

Supreme Court Case No. S180890

**SUPREME COURT COPY**

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**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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LES JANKEY  
Plaintiff – Petitioner,

v.

SONG KOO LEE, Individually and dba K&D MARKET,  
Defendant – Respondent.

SUPREME COURT  
**FILED**

MAR 4 - 2011

Frederick K. Orlrish Clerk

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Deputy

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**PETITIONER LES JANKEY'S REQUEST FOR JUDICIAL NOTICE**

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Re: Decision of the Court Appeal  
First Appellate District, Division Four  
Case No. A123006

On Appeal from the Superior Court for San Francisco County  
Case No. CGC07-463040  
Honorable Patrick J. Mahoney, Judge

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**LAW OFFICES OF LYNN HUBBARD**  
Scottlynn J Hubbard IV, State Bar No. 212970  
12 Williamsburg Lane  
Chico, CA 95926  
(530) 895-3252

Supreme Court Case No. S180890

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**LAW OFFICES OF LYNN HUBBARD**  
Scottlynn J Hubbard IV, State Bar No. 212970  
12 Williamsburg Lane  
Chico, CA 95926  
(530) 895-3252

**TO THE HONORABLE CHIEF JUSTICE OF THE SUPREME  
COURT OF THE STATE OF CALIFORNIA:**

Pursuant to Evidence Code section 459 and Rule 8.252, California Rules of Court, Petitioner Les Jankey moves the Court to take judicial notice of the documents listed below, which are attached to this request and described as follows:

**Exhibit A:** Ed and Toni Eames letter to Senator Charles Calderon in support of SB 1687 (Apr. 8, 1995);

**Exhibit B:** J. Kendrick Kresse, California Center for Law and the Deaf, letter to Senator Charles Calderon in support of SB 1687 (Apr. 3, 1996);

**Exhibit C:** Senate Judiciary Committee Analysis of SB 1687, as amended April 11, 1996 (Apr. 11, 1996);

**Exhibit D:** Senate Rule Committee, Office of Senate Floor Analysis, Third Reading of SB 1687 (Apr. 25, 1996);

**Exhibit E:** Assembly Committee on Judiciary analysis of SB 1687, as amended April 25, 1996 (July 11, 1996);

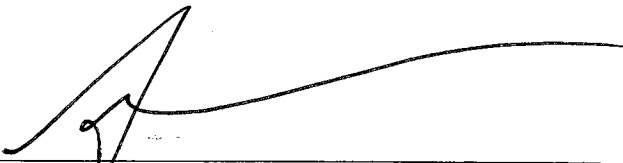
**Exhibit F:** Department of Fair Employment and Housing, Enrolled Bill Report regarding SB 1687 (Aug. 27, 1996);

**Exhibit G:** Senate Rule Committee, Office of Senate Floor Analysis,  
Third Reading of AB 2222, as amended Aug. 28, 2000 (Sept. 7, 2000);

**Exhibit H:** SB 1608, as amended August 12, 2008, Third Reading  
(Aug. 28, 2008)(Amended after Assembly vote)(bold added); and,

This motion is based upon the attached declaration of Scottlynn J  
Hubbard IV and upon the supporting memorandum of points and authorities.

Dated: March 2, 2011

By   
\_\_\_\_\_  
Scottlynn J. Hubbard, IV, attorney  
for Plaintiff-Petitioner Les Jankey

## DECLARATION OF SCOTTLYNN J HUBBARD IV

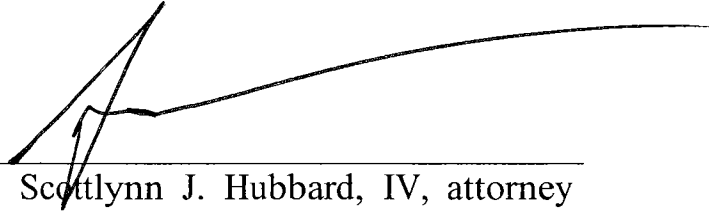
I, Scottlynn J Hubbard IV, declare:

1. I am the counsel for Petitioner, Les Jankey.
2. Exhibits A through H are true and correct copies of documents that I obtained from California Legislative Intent.
3. Because of their large size, I have declined to dump the entire legislative history associated with these bills on the court. I will, however, provide full production at the Court's behest.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 2, 2011

By



Scottlynn J. Hubbard, IV, attorney  
for Plaintiff-Petitioner Les Jankey

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to Evidence Code section 459 and Rule 8.252, California Rules of Court, Petitioner Les Jankey moves the Court to take judicial notice of the documents contained in Exhibits A through H to the instant motion.

### **1. Court's Authority to Take Judicial Notice**

Under Evidence Code section 459, appellate courts have the same right and power to take judicial notice as do the trial courts. "In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute." *Hale v. S. Cal. IPA Med. Group, Inc.* (2001) 86 Cal. App. 4th 919, 927.

### **2. Courts Have Taken Judicial Notice of the Types of Documents in This Motion**

Courts have taken judicial notice of and given considerable weight to such legislative history materials as: (1) Various versions of a legislative bill, *see Alford v. Superior Court* (2003) 29 Cal. 4th 1033, 1040-1041; *Myers v. Philip Morris Cos., Inc.* (2002) 28 Cal. 4th 828, 844; (2) Committee analysis and reports, *In re J W.* (2002) 29 Cal. 4th 200, 211-212; *EI Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal. App. 4th 1153, 1170; (3) Legislative author letters to governor, *Lantzy v. Centex Homes*

(2003) 31 Cal. 4th 363, 376-377; *Mercy Hasp. & Med. Ctr. v. Farmers Ins. Group a/Cos.* (1997) 15 Cal. 4th 213,222; and (4) Predecessor bills and statutes, *City of Richmond v. Comm. on State Mandates* (1998) 64 Cal. App. 4th 1190,1199.

### **3. The Documents Are 'Relevant'**


The types of legislative documents submitted herewith are routinely considered by the reviewing courts of this state when considering the background and purpose of specific bills and statutes. In the case at bar, this material sheds light on the intent of the Legislature with regard to whether section 52 is an enforcement mechanism for violations of section 51 and whether the Legislature intended to impose an intent requirement for Unruh Civil Rights Act claims based on ADA violations.

### **CONCLUSION**

For all the foregoing reasons, Petitioner Les Jankey respectfully moves that that this Court take judicial notice of Exhibits A through H herein, pursuant to Evidence Code section 459.

Dated: March 2, 2011

By

  
\_\_\_\_\_  
Scottlynn J. Hubbard, IV, attorney  
for Plaintiff-Petitioner Les Jankey

**Proposed Order Granting Request for Judicial Notice**

Good cause appearing, Petitioner Les Jankey's Request for Judicial Notice is hereby Granted. IT IS SO ORDERED.

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Chief Justice of California Supreme  
Court



## **PROOF OF SERVICE**

I, Kaina Schukei declare that:

I am employed at the Law Offices of Lynn Hubbard, 12 Williamsburg Lane, Chico, California, 95926. I am a citizen of the United States, am over 18 years of age, and am not a party to this action.

On Wednesday, March 2, 2011, I served a true and correct copy of the following document(s):

### **PETITIONER LES JANKEY'S REQUEST FOR JUDICIAL NOTICE**

Office of the Clerk  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

Court of Appeal  
First Appellate District  
350 McAllister Street  
San Francisco, CA 94102

Civic Center Courthouse  
400 McAllister Street  
San Francisco, CA 94102

Solicitor General  
Office of the Attorney General  
1300 "I" Street  
P.O. Box 944255  
Sacramento, CA 9244-2550

Thomas E. Frankovich  
Attorney at Law  
4328 Redwood Highway, Suite 300  
San Rafael, CA 94903

David M. Axelrad  
Andrea M. Gauthier  
Horvitz & Levy, LLP  
15760 Ventura Boulevard, 18<sup>th</sup> Floor  
Encino, CA 91436

Jason George Gong  
Livingston Law Firm  
1600 S. Main Street, Suite 280  
Walnut Creek, CA 94596

Lizbeth Veronica West  
Weintraub Genshlea Chediak  
400 Capitol Mall, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Brad S. Seligman  
The Impact Fund  
125 University Avenue, Suite 102  
Berkeley, CA 94710

James Moxon Emery  
Office of the City Attorney  
Fox Plaza  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102

Richard D. Prager  
Charles Sanford Roseman  
Charles S. Roseman & Associates  
1761 Hotel Circle South, Suite 250  
San Diego, CA 92108

John J. Rice  
LaFave & Rice  
2333 First Avenue, Suite 201  
San Diego, CA 92101

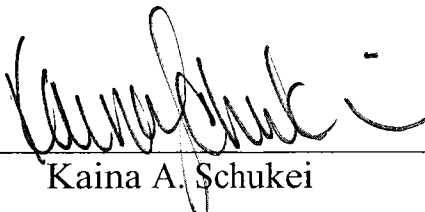
Gary L. Simms  
Law Offices of Gary L. Simms  
2050 Lyndell Terrace, Suite 2410  
Davis, CA 95616

I declare under penalty of perjury that the foregoing is true and correct  
and that this declaration was executed on March 2, 2011 in Chico,  
California.

