

ASSEMBLY BILL

No. 1040

Introduced by Assembly Member Dutra

February 23, 2001

An act to amend Section 54.3 of the Civil Code, relating to disabled persons.

LEGISLATIVE COUNSEL'S DIGEST

AB 1040, as introduced, Dutra. Disabled persons: liability.

Under existing law, a person, firm, or corporation that interferes with various specified rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000.

This bill would specify that a person may not be held liable for the damages described above unless the plaintiff provided the defendant with notice of the alleged violation of the Americans with Disabilities Act of 1990 at least 90 days before filing the complaint, the notice identified the specific facts of the alleged violation, and the defendant failed to correct the violation within 90 days. The bill would additionally provide that a defendant may avoid liability only if the defendant shows that, prior to receiving notice of the alleged violation, the defendant either employed a consultant with expertise in compliance with the Americans with Disabilities Act of 1990, and took the actions recommended by the consultant to comply with the act or complied with the requirements of the act as a condition of the issuance of a building permit.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 54.3 of the Civil Code is amended to
2 read:

3 54.3. (a) Any person or persons, firm or corporation who
4 denies or interferes with admittance to or enjoyment of the public
5 facilities as specified in Sections 54 and 54.1 or otherwise
6 interferes with the rights of an individual with a disability under
7 Sections 54, 54.1 and 54.2 is liable for each offense for the actual
8 damages and any amount as may be determined by a jury, or the
9 court sitting without a jury, up to a maximum of three times the
10 amount of actual damages but in no case less than one thousand
11 dollars (\$1,000), and attorney’s fees as may be determined by the
12 court in addition thereto, suffered by any person denied any of the
13 rights provided in Sections 54, 54.1, and 54.2. “Interfere,” for
14 purposes of this section, includes, but is not limited to, preventing
15 or causing the prevention of a guide dog, signal dog, or service dog
16 from carrying out its functions in assisting a disabled person.

17 (b) Any person who claims to be aggrieved by an alleged
18 unlawful practice in violation of Section 54, 54.1, or 54.2 may also
19 file a verified complaint with the Department of Fair Employment
20 and Housing pursuant to Section 12948 of the Government Code.
21 The remedies in this section are nonexclusive and are in addition
22 to any other remedy provided by law, including, but not limited to,
23 any action for injunctive or other equitable relief available to the
24 aggrieved party or brought in the name of the people of this state
25 or of the United States.

26 (c) A person may not be held liable for damages pursuant to
27 both this section and Section 52 for the same act or failure to act.

28 (d) (1) *A person may not be held liable for damages pursuant*
29 *to this section for a violation of subdivision (c) of Section 54 or*
30 *subdivision (d) of Section 54.1 unless all of the following*
31 *conditions are met:*

32 (A) *At least 90 days before filing the complaint, the plaintiff*
33 *provided to the defendant notice of the alleged violation of the*
34 *Americans with Disabilities Act of 1990 (Public Law 101-336).*

35 (B) *The notice identified the specific facts that constitute the*
36 *alleged violation, including the location at which the violation*
37 *occurred and the date of the violation.*



1 (C) *The defendant failed to correct the alleged violation within*
2 *90 days of the date the notice of violation was received.*

3 (2) *A defendant may avoid liability pursuant to this subdivision*
4 *only if, prior to receiving notice of the alleged violation of the*
5 *Americans with Disabilities Act of 1990, the defendant proves that*
6 *he or she did either of the following:*

7 (A) *Hired an architect, engineer, attorney, or other consultant*
8 *with specific expertise in the subject of compliance with the*
9 *Americans with Disabilities Act of 1990, and undertook those*
10 *actions deemed necessary by the consultant to comply with the act.*

11 (B) *Complied with the requirements of the act as a condition of*
12 *the issuance of a building permit for that location.*

