

AMENDED IN SENATE APRIL 26, 2005

SENATE BILL

No. 855

Introduced by Senator Poochigian

(Coauthors: Senators Ackerman, Cox, and Maldonado)

*(Coauthors: Assembly Members Benoit, Cogdill, DeVore, Harman,
McCarthy, Sharon Runner, Tran, and Villines)*

February 22, 2005

An act to add ~~Section 55.3~~ *Sections 55.3 and 55.4* to the Civil Code, and to amend Section 4452 of the Government Code, relating to special access.

LEGISLATIVE COUNSEL'S DIGEST

SB 855, as amended, Poochigian. Special access: liability.

Under existing law, a person, firm, or corporation that interferes with the access 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. Existing law requires the State Architect to adopt and develop building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified.

This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. The bill would require that owner, agent, or other responsible party to respond within 30 days as to a description of the improvements to be made or *to* rebut the allegations, as specified. If opting to fix the alleged violation, the bill would provide 120 days to

do so. The bill would provide that its provisions do not apply to claims for recovery of special damages for an injury in fact, and would authorize the court to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury. *The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws.*

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. The Legislature finds and declares all of the
2 following:

3 (a) The federal Americans with Disabilities Act of 1990
4 (Public Law 101-336) and this state's complementary special
5 access laws set forth in Sections 51, 52, 54, 54.1, and 54.3 of the
6 Civil Code and Sections 4450 and 4452 of the Government Code
7 are intended to protect Californians with special needs from
8 unlawful and unfair restrictions on access to the full and free use
9 of the streets, highways, sidewalks, walkways, public buildings,
10 medical facilities, including hospitals, clinics, and physicians'
11 offices, public facilities, and other public places.

12 (b) These special access laws are susceptible to abuse through
13 vexatious litigation that is not pursued with the primary intent of
14 rectifying a wrong or advancing or creating a public benefit.

15 (c) Vexatious special access lawsuits unduly burden our courts
16 and taxpayers and do not result in improved access for those with
17 special access needs. Those lawsuits cost California jobs and
18 economic prosperity, unfairly threaten small businesses, force
19 businesses to respond with higher costs for goods and services,
20 and have adverse impacts on levels of employment and employee
21 compensation.

22 (d) It is the intent of the Legislature in enacting this act to
23 eliminate vexatious special access lawsuits while protecting the
24 right of individuals to retain counsel and file an action for relief
25 pursuant to the federal Americans with Disabilities Act of 1990
26 (Public Law 101-336) and Sections 51, 52, 54, 54.1, and 54.3 of
27 the Civil Code and Sections 4450 and 4452 of the Government
28 Code.

1 (e) It is the intent of the Legislature in enacting this act to
2 restrict the filing of special access lawsuits under California law
3 without first notifying and allowing property owners, agents, or
4 other responsible parties the opportunity to improve access by
5 curing any violations.

6 (f) It is not the intent of the Legislature in enacting this act to
7 prohibit the filing of special access lawsuits where, because of an
8 alleged violation of this state’s special access laws, an individual
9 has suffered an injury in fact for which a proceeding in a court of
10 competent jurisdiction is proper.

11 SEC. 2. Section 55.3 is added to the Civil Code, to read:

12 55.3. (a) Notwithstanding any other provision of law, prior to
13 filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section
14 4450 or 4452 of the Government Code, the alleged aggrieved
15 party shall notify the owner of the property, agent, or other
16 responsible party where the alleged violation occurred by
17 personal service, in accordance with applicable state or federal
18 laws, or certified mail, of all alleged special access violations for
19 which a claim may be filed by the alleged aggrieved party. That
20 notice shall contain the following language:

21 “This letter is to inform you that the property located at
22 (address of property), for which you are the property owner,
23 agent, or other responsible party, may be in violation of federal
24 and/or state special access laws pursuant to (expressly cite the
25 federal and/or California statute of which the property is believed
26 to be in violation) and caused harm to (list the name of the
27 alleged aggrieved party).

28 Specifically, the possible violation(s) has/have been identified
29 as follows: (Notice must identify the specific facts that constitute
30 the alleged violation, including the date on which the alleged
31 violation occurred and identification of the location of the alleged
32 violation with sufficient detail, so that the location can be
33 identified by the property owner, agent, or other responsible
34 party).

35 Under Section 55.3 of the California Civil Code, you have 30
36 days to respond to this notice by certified mail or personal
37 service. Your response must be addressed to (give address where
38 personal service may be received or certified mail may be sent).
39 California law allows you to respond in one of three ways:

1 (1) You may expressly state that improvements will be made
2 to bring the premises into compliance with applicable special
3 access laws. If you respond in this fashion, you have a maximum
4 of 120 days to make these improvements or repairs. The 120-day
5 period shall begin on the date your response to this notice is
6 received at the address given above. If the improvements or
7 repairs necessary to bring the property into compliance with
8 federal and state special access laws are not completed in 120
9 days, a lawsuit may be brought against you.