Via Overnight Mail (FedEx) to the Supreme Court of California

Via First Class Mail to all Interested Parties

Dated: March 2, 2011

By   
Kaina A. Schukei

# **EXHIBIT A**

SB 1687

ED and TONI EAMES

S

3376 N. Wishon  
Fresno, CA 93704-4832

(209) 224-0544

April 8, 1996

Senator Charles Calderon, Chair  
Senate Judiciary Committee  
Att: Gordon Hart  
FAX 916-327-8755

Dear Senator Calderon,

We want to express our support for SB 1687, a bill proposed by Senator Milton Marks. The goal of the bill is to reconcile recently enacted legislation with already existing statutes. Such reconciliation is essential to avoid confusion based upon differences in the laws concerning guide, hearing and service dogs.

Sincerely,



Ed Eames Ph.D., co-chair  
Toni Eames M.S., co-chair  
Guide Dog Committee  
National Federation of the Blind of California

LEGISLATIVE INTENT SERVICE (800) 666-1917



# **EXHIBIT B**

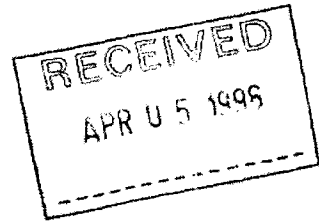
SB 1687  
S



# California Center for Law and the Deaf

- Main Office  
1539 Webster St.  
Oakland, CA 94612  
(510) 251-6420 TDD/Voice  
FAX (510) 465-7824
- 39350 Gallaudet Drive  
Fremont, CA 94538-2387  
(510) 790-1433 TTY/V  
FAX (510) 794-9250

April 3, 1996



The Honorable Charles Calderon  
Chair, Senate Judiciary Committee  
The State Capitol, Room 4039  
Sacramento, CA 95814

RE: SB 1687 (Marks)

Dear Senator Calderon:

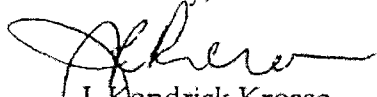
On behalf of the California Coalition of Agencies Serving the Deaf, I am writing in support of SB 1687, which would make various amendments to the codes relating to the access rights of individuals with disabilities in general and specifically in connection with their use of assistance dogs.

The Coalition is a statewide organization of six nonprofit corporations controlled and substantially staffed by deaf and hard-of-hearing individuals, including the California Association of the Deaf.

The Coalition is particularly supportive of the provisions of SB 1687 that will bring clarity and consistency to the Civil Code Sections relating to disabled access rights, particularly between the Unruh Civil Rights Act on the one hand and provisions specifically regarding the disabled on the other. Since both prohibit the same disability discrimination by businesses, they should be made consistent. This bill would accomplish that.

Please vote for SB 1687.

Sincerely,

  
J. Kendrick Kresse  
Legal Director

cc: Committee Members  
Senator Milton Marks

SP2

# **EXHIBIT C**



SENATE JUDICIARY COMMITTEE  
Charles M. Calderon, Chairman  
1995-96 Regular Session

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SB 1687  
Senator Marks  
As amended on April 11, 1996  
Hearing Date: April 16, 1996  
Civil, Food and Agriculture, Penal, and Government Codes  
GEH:cb

DISABLED PERSONS  
EQUAL ACCESS TO FACILITIES

HISTORY

Source: Senator Marks

Related Pending Legislation: None known

Prior Senate Judiciary Committee Action:

This bill was heard in this committee on April 9th. At that hearing, committee members expressed a desire to get more detailed information about the impact of two provisions:

- 1) Allowing complaints of violations of the specific disable person access statutes (Civil Code §§ 54, 54.1 and 54.2) to be filed with the Department of Fair Employment and Housing; and
- 2) Expanding the definition of the "telephone facilities" to which disabled persons must be given equal access.

The bill was put over until that information was gathered. This analysis contains additional detail on those two issues, comment "1(a)" and comment "2".

KEY ISSUES

1. SHOULD VIOLATIONS OF THE STATE LAW GUARANTEEING EQUAL ACCESS TO THE DISABLED TO PUBLIC FACILITIES BE SUBJECT TO THE SAME PENALTY AND ADMINISTRATIVE REMEDY PROVISIONS AS VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT?

- A. SHOULD COMPLAINTS OF VIOLATIONS OF THE SPECIFIC DISABLED PERSON ACCESS STATUTES BE ALLOWED TO BE FILED ADMINISTRATIVELY WITH THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING?
- B. SHOULD THE MINIMUM DAMAGE AWARD FOR A VIOLATION OF THE SPECIFIC DISABLED PERSON ACCESS STATUTES BE RAISED FROM \$750 TO \$1,000?
2. SHOULD THE DEFINITION OF THE "TELEPHONE FACILITIES" TO WHICH DISABLED PERSONS MUST BE GIVEN EQUAL ACCESS, BE EXPANDED?
3. SHOULD ADDITIONAL SAFEGUARDS TO PREVENT PERSONS FROM FRAUDULENTLY HOLDING OUT DOGS AS ASSISTANCE DOGS BE ESTABLISHED?
4. SHOULD A NUMBER OF MINOR AND CLARIFYING AMENDMENTS BE MADE TO THE STATE LAWS RELATED TO ACCESS FOR THE DISABLED, AND FOR THEIR ASSISTANCE DOGS?

#### PURPOSE

The purpose of this bill is to address a number of issues which have arisen in the implementation of SB 1240 (Marks) of 1994, which significantly amended the state laws related to access for the disabled, and for their assistance dogs.

- 1) Conforming disabled access statutory remedies to Unruh Civil Rights Act remedies

Existing law: access for disabled persons: The Unruh Civil Rights Act (Section 51 of the Civil Code) provides:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.  
(emphasis added)

Section 51 also specifies that a violation of the right of any individual under the federal Americans with Disabilities Act (ADA) constitutes a violation of the Unruh Civil Rights Act.

In addition to the Unruh Civil Rights Act's general prohibitions against denial of equal access to the disabled and other protected classes, § 54 et seq. of the Civil Code contain specific requirements for how equal access is to be



provided to disabled persons, and to their guide dogs, signal dogs or service dogs (known collectively as "assistance dogs"). These provisions in large part proscribe, and prescribe, the same conduct as the federal ADA. There are, however, protections in these state laws for persons training assistance dogs that are not covered by the federal ADA. Specifically, § 54 et seq. provide as follows:

Section 54 contains a general statement that individuals with disabilities shall have the same right as the general public to the full and free use of streets, highways, and all buildings and facilities open to the public. It also defines "disability."

Section 54.1 contains a number of definitions, and four specific access requirements:

- 1) Commercial and residential landlords must allow disabled tenants to make physical modifications to accommodate their disability, and landlords must appropriately adjust any rules, policies, practices or services to accommodate tenants with disabilities.
- 2) Residential landlords must allow disabled tenants to live with their assistance dog, subject to reasonable regulation.
- 3) Residential landlords cannot deny housing to a disabled person on the basis that the person is wholly or partially dependent upon the income of his or her spouse, if the spouse is party to the rental agreement.
- 4) No facility open to the public may deny access to a person authorized to train assistance dogs who takes the dogs to the facility for the purpose of training the assistance dog.

Section 54.2 states that every disabled person has the right to be accompanied by an assistance dog, as does every person authorized to train an assistance dog in any facility open to the public, and may not be charged for that right. It also states that the person accompanying the dog shall be liable for any damage done to the premises by the dog.

Existing law: penalties and remedies for denial of access: Section 52 of the Civil Code establishes the penalties for violation of the Unruh Civil Rights Act. It specifies that persons engaging in prohibited discrimination are liable for up to a maximum of three times the amount of actual damage but in no case less than \$1,000, plus attorneys' fees. Section 52 also provides that persons claiming to be discriminated against in violation of the Act may file an administrative complaint with the Department of Fair Employment and Housing, in addition to, or instead of, filing a lawsuit.

Section 54.3 establishes the penalties for violations of the specific disabled access requirements. Under this section, persons are liable for up to a maximum of three times the amount of actual damage but in no case less than \$750, plus attorneys' fees. This section does not provide for disabled persons claiming to have had their access rights violated to file an administrative complaint with the Department of Fair Employment and Housing.

This bill makes two amendments to the specific access requirement statutes in § 54 et. seq. to conform those sections to the provisions in the Unruh Civil Rights Act:

- The bill raises the minimum penalty for violation of the specific disabled access requirements from \$750 to \$1000.
- The bill allows disabled persons claiming to have had their access rights violated to file an administrative complaint with the Department of Fair Employment and Housing, in addition to, or instead of, filing a lawsuit. As proposed to be amended in committee, the bill will make an appropriate conforming change in the Fair Employment and Housing Act in the Government Code.

2) Expanded definition of "telephone facilities"

The list of public facilities in § 54.1 to which disabled persons must be given equal access includes "telephone facilities." Such facilities are especially defined as:

"Tarriff items and other equipment and services that have been approved by the Public Utilities Commission to be used by individuals with disabilities in a manner feasible and compatible with the existing telephone network provided by the telephone companies."

This bill deletes everything in this definition after the word "Commission", thereby requiring that persons with disabilities be given equal access to any telephone facilities approved by the Public Utilities Commission, regardless of whether those facilities were approved for use by individuals with disabilities.

