilities Act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

An act to add Section 425.49 to the Code of Civil Procedure, and to add Section 19025 to the Welfare and Institutions Code, relating to disability access.

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS

SECTION 1. Section 425.49 is added to the Code of Civil Procedure, to read:

425.49. (a) A cause of action on the basis of a construction-related access barrier in an existing public accommodation by an individual who alleges to have been aggrieved by the existence of the access barrier shall not accrue unless all of the following conditions are met:

(1) The individual who alleges to have been aggrieved by the existence of an access barrier provided the owner or operator of the public accommodation a written notice by certified mail stating facts sufficient to allow a reasonable person to identify the specific access barrier or barriers the individual encountered or by which the individual alleges he or she was deterred as described in subdivision (b).

(2) The individual who alleges to have been aggrieved by the existence of an access barrier did not send a demand letter, request for settlement, or other communication, other than the communication described in paragraph (1), to the owner or operator of the public accommodation during the 45-day period defined in paragraph (3).

(3) The owner or operator of the public accommodation failed to provide to the individual who alleges to have been aggrieved by the existence of an access barrier a written description of improvements what will be made to remove the barrier during the period beginning on the date that the notice described in paragraph (1) was received by the owner or operator of the public accommodation and ending 45 days later.

(4) The owner or operator of the public accommodation failed to remove the barrier or to make substantial progress toward removing the barrier during the period beginning on the date that the individual who alleges to have been aggrieved by the existence of an access barrier received the written description of improvements to be made to remove the barrier pursuant to paragraph (3) and ending 90 days later.

(b) The written notice required pursuant to paragraph (1) of subdivision (a) stating facts sufficient to allow a reasonable person to identify the specific access barrier or barriers the individual encountered or by which the individual alleges he or she was deterred shall specify all of the following:

(1) The circumstances under which the individual who alleges to have been aggrieved by the existence of an access barrier was actually denied access to the public accommodation.

(2) The address of the public accommodation.

(3) The date and time that the individual who alleges to have been aggrieved by the existence of an access barrier was denied access to, or denied reasonable use of, the public accommodation due to the alleged existence of the barrier.

(4) The specific sections of the federal Americans with Disabilities Act of 1990, Public Law 101-336 (42 U.S.C. Sec. 12102) or of the California Building Code (Part 2 of Title 24 of the California Code of Regulations) that are alleged to have been violated.

(5) Whether a request for assistance in removing the access barrier was made to the owner or operator of the public accommodation, or to their employee, at the time that the individual who alleges to have been aggrieved by the existence of an access barrier was denied

access to, or denied reasonable use of, the public accommodation, and, if so, the name of the individual to whom the request was made.

(c) (1) An owner or operator of a public accommodation that provided the individual who alleges to have been aggrieved by the existence of an access barrier a written description of improvements that will be made to remove the barrier pursuant to paragraph (3) of subdivision (a) and made a good faith effort to remove the barrier but failed to do so during the 90-day period described in paragraph (4) of subdivision (a), shall be entitled to an additional 30 days before a cause of action accrues for the individual who alleges to have been aggrieved by the existence of the access barrier.

(2) Whether the owner or operator of the public accommodation made a good faith effort to remove the alleged access barrier within the 90-day period shall be determined by considering whether the owner or operator of the public accommodation did any of the following:

(A) Submitted an application for construction permits, if required, prior to beginning renovations necessary to remove the access barrier or to correct the violation.

(B) Hired a contractor to complete renovations necessary to remove the access barrier or to correct the violation, and secured an estimate for when that construction will be complete.

(C) Started renovations necessary to remove the access barrier or to correct the violation, and worked to minimize delays to complete the construction.

(d) A cause of action against an owner or operator of a public accommodation on the basis of a construction-related access barrier by an individual who alleges to have been aggrieved by the existence of the access barrier shall not accrue under the Unruh Civil Rights Act (Section 51 of the Civil Code), Section 54.3 of the Civil Code, or the Construction-Related Accessibility Standards Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code) during the 90-day period described in paragraph (4) of subdivision (a), and, if applicable, the additional 30-day period described in paragraph (1) of subdivision (c) if a civil action relating to the same construction-related access barrier is pending.

(e) The damages awarded to a plaintiff who brings a cause of action under the Unruh Civil Rights Act (Section 51 of the Civil Code), Section 54.3 of the Civil Code, or the Construction-Related Accessibility Standards Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code) on the basis of a construction-related access barrier in an existing public accommodation shall be limited to the individual who was aggrieved by the existence of the access barrier because he or she was denied access to, or reasonable use of, the public accommodation that is the subject of the action.

(f) (1) On or before January 1, 2021, the California Commission on Disability Access shall submit a report to the Legislature analyzing the impact of these provisions that includes all of the following:

(A) The number of individuals in each county who filed 10 or more actions alleging a violation of the Unruh Civil Rights Act (Section 51 of the Civil Code), Section 54.3 of the Civil Code, or the Construction-Related Accessibility Standards Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code) within any 12-month period after the operative date of this section.

(B) Whether this section has affected the number of causes of action on the basis of a construction-related access barrier in an existing public accommodation that are filed by an individual who alleges to have been aggrieved by the existence of the access barrier.

(C) Whether this section has impacted an individual's ability to bring a legitimate, good faith, accessibility claim under the Unruh Civil Rights Act (Section 51 of the Civil Code), Section 54.3 of the Civil Code, or the Construction-Related Accessibility Standards Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code).

(D) Recommendations as to whether a limitation on recoverable attorney fees would reduce the number of actions brought by individual plaintiffs under the Unruh Civil Rights Act (Section 51 of the Civil Code), Section 54.3 of the Civil Code, or the Construction-Related Accessibility Standards Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code).

(2) The report required to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(3) Pursuant to Section 10231.5 of the Government Code, the requirement for submitting a report under this subdivision shall be inoperative on January 1, 2023, pursuant to Section 10231.5 of the Government Code.

SEC. 2. Section 19025 is added to the Welfare and Institutions Code, to read:

19025. (a) The department shall develop a program to educate cities, counties, cities and counties, local government agencies, and private property owners on effective and efficient strategies for promoting access to public accommodations for individuals with disabilities, as defined in Sections 51 and 54 of the Civil Code.

(b) The program shall engage certified access specialist to provide guidance for remediation of potential violations under the federal Americans with Disabilities Act of 1990, Public Law 101-336 (42 U.S.C. Sec. 12102).