10 (2) You may challenge the validity of the alleged violations. If
11 you respond in this fashion, a lawsuit may be brought against you
12 immediately.

13 (3) If the violations listed above are the same or similar to
14 previous violations; that you believe have been corrected, you
15 may respond by stating that the necessary repairs have been
16 made to bring the property into compliance with federal and state
17 special access laws. You must also attach evidence that verifies
18 those improvements.

19 If you have any questions about this notice or your rights under
20 federal or California law, please contact your legal counsel.”

21 (b) Beginning with the date of notice, the property owner,
22 agent, or other responsible party where the alleged violation
23 occurred shall have 30 days to respond by certified mail or
24 personal service to the alleged aggrieved party. That response
25 shall communicate any of the following:

26 (1) Expressly state that improvements will be made to bring
27 the premises into compliance with applicable laws. A response in
28 this fashion by the property owner, agent, or other responsible
29 party where the alleged violation occurred shall not be
30 considered an admission of guilt and is inadmissible in any future
31 claims based on the same facts filed against the property owner,
32 agent, or other responsible party.

33 (2) Challenge the validity of the alleged violation. If the
34 property owner, agent, or other responsible party where the
35 alleged violation occurred so responds, the alleged aggrieved
36 party may file a claim, subject to any applicable statutes of
37 limitations, any time after receipt of notice as prescribed in this
38 section.

39 (3) State that the alleged violations identified by the alleged
40 aggrieved party have been corrected to comply with applicable

1 state and federal special access laws. The property owner, agent,
2 or other responsible party where the alleged violation occurred
3 shall also attach evidence that verifies those improvements.

4 (c) If the property owner, agent, or responsible party where the
5 alleged violation occurred responds in the manner described in
6 paragraph (1) of subdivision (b), the property owner, agent, or
7 responsible party where the alleged violation occurred shall have
8 120 days to remedy the alleged violation. The 120-day period
9 shall begin on the date the alleged aggrieved party receives a
10 response, pursuant to subdivision (b), from the owner, agent, or
11 responsible party where the alleged violation occurred.

12 (d) If, at the end of the 120-day period, the property owner,
13 agent, or responsible party where the alleged violation occurred
14 has not made the improvements described in paragraph (1) of
15 subdivision (b) and fails to provide satisfactory explanation as to
16 why those repairs were not yet completed, the alleged aggrieved
17 party may file a claim.

18 (e) If the property owner, agent, or other responsible party
19 where the alleged violation occurred has made the improvements
20 described in paragraph (1) of subdivision (b), no current or future
21 alleged aggrieved party shall receive any damages or attorney's
22 fees, other than special damages, for any claim arising out of the
23 same or similar facts that served as a basis for the alleged
24 violation.

25 (f) This section applies to all claims for damages or fees, other
26 than those praying for special damages arising out of injuries in
27 fact. This section shall not be construed to limit claims for
28 recovery of special damages filed by any person who suffers an
29 injury in fact because they were denied full and equal access to
30 an accommodation as required by Section 51, 52, 54, 54.1, or
31 54.3, or Section 4450 or 4452 of the Government Code.

32 (g) In making a determination of the amount of damages
33 awarded to a successful plaintiff, a court or jury shall consider
34 previous or pending actual damage awards received or prayed for
35 by that plaintiff for the same or similar injury.

36 *SEC. 3. Section 55.4 is added to the Civil Code, to read:*

37 *55.4. It is the intent of the Legislature to institute programs to*
38 *educate business property owners and local municipalities about*
39 *the accessibility requirements of federal and state special access*
40 *laws.*

1 ~~SEC. 3.~~

2 *SEC. 4.* Section 4452 of the Government Code is amended to
3 read:

4 4452. (a) It is the intent of the Legislature that the building
5 standards published in the State Building Standards Code relating
6 to access by the physically handicapped and the other regulations
7 adopted by the State Architect pursuant to Section 4450 shall be
8 used as minimum requirements to insure that buildings,
9 structures and related facilities covered by this chapter are
10 accessible to, and functional for, the physically handicapped to,
11 through, and within their doors, without loss of function, space,
12 or facility where the general public is concerned.

13 (b) Any unauthorized deviation from those regulations or
14 building standards shall be rectified by full compliance within 90
15 days after discovery of the deviation.

16 (c) Notwithstanding subdivision (b), prior to any action
17 commenced for an alleged violation of Section 4450 or this
18 section, the notice requirements specified in Section 55.3 of the
19 Civil Code shall apply to the alleged aggrieved party.