3) Preventing persons from fraudulently holding out dogs as assistance dogs

Existing law, § 54.1 of the Civil Code, requires disabled persons using assistance dogs to tag the dog with an identification tag issued by a county clerk, animal control department or other authorized agency. Section 30850 et. seq. of the Food and Agriculture Code establishes the procedures for the issuance of such identification tags.



Section 365.7 of the Penal Code makes it a misdemeanor for any person to knowingly and fraudulently represent himself or herself to be the owner or trainer of an assistance dog.

This bill makes two changes to the Food and Agriculture Code sections concerning the issuance of identification tags for assistance dogs:

- The bill requires persons applying for an assistance dog identification tag to sign an affidavit stating that the person fully understands that § 365.7 of the Penal Code makes it a misdemeanor punishable by up to six months in jail and a \$1,000 fine to fraudulently represent their dog as an assistance dog.
- The bill also requires that, upon the death or retirement of an assistance dog, the owner shall immediately return the tag to the county clerk or agency that issued the tag.

4) Other clarifying amendments

As specified in comment 4 below, the bill makes a number of other clarifying and minor amendments to the Civil Code, Food and Agriculture Code and Penal Code sections related to access for the disabled, and for their assistance dogs.

COMMENT

According to Senator Marks, the provisions of this bill resulted from comments made to his office by various persons affected by disabled access and guide dog laws in the year and a half since Senator Marks' SB 1240 became law in 1994. SB 1240 was the culmination of four years of efforts by the disabled community to expand the scope of California's protections of disabled persons' and their assistance dogs' access to public facilities.

Some of the provisions of the bill are small items the author and supporters believe were inadvertently omitted from SB 1240; some of the provisions are designed to address issues raised by implementation of provisions in the federal ADA; and some of the provisions are clarifications to address issues raised by operators of facilities, like hotels and restaurants, required to provide access to assistance dogs.

1. Conforming disabled access statutory remedies to Unruh Civil Rights Act remedies

a) Administrative remedies

At the April 9th hearing, the committee requested additional information about the effects of this provision. According to the Department of Fair

Employment and Housing, Unruh Civil Rights Act complaints are handled in the same manner as employment discrimination cases under the state Fair Employment and Housing Act (FEHA) (even if the Unruh Act complaint does not involve employment discrimination.)

A person who believes he or she has been discriminated against is initially interviewed at a regional office of DFEH. If there appears there has been a violation of the Unruh Civil Rights Act, a formal complaint is issued and an investigation is instigated. If DFEH is unable to help the complaining party redress their grievance through an informal reconciliation process, the legal division files a formal accusation against the alleged violator. This accusation is then brought before the Fair Employment and Housing Commission for decision.

The only difference between Unruh Act complaints and complaints brought directly under FEHA is that persons cannot file a FEHA suit in court unless they have first brought their complaint to the attention of DFEH. If they inform DFEH that they want to sue in court, DFEH issues a "right to sue" letter. That procedure is unnecessary for Unruh Act violations because the right in § 52 to file a complaint with DFEH is completely independent of the right to sue.

DFEH reports that complaints of violations of the Unruh Civil Rights Act represent a very small percentage of its total complaints. In fiscal year, 1994-5, DFEH processed 177 Unruh Civil Rights Act complaints out of over 17,000 total complaints. Of those 177 complaints, it is not clear how many of them involved allegations of discrimination against persons with disabilities.

DFEH indicates that this bill's provision allowing complaints of violations of the specific disabled person access provisions to be filed administratively with DFEH will have very little impact on its workload. Because any violation of the federal ADA is already a violation of the Unruh Civil Rights Act, the only type of complaint that this bill would allow to be filed with DFEH that cannot already be filed there, are complaints related to denial of access to persons training assistance dogs.

b) Raising the minimum damage award

The provision raising the minimum damage award to \$1,000 is a way for the supporters of disabled rights to get a little bit more than they were able to in the debates over SB 1240. The original version of that bill proposed to increase the minimum award from \$250 to \$5,000. The \$5,000 figure was decreased by several committees until it finally ended up at \$750. Meanwhile, another bill was going through the Legislature (and ultimately getting signed) in 1994. SB 1288 (Calderon), among other



things, increased the minimum award for violations of the Unruh Civil Rights Act to \$1,000.

The concept that the penalties for violation of the specific disabled person access statutes should be the same as the remedies and penalties for violation of the Unruh Civil Rights Act's general prohibitions against discrimination seems sound. Since all acts that would violate the specific statutes, other than denial of access to assistance dog trainers would also violations of the general Unruh Civil Rights Act, it seems nonsensical to have the minimum penalty depend upon the statute that the aggrieved person happens to cite in his or her complaint.

2. Expanding the definition of telephone facilities

At the April 9th hearing, the committee asked for additional information about the effect of this provision. According to the author's office, this bill's amendment to the definition of "telephone facilities" is intended to ensure that the definition accommodates changes in technology. Apparently, the author is concerned that the existing definition states that the facilities must be compatible with the "existing" telephone network. PUC staff is unaware of any problems which have arisen with this present definition

As drafted, the bill addresses much more than the alleged problem related to changes in technology. The bill appears to require that persons with disabilities be given equal access to any telephone facilities approved by the Public Utilities Commission, regardless of whether they were approved for use by individuals with disabilities. This could be a dramatic change in policy, requiring all telephone boots and other telephone facilities to be retrofitted or replaced to accommodate persons with disabilities.

PUC staff believes this change is problematic, and notes that Public Utilities Code §2881 specifically addresses the issue of access for the deaf and hearing-impaired to telephone facilities. Pacific Telesis representatives are also concerned about this change to the definition of "telephone facilities.". They believe that it expands the original concept of access to specially designed telephone facilities. GTE, the other major provider of telephone facilities in the state, has also been asked to review this provision.

SHOULD THIS PROVISION BE REMOVED, AND THE PRESENT DEFINITION OF TELEPHONE FACILITIES RETAINED?

3. Preventing persons from fraudulently holding out dogs as assistance dogs

The provisions in SB 1240 establishing procedures for assistance dogs to be issued identification tags were inserted to address concerns by operators of facilities like hotels and restaurants. These operators were concerned that



non-disabled persons would take advantage of these statutes to insist on their right to have their untrained pets be accommodated in restaurants and hotels.

The tags were therefore established to provide identification of animals legitimately entitled to access privileges, much like the placard placed on cars entitled to use handicapped parking spaces. Holders of such placards are required to return them when the car for which they were issued is sold, in order to exercise tight control over which vehicles can carry such placards. Similarly, this bill requires owners of assistance dogs to return their tags when the dog dies, in order to exert tight control over which animals can wear such tags.

The requirement that persons applying for an assistance dog identification tag sign an affidavit that they are aware that it is a misdemeanor to fraudulently represent that their dog is an assistance dog, is intended to address problems that have arisen with the implementation of the federal ADA. That law liberalized the requirement that they be trained by specially licensed trainers. This increases the potential for persons to fraudulently claim that their regular pet is an assistance dog. The author believes that the requirement to sign this affidavit will deter some would-be defrauders who might think it is funny and inconsequential for them to pretend their pet is an assistance dog.

According to the author's office organizations representing users and trainers of assistance dogs are supportive of these changes even though they might be interpreted as increasing the burden on users of assistance dogs. According to the author's office, these organizations want to discourage fraudulent representations that untrained dogs are assistance dogs.

#### 4. Other clarifying amendments

This bill makes the following other minor and clarifying amendments to the Civil Code, Food and Agriculture Code and Penal Code sections related to access for the disabled, and for their assistance dogs:

##### a) Liability for damage caused by assistance dogs

The bill codifies in Civil Code §54.1 the liability of persons training assistance dogs for damage to facilities by their assistance dogs. Similar language appears in Civil Code §52.2 and Penal Code § 365.5, and such liability is also clearly established under common law tort principles.

##### b) Exemption from APA for Department of Food and Agriculture (CDFA)

SB 1240 required CDFA, in consultation with the Department of Health Services, to specify the shape, size and color of the tags. To avoid further delays by CDFA in implementing this section, this bill clarifies that these





specifications need not be done through the regulation process specified in the state Administrative Procedures Act.

c) Clarifying relationship between the federal ADA and state law

Some of the state disabled person and assistance dog access statutes expressly state their provisions are not to be construed as limiting any disabled persons' access in violation of the federal ADA, but some do not. Likewise some expressly state that a violation of the federal ADA constitutes a violation of the state statute as well, but some do not. This makes these express statements in all of the appropriate statutes, and provides for the severability of any requirement deemed to be preempted by the federal ADA.

d) Conforming the list of public facilities in the Penal Code and Civil Code

Penal Code Section 365.5., which creates a misdemeanor for denying access to public facilities for disabled persons, has a less specific list of types of public facilities than Civil Code Section 54.1. The Penal Code list reads:

"hotels, restaurants, lodging places, places of public accommodation, amusement, resort, or other places to which the general public is invited"

This bill amends that list to be the same as the Civil Code list, to read:

"accommodations, advantages, facilities, medical facilities, including hospitals, clinics and physicians' offices, telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort and other places to which the public is invited"

Support: Ed and Toni Eames (co-chairs, Guide Dog Committee of the National Federation of the Blind of California)

Opposition: None known

Prior Legislation: SB 1240 (1994) Chaptered  
\*\*\*\*\*



# **EXHIBIT D**

**SENATE RULES COMMITTEE**

SB 1687

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

**THIRD READING**

Bill No: SB 1687  
Author: Marks (D)  
Amended: 4/25/96  
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-1, 4/16/96  
AYES: Lockyer, O'Connell, Petris, Sher, Solis, Wright, Calderon  
NOES: Haynes  
NOT VOTING: Leslie

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

**SUBJECT:** Disabled persons: assistance dogs

**SOURCE:** Author

**DIGEST:** This bill amends and clarifies existing law relative to the use of assistance dogs by disabled persons.

**ANALYSIS:** Existing law provides that every disabled person has the right to be accompanied by an assistance dog, as does every person authorized to train an assistance dog in any facility open to the public, and may not be charged for that right. It also states that the person accompanying the dog shall be liable for any damage done to the premises by the dog.

Section 52 of the Civil Code establishes the penalties for violation of the Unruh Civil Rights Act. It specifies that persons engaging in prohibited discrimination are liable for up to a maximum of three times the amount of actual damage but in no case less than \$1,000, plus attorneys' fees. Section 52 also provides that persons claiming to be discriminated against in violation



of the Act may file an administrative complaint with the Department of Fair Employment and Housing (DFEH), in addition to, or instead of, filing a lawsuit.

Section 54.3 establishes the penalties for violations of the specific disabled access requirements. Under this section, persons are liable for up to a maximum of three times the amount of actual damage but in no case less than \$750, plus attorneys' fees. This section does not provide for disabled persons claiming to have had their access rights violated to file an administrative complaint with the DFEH.

This bill makes two amendments to the specific access requirement statutes in §54 et. seq. to conform those sections to the provisions in the Unruh Civil Rights Act:

1. The bill raises the minimum penalty for violation of the specific disabled access requirements from \$750 to \$1,000.
2. The bill allows disabled persons claiming to have had their access rights violated to file an administrative complaint with the DFEH, in addition to, or instead of, filing a lawsuit. The bill will make an appropriate conforming change in the Fair Employment and Housing Act in the Government Code.

Existing law, §54.1 of the Civil Code, requires disabled persons using assistance dogs to tag the dog with an identification tag issued by a county clerk, animal control department or other authorized agency. Section 30850 et. seq. of the Food and Agriculture Code establishes the procedures for the issuance of such identification tags.

Section 365.7 of the Penal Code makes it a misdemeanor for any person to knowingly and fraudulently represent himself or herself to be the owner or trainer of an assistance dog.

This bill makes two changes to the Food and Agriculture Code sections concerning the issuance of identification tags for assistance dogs:

1. The bill requires persons applying for an assistance dog identification tag to sign an affidavit stating that the person fully understands that §365.7 of the Penal Code makes it a misdemeanor punishable by up to six months

CONTINUED



in jail and a \$1,000 fine to fraudulently represent their dog as an assistance dog.

2. The bill also requires that, upon the death or retirement of an assistance dog, the owner shall immediately return the tag to the county clerk or agency that issued the tag.

This bill makes the following other minor and clarifying amendments to the Civil Code, Food and Agriculture Code and Penal Code sections related to access for the disabled, and for their assistance dogs:

1. Liability for Damage Caused by Assistance Dogs

The bill codifies in Civil Code §54.1 the liability of persons training assistance dogs for damage to facilities by their assistance dogs. Similar language appears in Civil Code §52.2 and Penal Code §365.5, and such liability is also clearly established under common law tort principles.

2. Exemption from Administrative Procedures Act for Department of Food and Agriculture

SB 1240 required DFA, in consultation with the Department of Health Services, to specify the shape, size and color of the tags. To avoid further delays by DFA in implementing this section, this bill clarifies that these specifications need not be done through the regulation process specified in the state's Administrative Procedures Act.

3. Clarifying Relationship Between the Federal ADA and State Law

Some of the state disabled person and assistance dog access statutes expressly state their provisions are not to be construed as limiting any disabled persons' access in violation of the federal Americans with Disabilities Act, but some do not. Likewise some expressly state that a violation of the federal Act constitutes a violation of the state statute as well, but some do not. This makes these express statements in all of the appropriate statutes, and provides for the severability of any requirement deemed to be pre-empted by the federal Act.

4. Conforming the List of Public Facilities in the Penal Code and the Civil Code



Penal Code Section 365.5., which creates a misdemeanor for denying access to public facilities for disabled persons, has a less specific list of types of public facilities than Civil Code Section 54.1. The Penal Code list reads: "hotels, restaurants, lodging places, places of public accommodation, amusement, resort, or other places to which the general public is invited."

This bill amends that list to be the same as the Civil Code list, to read: "accommodations, advantages, facilities, medical facilities, including hospitals, clinics and physicians' offices, telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort and other places to which the public is invited."

#### Prior Legislation

SB 1240 (Marks), Chapter 794 of 1994; Senate vote 29-2 (Noes: Johannessen, Leonard).

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

**SUPPORT:** (Verified 5/14/96)

California Center for Law and the Deaf

**ARGUMENTS IN SUPPORT:** According to the author's office, the provisions of this bill resulted from comments made to his office by various persons affected by disabled access and guide dog laws in the year and a half since Senator Marks' SB 1240 became law in 1994. SB 1240 was the culmination of four years of efforts by the disabled community to expand the scope of California's protections of disabled persons' and their assistance dogs' access to public facilities.

RJG:ctl 5/14/96 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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

# **EXHIBIT E**

Date of Hearing: July 10, 1996

ASSEMBLY COMMITTEE ON JUDICIARY  
Bill Morrow, Chair

SB 1687 (Marks) - As Amended: April 25, 1996

SENATE VOTE: Floor: 25-0

SUMMARY: Revises and recasts provisions relative to the use of assistance dogs by disabled persons. Specifically, this bill:

- 1) Conforms minimum statutory damages for disabled access violations to the Unruh Civil Rights Act remedies.
- 2) Provides for administrative remedies through the Department of Fair Employment and Housing.
- 3) Makes congruent sections of the Civil and Penal Code which address the same issues.
- 4) Adds safeguards to prevent persons from fraudulently holding out pet dogs as assistance dogs.
- 5) Provides administrative relief from the promulgation of regulations by the Department of Food and Agriculture describing the size, shape and color of tags which identify dogs as assistance dogs.
- 6) Makes other technical and clarifying changes relative to the use of assistance dogs by disabled persons.

FISCAL EFFECT: Unknown

EXISTING LAW:

- 1) Provides that every disabled person has the right to be accompanied by an assistance dog, as does every person authorized to train an assistance dog in any facility open to the public, and may not be charged for that right. It also states that the person accompanying the dog shall be liable for any damage done to the premises by the dog.
- 2) Section 52 of the Civil Code establishes the penalties for violation of the Unruh Civil Rights Act. It specifies that persons engaging in prohibited discrimination are liable for up to a maximum of three times the amount of actual damage but in no case less than \$1,000, plus attorneys' fees. Section 52 also provides that persons claiming to be discriminated against in violation of the Act may file an administrative complaint with the Department of Fair Employment and Housing (DFEH), in addition to, or instead of, filing a lawsuit.
- 3) Section 54.3 of the Civil Code establishes the penalties for violations of the specific disabled access requirements. Under this section, persons are liable for up to a maximum of three times the amount of actual damage but in no case less than \$750, plus attorneys' fees. This section does not provide for disabled persons claiming to have had their access rights violated to file an administrative complaint with the DFEH.





- 4) Section 54.1 of the Civil Code, requires disabled persons using assistance dogs to tag the dog with an identification tag issued by a county clerk, animal control department or other authorized agency. Section 30850 et. seq. of the Food and Agriculture Code establishes the procedures for the issuance of such identification tags.
- 5) Section 365.7 of the Penal Code makes it a misdemeanor for any person to knowingly and fraudulently represent himself or herself to be the owner or trainer of an assistance dog.
- 6) Section 365.5 of the Penal Code makes it a misdemeanor to deny access to public facilities to disabled persons.
- 7) Section 54.1 of the Civil Code provides that individuals with disabilities are to be provided equal access to public facilities.

BACKGROUND: SB 1240 (Marks), Chapter 794 of 1994, expanded the scope of California's protections of disabled persons' and their guide dogs' access to public facilities.

ARGUMENTS IN SUPPORT: According to the author's office, the provisions of this bill resulted from comments made to his office by various persons affected by disabled access and guide dog laws in the year and a half since Senator Marks' SB 1240 became law in 1994. SB 1240 was the culmination of four years of efforts by the disabled community to expand the scope of California's protections of disabled persons' and their assistance dogs' access to public facilities. Inconsistencies and oversights occurred as competing bills were going through the legislature at the same time. This bill would remedy those oversights and inconsistencies.

ARGUMENTS IN OPPOSITION: None

COMMENTS:

- 1) Conforming disabled access statutory remedies to Unruh Civil Rights Act remedies

- a. Administrative remedies

DFEH indicates that this bill's provision allowing complaints of violations of the specific disabled person access provisions to be filed administratively with DFEH will have very little impact on its workload. Because any violation of the federal ADA is already a violation of the Unruh Civil Rights Act, the only type of complaint that this bill would allow to be filed with DFEH that cannot already be filed there, are complaints related to denial of access to persons training assistance dogs.

- b. Raising the minimum damage award

The provision raising the minimum damage award to \$1,000 is a way for the supporters of disabled rights to get a little bit more than they were able to in the debates over SB 1240. The original version of that bill proposed to increase the minimum award from \$250 to \$5,000. The \$5,000 figure was decreased by several committees until it finally ended up at \$750. Meanwhile, another bill was going through the Legislature (and ultimately getting signed) in 1994. SB 1288



(Calderon), among other things, increased the minimum award for violations of the Unruh Civil Rights Act to \$1,000.

The concept that the penalties for violation of the specific disabled person access statutes should be the same as the remedies and penalties for violation of the Unruh Civil Rights Act's general prohibitions against discrimination seems sound. Since all acts that would violate the specific statutes, other than denial of access to assistance dog trainers would also constitute violations of the general Unruh Civil Rights Act, it seems nonsensical to have the minimum penalty depend upon the statute that the aggrieved person happens to cite in his or her complaint.

2) Preventing persons from fraudulently holding out dogs as assistance dogs

The provisions in SB 1240 establishing procedures for assistance dogs to be issued identification tags were inserted to address concerns by operators of facilities like hotels and restaurants. These operators were concerned that non-disabled persons would take advantage of these statutes to insist on their right to have their untrained pets be accommodated in restaurants and hotels.

The tags were therefore established to provide identification of animals legitimately entitled to access privileges, much like the placard placed on cars entitled to use handicapped parking spaces.

The requirement that persons applying for an assistance dog identification tag sign an affidavit that they are aware that it is a misdemeanor to fraudulently represent that their dog is an assistance dog, is intended to address problems that have arisen with the implementation of the federal ADA. That law liberalized the requirement that they be trained by specially licensed trainers. This increases the potential for persons to fraudulently claim that their regular pet is an assistance dog. The author believes that the requirement to sign this affidavit will deter some would be defrauders who might think it is funny and inconsequential for them to pretend their pet is an assistance dog.

3) Other clarifying amendments

This bill makes the following other minor and clarifying amendments to the Civil Code, Food and Agriculture Code and Penal Code sections related to access for the disabled, and for their assistance dogs:

a. Liability for damage caused by assistance dogs

The bill codifies in Civil Code Section 54.1 the liability of persons training assistance dogs for damage to facilities by their assistance dogs. Similar language appears in Civil Code Section 52.2 and Penal Code Section 365.5, and such liability is also clearly established under common law tort principles.

b. Exemption from APA for Department of Food and Agriculture (CDFA)

SB 1240 required CDFA, in consultation with the Department of Health Services, to specify the shape, size and color of the tags. To avoid further delays by CDFA in implementing this section, this bill clarifies that these specifications need not be done through the

regulation process specified in the state Administrative Procedures Act.

c. Clarifying relationship between the federal ADA and state law

Some of the state disabled person and assistance dog access statutes expressly state their provisions are not to be construed as limiting any disabled persons' access in violation of the federal ADA, but some do not. Likewise some expressly state that a violation of the federal ADA constitutes a violation of the state statute as well, but some do not. This makes these express statements in all of the appropriate statutes, and provides for the severability of any requirement deemed to be pre-empted by the federal ADA.

d. Conforming the list of public facilities in the Penal Code and Civil Code

Penal Code Section 365.5, which creates a misdemeanor for denying access to public facilities for disabled persons, has a less specific list of types of public facilities than Civil Code Section 54.1. The Penal Code list reads:

"hotels, restaurants, lodging places, places of public accommodation, amusement, resort, or other places to which the general public is invited"

This bill amends that list to be the same as the Civil Code list, to read:

"accommodations, advantages, facilities, medical facilities, including hospitals, clinics and physicians' offices, telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort and other places to which the public is invited"

4) California Council for the Blind concerns

The California Council for the Blind has expressed concern that this measure includes guide dogs for the blind within the definition of service dogs. However, this measure does not change current law's definition of service dogs. The current definition does include guide dogs for the blind. This was apparently a contentious matter. Nevertheless, the issue was debated and decided. The Council's objection would appear to be directed at an issue that has been dealt with rather than the specifics of this measure.

REGISTERED SUPPORT / OPPOSITION:

Support

California Center for Law  
and the Deaf

Opposition

None to date

Analysis prepared by: Cliff Zall / ajud / (916) 445-4560



# **EXHIBIT F**

DEPARTMENT Department of Fair Employment and Housing	AUTHOR Marks	BILL NUMBER SB 1687
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**BILL DESCRIPTION**

This bill would make changes to existing statutory provisions that provide rights to individuals with disabilities. Specifically, this bill would:

1. Provide that a person who is denied any right found in Civil Code sections 54 - 54.2, may seek a remedy in an administrative forum by filing a complaint with the Department of Fair Employment and Housing, as an alternative to filing a complaint in civil court; and
2. Increase the damages that are available to such a person.

These provisions are discussed below.

Additionally, this bill would:

1. Enact provisions that would prevent pets from being held out as assistance dogs;
2. Exempt the Department of Food and Agriculture from Administrative Procedures Act rulemaking requirements in a specified instance; and
3. Conform a penal code statute with a corresponding statute in the civil code.

The Department defers a recommendation on these provisions to the Department of Food and Agriculture and the Department of Rehabilitation.

**BACKGROUND**

This bill is sponsored by the author and is the second "clean-up" bill to AB 1077 (Bronzan, Stats. 1992, c. 913.) AB 1077 was introduced in an effort to bring California's disability laws into conformity with the federal Americans with Disabilities Act of 1990 (ADA.) In 1994, Senator Marks authored SB 1240 (Marks, Stat. 1994, c. 794) as the first "clean-up" bill to AB 1077. This bill, SB 1687 is the second "clean-up" bill and contains provisions that were brought to Senator Marks' attention since the passage of SB 1240 in 1994.

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VOTE: Assembly Floor:           Aye <u>71</u> No <u>0</u> Policy Committee:        Aye <u>12</u> No <u>0</u> Fiscal Committee:         Aye <u>17</u> No <u>0</u>		VOTE: Senate Floor:            Aye <u>25</u> No <u>0</u> Policy Committee:        Aye <u>7</u> No <u>1</u> Fiscal Committee:        28.8 <span style="float: right;">p 57</span>	
RECOMMENDATION TO GOVERNOR: SIGN <u>XX</u> VETO <u>    </u>		DEFER TO OTHER AGENCY _____	
DEPARTMENT DIRECTOR <i>Randy C. Sutton</i>		AGENCY SECRETARY <i>Debra Stevens</i>	
DATE: <u>27 Aug 96</u>		DATE: <u>8/28/96</u>	

**SPECIFIC FINDINGS**

1. This bill would authorize a person who is denied a right listed in Civil Code sections 54 - 54.2 to file a complaint with DFEH.

Civil Code sections 54 - 54.2 confer various rights to the disabled and to trainers of service animals for the disabled. Under these sections, a person with a disability:

- May not be denied the full and free use of and access to public and private accommodations, modes of transportation, streets, hospitals, railroad trains, schools, lodging, or other public places (Civil Code §§ 54, subd. (a); 54.1, subd. (a)(1));
- Is entitled to full and equal access to housing accommodations offered for rent, lease or compensation (Civil Code § 54.1, subd. (b)(1));
- Has the right to modify his or her housing accommodations to make reasonable accommodations for his or her disability, as specified (Civil Code § 54.1, subd. (b)(3)(A));
- May not be denied a rental or lease of a housing accommodation if the person is wholly dependent on another and the other person is also bound by the lease (Civil Code § 54.1, subd. (b)(7));
- Has the right to have an assistance animal in his or her housing facility, subject to reasonable regulations of the landlord (Civil Code § 54.1, subds. (b)(6)(A) & (B));
- May not be charged a security deposit or an extra charge for having an assistance animal (Civil Code § 54.2, subd. (a)).

Sections 54 - 54.2 also provides that a person who is training an assistance animal:

- May take that animal to any place that a disabled person may take the animal (Civil Code § 54.1, subd. (c));
- May not be charged a security deposit or an extra charge for having an assistance animal (Civil Code § 54.2, subd. (b)).

Under current law, a violation of sections 54 - 54.2 may only be enforced by filing a complaint in civil court. (Civil Code § 54.3, subd. (a).)

This bill would provide that as an alternative to filing a complaint in civil court, a person who has been denied a right listed in sections 54 - 54.2 above, may file a complaint with DFEH and seek a remedy through the administrative process. **However, as shown below, in most instances, a person who has been denied a right found in sections 54 - 54.2 may currently file a complaint with DFEH for the same act of harm under either the Unruh Civil Rights Act (Civil Code § 51) or the housing provisions of the Fair Employment and Housing Act (FEHA) (Gov't Code §§ 12955 et. seq.)**



PG 2

- a. A person who is denied a right found in sections 54 - 54.2, related to access and enjoyment of public facilities and public accommodations may currently file a complaint with DFEH under the Unruh Civil Rights Act

As stated above, sections 54 - 54.2 provide that a person with a disability may not be denied the full and free use of and access to public and private accommodations, modes of transportation, streets, hospitals, railroad trains, schools, lodging, or other public places (Civil Code §§ 54, subd. (a); 54.1, subd. (a)(1));

Similarly, the Unruh Civil Rights Act broadly prohibits, among other things, discrimination against persons with disabilities. It states that "[a]ll persons ... no matter what their ... disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civil Code § 51.) A person who is denied a right under the Unruh Civil Rights Act may file a complaint with DFEH. (Civil Code § 52, subd. (f); Gov't Code § 12948.)

In virtually all instances, acts of harm that would violate the provisions of sections 54 - 54.2 related to access to public facilities and public accommodations also would violate the Unruh Civil Rights Act's broad prohibition against disability discrimination. Consequently, a person already may file a complaint with DFEH to seek a remedy for these common acts of harm.

Additionally, current law provides that any violation of the Americans with Disabilities Act (ADA) also is a violation of the Unruh Civil Rights Act. (Civil Code § 51.) This provision brings within DFEH jurisdiction virtually all discriminatory practices against individuals with disabilities that are prohibited under federal statutes and regulations.

The ADA prohibits denying qualified individuals with a disability from, among other things, being denied:

- Participation in, or benefits of services, programs, or activities of a public entity (42 USCS § 12132; 28 CFR §§ 35.130, subd. (a); 35.149);
- Full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodations (42 USCS § 12182, subd. (a); 28 CFR § 36.201, subd. (a));
- Full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce (42 USCS § 12184, subd. (a).)

Additionally, regulations promulgated by the Secretary of Transportation that interpret the ADA provide that:

- No entity shall discriminate against an individual with a disability in connection with the provision of transportation service. (49 CFR 37.5, subd. (a).)



PE-9

As in the case with the Unruh Act's broad prohibition, in virtually all instances an act of harm that would violate the access to public facilities and public accommodations provisions of sections 54 - 54.2 also would violate the ADA and therefore currently be under DFEH jurisdiction.

**Consequently, the rights found in sections 54 - 54.2 related to disabled access to public facilities and public accommodations would not expand the department's jurisdiction.**

- b. A person who is denied a right found in sections 54 - 54.2 relating to modifications of housing accommodations may currently file a complaint with DFEH under the FEHA

Sections 54 - 54.2 provide an individual with disabilities with the right to make reasonable modifications to his or her housing facilities, as specified. This provision already is contained in the FEHA. The FEHA defines discrimination to include the refusal of a landlord to permit an individual with a disability to make reasonable modifications of premises if the modifications are necessary to afford the disabled person full enjoyment of the premises. (Gov't Code §§ 12927, subd. (c)(1); 12955, subds. (a) & (d); 12955.1.)

**Consequently, the rights found in sections 54 - 54.2 related to reasonable modifications to housing accommodations would not expand the department's jurisdiction.**

- c. A person who is denied a right found in sections 54 - 54.2 above relating to having an assistance animal in his or her housing facility may currently file a complaint with DFEH under the FEHA

Sections 54 - 54.2 prohibit denying housing accommodations to an individual with a disability because the individual has an assistance animal (guide, signal, or assistance dog.) Although the FEHA does not contain this same provision, the FEHA does require a landlord to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. (Gov't Code §§ 12927, subd. (c)(1); 12955, subds. (a) & (d).) The Department interprets this broad requirement to mean, among other things, that a landlord must reasonably accommodate a person with a disability by allowing that person to have an assistance animal.

**Consequently, the rights found in sections 51 - 51.2 related to having an assistance animal in housing facility would not expand the department's jurisdiction.**





- d. Trainers of service animals are not protected under the ADA and therefore may not currently file a complaint with DFEH

Sections 54 - 54.2 provide that a person who is training an assistance animal may take that animal to any place that a disabled person may take the animal (Civil Code § 54.1, subd. (c)). Additionally, a trainer may not be charged a security deposit or an extra charge for having an assistance animal (Civil Code § 54.2, subd. (b)).

While both the FEHA and the ADA protect persons with disabilities who have assistance animals, neither body of law affords protections to trainers of assistance animals.

**As a result of this bill, the department's jurisdiction would increase in that the following persons would be able to file a complaint with the DFEH:**

1. **Trainers of guide dogs, signal dogs, or service dogs who are denied access to public places because of the dog.**
  2. **Trainers of guide dogs, signal dogs, or service dogs who are charged a security deposit or an extra charge because of the dog.**
2. This bill would increase damages for a violation of Civil Code sections 54 - 54.2 to conform to those damages currently available for a violation of the Unruh Civil Rights Act.

Current law provides that a person who has been denied a right in the Unruh Civil Rights Act may receive three times his or her actual damages, but not less than \$1000, plus attorney's fees. (Civil Code § 52.)

Also under current law, a person who has been denied a right found in sections 54 - 54.2 may recover three times actual damages, but not less than \$750, plus attorney's fees. However, in most instances, an act that would violate sections 54 - 54.2 also would violate the Unruh Civil Rights Act.

**This bill would conform damages available to a person who is denied a right found in sections 54 - 54.2 to those damages available to a person who is denied a right found in the Unruh Civil Rights Act.**

3. This bill would provide that a person may not recover damages under sections 54 - 54.2 and the Unruh Civil Rights Act for the same act of harm.

As stated above, in many instances, a person who has a claim under sections 54 - 54.2 also would have a claim under the Unruh Civil Rights Act. In order to prevent a person from recovering twice for the same act of harm, this bill would provide that a person may not be held liable for damages under both sections 54 - 54.2 and the Unruh Civil Rights Act.



PC 11

**FISCAL IMPACT**

Minor absorbable impact. The majority of the provisions in the sections 54 - 54.2 that are being brought under DFEH's jurisdiction are already under DFEH's jurisdiction through the Unruh Civil Rights Act or the FEHA.

**SUPPORT**

California Center for Law and the Deaf

**OPPOSITION**

None

**ARGUMENTS**

**Pro**

This bill would clarify California disability law by making conforming changes to several of California's disability statutes.

**Con**

None.

**RECOMMENDATION**

**SIGN.**

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PS 12

# **EXHIBIT G**

SENATE RULES COMMITTEE  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

TAT

AB 2222

JK

THIRD READING

Bill No: AB 2222  
Author: Kuehl (D)  
Amended: 7/6/00 in Senate  
Vote: 21 8/28

SENATE JUDICIARY COMMITTEE: 6-3, 8/8/00  
AYES: Burton, Escutia, O'Connell, Peace, Sher, Schiff  
NOES: Haynes, Morrow, Wright

SENATE APPROPRIATIONS COMMITTEE: 8-5, 8/23/00  
AYES: Johnston, Alpert, Bowen, Burton, Escutia, Karnette, Perata,  
Vasconcellos  
NOES: Johnson, Kelley, Leslie, McPherson, Mountjoy

ASSEMBLY FLOOR: 42-32, 6/1/00 - See last page for vote

SUBJECT: Civil rights: disability

SOURCE: Employment Law Center

DIGEST: This bill enacts the Prudence Kay Poppink Act. The bill clarifies the definitions of "mental disability", "physical disability" and "medical condition" for the purposes of California's civil rights laws, limits an employer's ability to require medical or psychological examinations, or make certain medical or disability-related inquiries; and requires an employer to engage in a good faith, interactive process to determine reasonable accommodations for a disabled employee or applicant.

SFA 7/8/28/00 double insert this bill X  
ANALYSIS: Last year, the U.S. Supreme Court held that the determination of whether a person has a disability under the Americans With Disabilities Act must take into consideration whether the person may not be

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SFA 1

substantially limited in a major life activity because they are using a mitigating measure, such as medication, a prosthesis, or a hearing aid. (See *Sutton v. United Airlines* (1999) 119 S.Ct. 2139; *Murphy v. United Postal Services* (1999) 119 S.Ct. 2133; *Albertson's Inc. v. Kirkingburg* (1999) 119 S.Ct. 2162.) This bill is intended to assert the independence of FEHA as more protective of persons with disabilities than under the federal ADA.

Changes to existing law:

Existing law, Civil Code Section 51, provides that all persons within the jurisdiction of this state are free and equal, and no matter what their... disability... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. Section 51 does not define disability.

Existing law, Civil Code Section 51.5 provides that no business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the ... or disability of the person or ... because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics. Section 51.5 does not define disability.

Existing law, Civil Code Section 54 provides that individuals with disabilities 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.

"Disability," as used in Section 54, means any of the following with respect to an individual:

1. A physical or mental impairment that substantially limits one or more of the major life activities of the individual.
2. A record of such an impairment.
3. Being regarded as having such an impairment.

Existing law, Government Code Section 12940, et seq., provides that it is an unlawful employment practice for an employer (or employment agency) to

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refuse to hire or employ a person, or otherwise discriminate because of a mental or physical disability or medical condition. In Government Code Section 12926(i), "Mental disability" includes "any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." In Government Code Section 12926 (k), "Physical disability" includes, among other things, "any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss" that affects specified body systems and "limits an individual's ability to participate in major life activities."

This bill would synthesize and make uniform the definitions of disabled for purposes of both the Government Code and Civil Codes, as that contained in Government Code Section 12926, which would be amended to provide as follows:

"Mental disability" includes having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.

"Physical disability" includes:

1. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
  - A. Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, and;
  - B. Limits a major life activity.
2. A psychological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
3. Any other health impairment not described above that requires special education or related services.



The definition of mental and physical disability and medical condition would include a record or history of, or being regarded as having had, a protected condition, as well as currently suffering from the condition.

The bill would further provide:

1. For the purpose of the definition of disability, "limits" on an individual's ability to participate in "major life activities" shall be determined without regard to mitigating measures, unless the mitigating measure itself limits an individual's ability to participate in major life activities.
2. "Major life activities" shall be broadly construed, and includes physical, mental, social, and work-related activities.

Existing law prohibits an employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to make any non-job-related inquiry of an employee or applicant, that expresses any limitation as to physical disability, mental disability, medical condition.

Existing law provides that except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, information directly related and pertinent to the position the applicant is applying for.

This bill would recast this provision of law to provide that it is an unlawful employment practice for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

The bill would further provide that notwithstanding the above:

1. An employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

CONTINUED



2. An employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.
3. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

Existing law requires an employer to make reasonable accommodation for the known physical or mental disability of an applicant or employee.

This bill would require, in addition, that an employer must engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

State law is independent of -- and stronger than -- federal disability law

California courts often use federal precedent in interpreting state employment discrimination law, because "(F)ederal employment discrimination legislation in many ways is quite similar in wording and intent to the FEHA, and California courts have found it helpful to rely on federal precedent to interpret the analogous portions of state law. Mixon v Fair Employment & Housing Com (1987, 6<sup>th</sup> Dist) 192 Cal App 3d 1306." However, California courts are not bound by federal interpretations of employment discrimination law.

As one legal treatise recognized, "Congress intended federal employment discrimination laws to supplement rather than supplant state legislation in the field." Alexander v Gardner-Denver Co. (1974) 415 US 36. "(W)hile the language of Title VII and the FEHA may differ as to some particulars, the antidiscriminatory objectives and the overriding public policy purposes are identical, and the California courts (only) refer to federal decisions where appropriate. (Citations omitted.) California Civil Practice, Employment Litigation (Cont. Ed. Bar 1999) section 2:7 page 13-14.





California case law and statutes follow this scheme. For instance, Government Code Section 12926(l) expressly states that the definition of "disability" under the ADA applies to FEHA cases if the ADA definition "results in broader protection of the civil rights" of people with disabilities. Notably, Section 12926(l) does not incorporate the ADA definition if the ADA definition provides lesser protection for disabled persons.

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

**SUPPORT:** (Verified 8/24/00)

Employment Law Center (source)  
AIDS Legal Referral Panel  
AIDS Project Los Angeles  
AIDS Services Foundation, Orange County  
American Civil Liberties Union  
Association of Regional Center Agencies  
California Center for Law and the Deaf  
California Depressive and Manic-Depressive Association  
California Disability Alliance California Employment Lawyers Association  
California Fair Employment and Housing Commission  
California Psychological Association  
California School Employees Association  
Californians For Disability Rights  
Center for Independent Living  
City of West Hollywood  
Coalition on Homelessness, San Francisco  
Consumer Attorneys of California  
County of Nevada  
Deaf Counseling, Advocacy and Referral Agency  
Disability Rights Advocates  
Disability Rights Education and Defense Fund, Inc.  
East Bay Community Law Center  
Fair Employment and Housing Commission  
The Hawkins Center  
Homeless Action Center  
The Impact Fund  
Independent Living Resource Center San Francisco  
Mental Health Advocacy Project, Santa Clara County Bar Association Law  
Foundation  
Mental Health Association



National Multiple Sclerosis Society  
Placer Independent Resource Services  
Protection and Advocacy  
San Francisco AIDS Foundation  
Western Law Center for Disability Rights  
Women's Cancer Resource Center  
World Institute on Disability

**OPPOSITION:** (Verified 8/24/00)

California Chamber of Commerce  
California Employment Law Council  
California Manufacturers and Technology Association  
California State Association of Counties  
Cities of Fontana, Lakewood, Poway, and Stockton  
League of California Cities  
Motion Picture Association of America, San Diego Regional Chamber of  
Commerce

**ARGUMENTS IN SUPPORT:** The author offers the following in support of the bill, "AB 2222 is about equal opportunity. It's about making sure that no Californians are denied the opportunity to prove themselves at jobs they are capable of doing just because of assumptions made on the basis of their medical history. When employers provide reasonable accommodation for their disabled employees, they are not only strengthening our economy by keeping people working who would otherwise require public assistance, they are also availing themselves of a valuable labor pool of experienced, skilled employees. Any of us can incur a disabling injury or disease at any time. By protecting the dignity and self-reliance of the disabled, this bill protects all of us.

"AB 2222 is designed to strengthen the rights of workers with disabilities.

AB 2222 clarifies the definition of disability across California's civil rights protections. The measure includes protection from workplace discrimination for people with disabilities, as well as people with a record or history of disabilities, and limits the questions employers may ask prospective employees regarding possible disabilities to issues concerning job-related activities. It also requires employers to engage in a timely, good faith process to determine and provide reasonable accommodations at the request of a disabled employee."

SFA-7

CONTINUED



The Employment Law Center, sponsors of AB 2222, add, "For more than 30 years, it has been the policy of the state of California to promote the integration of persons with disabilities in every aspect of social and economic life. This commitment is expressed in an independent, comprehensive statutory scheme barring disability-based discrimination in employment, housing, public accommodations, and government services. For example, Government Code section 12926(l) expressly states that the Americans with Disabilities Act (ADA) definitions of disability apply to FEHA cases only if the ADA definition 'results in broader protections of the civil rights' of disabled individuals. "

The Impact Fund also writes in support of the bill stating that, it "is necessary to confirm that under California law, our independent public policy commitment to equal rights for persons with disabilities looks to the Americans with Disabilities Act (ADA) not as a limitation on rights and remedies, but as a minimum floor below which California law will not go. Although this has long been the manifest legislative intent, some courts have persisted in concluding that California law merely apes the ADA. Thus a clarification of the law is appropriate."

The Fair Employment and Housing Commission supports this measure saying, "AB 2222 is significant legislation because, among other things, the bill would clarify that a physical disability under California law is to be determined without consideration of mitigating measures such as medications, assistive devices, corrective lenses, etc. The bill would send a clear message that California is not in accord with the recent trilogy of United States Supreme Court decisions in *Sutton v. United Airlines* (1999) 119 S.Ct. 2139, *Murphy v. UPS* (1999) 119 S.Ct. 2133, and *Albertsons v. Kirkingburg* (1999) S.Ct. 2162 that found that, in determining whether a person has a disability under the ADA, consideration must be given to such mitigating measures."

AB 2222 would provide that the California Legislature expressly disavows the holdings in these three decisions, which interpret the ADA. The result will be that under California's civil rights statutes (FEHA and UNRUH in particular) the determination of whether a person suffers a disabling condition will be based upon the unmitigated condition of the individual.

**ARGUMENTS IN OPPOSITION:** Most opposition to AB 2222 is addressed to the definition of disability - which views the condition without



SEA 78

mitigating measures. The Motion Picture Association of America states that AB 2222 would have the effect of overruling United States Supreme Court decisions that disabilities are to be determined with regard to mitigating measures. "In *Murphy v. UPS* and *Sutton v. United Airlines*, the Supreme Court held that a disability should be evaluated with reference to mitigating or corrective measures. In *Murphy*, an employee with high blood pressure, correctable with medication, was found not to be disabled under the Americans With Disabilities Act. And in *Sutton*, two individuals with poor vision were found not to be disabled because their vision could be corrected with eyeglasses. Once a disability can be corrected, the individual is not limited in the ability to participate in major life activities and should not be considered disabled."

The California State Association of Counties (CSAC) adds their objection to the Findings and Declarations statement in the bill that the federal ADA provides "a floor of rights for the disabled and state law affords additional protections. This is contrary to the California Supreme Court case of *Cassista v. Community Foods*, which found that the FEHA protections are in line with, and modeled after, the ADA."

Finally, the California Manufacturers and Technology Association argues AB 2222 would make California's definition of mental and physical disability significantly different from the federal definition. As a result, the bill will require those employers who have built their programs around the federal ADA to revise their programs."

**ASSEMBLY FLOOR:**

AYES: Alquist, Aroner, Bock, Cardenas, Cedillo, Corbett, Davis, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Havice, Honda, Jackson, Keeley, Knox, Kuehl, Lempert, Longville, Lowenthal, Mazzone, Migden, Papan, Reyes, Romero, Scott, Shelley, Steinberg, Strom-Martin, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Hertzberg



NOES: Aanestad, Ackerman, Ashburn, Bates, Battin, Brewer, Briggs,  
Campbell, Cardoza, Cox, Cunneen, Dickerson, Frusetta, Granlund,  
House, Kaloogian, Leach, Leonard, Machado, Maddox, Maldonado,  
Margett, McClintock, Olberg, Oller, Robert Pacheco, Rod Pacheco,  
Pescetti, Runner, Strickland, Thompson, Zettel

RJG:jk 8/27/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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

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LEGISLATIVE INTENT SERVICE



SFA-10

# **EXHIBIT H**

**REPLACE** - 08/28/2008 (Bolded text added by Judiciary Committee staff after Assembly vote.)

SENATE THIRD READING  
SB 1608 (Corbett)  
As Amended August 12, 2008  
2/3 vote

SENATE VOTE: 40-0

BUSINESS & PROFESSIONS	10-0	JUDICIARY	10-0
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Ayes: Eng, Emmerson, Carter, Hayashi,  
Hernandez, Horton, Maze, Price,  
Torrico, Lieu

Ayes: Jones, Tran, Adams, Evans, Feuer,  
Keene, Krekorian, Laird, Levine,  
Lieber

APPROPRIATIONS	12-0
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Ayes: Leno, Caballero, Davis, DeSaulnier,  
Furutani, Huffman, Karnette,  
Krekorian, Lieu, Ma, Nava, Solorio

SUMMARY: Enacts several reforms intended to increase voluntary compliance with longstanding state and federal laws requiring access to the disabled in any place of public accommodation. Specifically, this bill:

- 1) Requires, as a condition of license renewal, that an architect must complete coursework regarding disability access requirements, as specified, and certify to the California Architects Board, as part of the license renewal process, completion of the coursework prior to renewing their license.
- 2) Creates the Construction-Related Accessibility Standards Compliance Act, which relates to construction-related accessibility claims and standards.
- 3) Specifies requirements for site certifications and reports by a certified access specialist.
- 4) Establishes a process by which businesses, if sued for violation of accessibility standards, may obtain a temporary stay of any litigation along with an in-person early evaluation conference with the court, attended by persons with authority to resolve the dispute between the parties, for the purpose of deterring frivolous cases and evaluating prospects for early settlement.
- 5) Creates the California Commission on Disability Access (Commission), an independent advisory body
- 6) Imposes continuing education requirements on local building officials relating to disability access requirements.

EXISTING LAW:

- 1) Provides for the licensure and regulation of some 22,000 architects by the California Architect's Board (CAB) within the Department of Consumer Affairs (DCA).

- 2) Requires that applicants for an architect license must provide verification of eight years of education and work experience, as specified, and successfully complete both an architect registration examination and a California supplemental examination.
- 3) Requires that in order to renew a license, a licensed architect must apply for renewal and include a statement specifying whether the licensee was convicted of a crime or disciplined by another public agency during the time since the license was last renewed.

FISCAL EFFECT: According to Assembly Appropriations Committee,

- 1) Commission. Given the commission's scope of responsibilities, annual GF costs would be around \$600,000 for a five person staff and associated expenses.
- 2) State Architect. Annual special fund costs of about \$750,000 for 4-5 positions to support the expanded demands for Certified Access Specialist certification and training, fully offset by fee revenues, plus minor costs for production and issuance of numbered disability access inspection certificates, offset by certificate fees.
- 3) Courts. Depending on the volume, frequency, and complexity of early evaluation conferences, courts could incur significant costs to incorporate and conduct this new procedure within court schedules. To the extent these conferences reduce the need for court hearings on disability disputes, however, the courts will realize some offsetting savings.
- 4) California Architects Board. The board will incur special fund costs in the first year of \$140,000 and ongoing costs of \$100,000 for 1.5 positions to establish continuing education guidelines, potentially approve and monitor course providers, and enforce compliance with continuing education requirements.

COMMENTS: The authors state that SB 1608 is a comprehensive reform measure intended to promote better compliance with the Americans with Disabilities Act (ADA), as well as the state's own equal access laws. It is a multi-faceted approach that attempts to address the problem of non-compliance in several ways.

Since 1969, Civil Code Sections 54 and 54.1 have entitled individuals with disabilities and medical conditions to full and free access to and use of various facilities and associated accommodations, benefits and privileges of places open to the public. After Congress enacted the ADA in 1990, the state made a violation of the ADA also a violation of sections 54 and 54.1, which make a person liable for actual damages plus a maximum of three times the actual damages (but not less than \$1,000 statutory damages), plus attorney's fees and costs for each offense. In a private right of action under the ADA, a plaintiff may obtain injunctive relief and attorney's fees. In addition, under the Unruh Civil Rights Act (UCRA) all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal facilities, services and related accommodations, advantages, privileges and benefits in all business establishments of every kind whatsoever. (Civil Code Section 51.) A violation of the ADA also constitutes a violation of the UCRA. Each and every offense subjects a person to actual damages incurred by an injured party, plus treble actual damages but not less than minimum statutory damages of \$4,000, and any attorney's fees as the court may determine to be proper. (Civil Code Section 52.)

Despite these longstanding access requirements, there has been considerable controversy regarding the extent to which businesses open to the public (places of public accommodation) are aware of, and comply with, these obligations, and the proper role of private litigation in the enforcement



scheme, when a plaintiff alleges that he or she encountered an alleged violation or was deterred from visiting or attending a place of public accommodation based on actual knowledge of a violation, particularly where the plaintiff seeks statutory damages. (E.g., *Donald v. Café Royale, Inc.*, 218 Cal. App. 3d 168 (1990); *Arnold v. United Artists Theatre Circuit*, 866 F. Supp. 433, 439 (N.D. Cal. 1994); *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9<sup>th</sup> Cir. 2008); *Pickern v. Holiday Quality Foods Inc.*, 293 F.3d 1133, 1135 (9<sup>th</sup> Cir. 2002); *Martinez v. Home Depot*, 2007 U.S. Dist. LEXIS 21838 (E.D. Cal. 2007); *Celano v. Marriott International, Inc.*, 2008 U.S. Dist. LEXIS 6172 (N.D. Cal. 2008); *Chavez v. Suzuki*, 2005 U.S. Dist. LEXIS 40092 (S.D. Cal. 2005); *Wilson v. Pier 1 Imps., Inc.*, 413 F. Supp. 2d 1130 (E.D. Cal. 2006); *Mantic Ashanti's Cause v. Darwish Plaza*, 2006 U.S. Dist. LEXIS 33650 (S.D. Cal. 2006); *National Federation of the Blind v. Target Corp.*, 2007 U.S. Dist. LEXIS 73547 (N.D. Cal. 2007). This controversy has been more difficult to resolve in part because there is so little, if any, public prosecution of access violations, and thus private enforcement efforts are central to the means by which these laws, like other civil rights laws, are designed to be enforced. This bill is intended to **reiterate these** existing private enforcement rights, while at the same time creating incentives for compliance that reduce the need for private litigation, and providing measures that are intended to discourage frivolous lawsuits and threats of litigation and encourage early resolution efforts when disputes arise.

Under SB 1608, the Certified Access Specialist (CASp) program under the Division of the State Architect would play a central role in the implementation of a new procedure for resolving claims related to construction-related accessibility violations. SB 1608 would require a CASp, upon completion of inspection of a site, to provide the building owner or tenant who requested the inspection with a specified notice which the State Architect would make available on its Web site. The specific notice prescribed in the bill would advise the owner/tenant to keep the written inspection report in their records, as well as any other documentation given to them by the CASp and advise them of certain rights and procedures. Further, an inspection certificate displayed on the window of a place of public accommodation would not preclude a person with disability from claiming access violations on the site, whether or not related to the physical accessibility of the inspected site.

If a place of public accommodation identified in a complaint is a CASp-inspected site (inspected and determined to meet applicable construction-related accessibility standards) or a CASp-determination pending site (inspected, but determination that it meets applicable construction-related accessibility standards is pending), is a defendant in a claim alleging disability access violations it has the right to seek a temporary stay of the claim at the outset of the case and to participate in an early evaluation conference designed to resolve construction-related accessibility claims shortly after the complaint is filed. This provision is intended to apply in every applicable individual civil action **and, where appropriate**, cases filed as proposed class actions, although the bill is intended not to alter class action requirements. The bill would require a plaintiff's attorney, at the time defendant is served with a complaint, to also serve a notice in the form specified in the bill and a copy of the form for defendant's request for a stay and an early evaluation conference (EEC). An attorney who substitutes into the case after a pro per plaintiff had filed and served the complaint would be required to serve this notice and request for stay and EEC form together with the Notice of Substitution of Counsel.

The inspection report of the CASp is to be filed with the court and served upon the plaintiff in advance of the early evaluation conference and is expected to be a helpful document in clarifying the dispute by identifying and potentially narrowing the issues for resolution, although neither the report nor other statements of the CASp are binding on the court and, like the statement of any witness, the views of the CASp are to be given only the evidentiary weight that the trier of fact finds they deserve.

Proposed Civil Code Section 55.55 reflects the principle that when a party prevails in a civil rights case the amount of attorney's fees to be awarded is based upon equitable considerations and a variety of factors, including but not limited to any written settlement offers actually made and rejected and whether the prevailing party failed to obtain a more favorable judgment or award than the settlements offered. This principle is not intended to affect the procedure or construction of Code of Civil Procedure Section 998.

The bill also addresses when a plaintiff may recover damages because he/she either personally encounters a violation **on** a particular occasion or is deterred from accessing a place of public accommodation the plaintiff **intends** to visit on a particular occasion based on the plaintiff's actual knowledge of a violation, however acquired, **based on the circumstances of the individual's experience. By contrast, other violations identified by the plaintiff are subject to only injunctive relief.** (*See, e.g., Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9<sup>th</sup> Cir. 2008); *Urhausen v. Longs Drug Stores*, 155 Cal. App. 4<sup>th</sup> 254 (2007).) While each violation of a construction-related accessibility standard **may** not constitute a separate offense triggering a right to statutory damages, some places of public accommodation may give rise to **more than one offense during a visit, depending on the type of facility, service or other function at issue.** For example, a hotel property may include **separate recreational facilities, such as** a swimming pool or bocce court in addition to other accommodations. In these circumstances, each denial of full and equal access may be subject to statutory damages, **but** statutory damages are not to be merely multiplied by the number of violations of construction-related accessibility standards.

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334

FN: 0007591