

New ADA Reform Law – CA SB 269

May 14, 2016 [CASp Reports](#)



I'm hopeful you've heard about the latest California Bill signed into Law this week by Governor Brown. If you haven't, Gov. Brown signed **Senate Bill 269 on May 10th**.

The legislation has been called the "Disability access fix-it bill" and promises to "ease penalties for minor violations". Just as previous bills have tried to accomplish in California, business owners have asked for some extra time to fix ADA issues at their business if they receive a complaint (ADA Lawsuit). Does this bill accomplish this request? What really do business owners get from this new law? After reading the bill and amended laws, I figured I would provide my opinion from the perspective of a Certified Access Specialist (CASp).

For business owners who are excited that this law will allow them 120-days to fix problems after they get sued...**you're going to be disappointed**. The minimum damages can be waived if "The inspection predates the filing of the claim".

Cliff notes

- There are some "minor" violations that won't count towards the minimum damages – there aren't very many, and they have to be fixed within 15-days.
- The minimum damages will be waived if, 1) a CASp Report has already been done, 2) the violations are fixed within 120-days from the inspection, and 3) you've notified the State and Public of the inspection.
- Starting in January 2017, CASp's have to notify the State of the businesses they ~~confidentially~~ inspect.
- The permit process for ADA Improvement plans will be expedited...if 1) a CASp Report was done, 2) the business has been sued, and 3) a CASp has reviewed the plans.

If you're not much a "reader" and want to see the bottom line (literally), [click here for my advice](#).

Source: [SB-269 Disability access.\(2015-2016\)](#)

Remember, I am not an attorney, please hire one to explain this law in detail.

I am a Certified Access Specialist (CASP) and want to shed light on the portions of this new law that pertain to CASp requirements.

My comments will be on this side of the screen.

First of all, the last paragraph of the bill stating its necessity seemed to hit the nail on the head:

Recent data from the California Commission on Disability Access indicates that a handful of highly litigious plaintiffs and attorneys have targeted small businesses in the state, especially those without financial resources or sophistication, with lawsuits alleging violations of construction-related accessibility standards. The lawsuits appear to be motivated by a desire to obtain quick cash settlements with the businesses, rather than to improve access to public accommodations. As a result, small businesses are justifiably **anxious about being sued, while disabled consumers are viewed with blame and suspicion**, even though they have a right to full and equal access and should be able to expect all public accommodations to comply with the 25-year-old requirements of the Americans with Disabilities Act. It is necessary that this act go into immediate effect to ensure that small businesses have the information and resources they need in order to bring their properties into compliance with construction-related accessibility standards. It is also necessary that this act go into immediate effect to increase compliance with those standards for the benefit of the public, especially disabled consumers who have the right to go about their daily lives without difficulty, discomfort, or embarrassment, and with the basic dignity that comes from having the same access to public accommodations that nondisabled persons enjoy.

The following are excerpts from the explanation of the bill and the corresponding amendments to the applicable laws:

Explanation: "This bill would, for claims filed on and after its effective date, establish a rebuttable presumption, for the purpose of an award of minimum statutory damages, **that certain technical violations** do not cause a plaintiff to experience difficulty, discomfort, or embarrassment, if specified conditions are met."

Text to Section 55.56(e) of the Civil Code was amended with a list of ADA violations that, when out of compliance, are not serious enough to cause someone to "experience difficulty, discomfort, or embarrassment". These include interior signs that are not directional or signs that indicate an accessible element over other elements that are not accessible. The list also includes faded or chipped parking stall paint, as long as it still "reasonably visible." The "specified conditions are met" statement refers to the requirement that this applies to small businesses and that these "minor violations" be fixed within 15 days of the complaint.

Explanation: "This bill would also exempt a defendant from liability for minimum statutory damages with respect to a structure or area inspected by a certified access specialist for a period of 120 days **if specified conditions are met.**"

This is referring to Section 55.56(g)(3)(a) of the Civil Code that now says, if a business is issued a complaint, and they've already had a CASp Inspection completed, and they fix everything listed in the report, within 120 days of the inspection...the minimum statutory damages are waived.

Explanation: "The bill would require a defendant who claims the benefit of this exemption to disclose the date and findings of any certified access specialist (CASp) inspection to the plaintiff."

In order to get the minimum damages waived, the business must turn over the CASp Report to the plaintiff.

Explanation: "This bill would additionally require the State Architect to publish, and regularly update, easily accessible lists of businesses that file prescribed notices of inspection, and **businesses which have been inspected by a CASp on or after January 1, 2017**, including the date of the inspection."

Starting in January 2017, CASp's will be required to disclose to the State each of their inspections and reports. These will be posted on the State website.

Explanation: "The bill would require the State Architect to develop a process by which a small business may **notify the State Architect** that a structure or area has had a CASp inspection and to develop a form for businesses to notify the public that the business has obtained a CASp inspection."

DSA will be providing a way for small businesses to notify the State that a portion of their business has been inspected. They will also be providing a "form" that will need to be posted in public at the business.

Explanation: "This bill would additionally require the commission to provide a link on its [Internet Web site](#) to the Internet Web site of the Division of the State Architect's CASp certification program, and make the commission's educational materials and information available to other state agencies and local building departments."

Explanation: "The bill would require a local agency to notify an applicant that approval of a permit does not signify that the applicant has complied with that act."

Portions of the revised laws are directed to cities and counties in the State. They are required to provide materials to businesses that explain the requirement to be accessible. They are also required to tell a business getting a building permit, that the permit doesn't guarantee that they are in compliance.

Explanation: "The bill would also require local agencies to **expedite review of projects** for which the applicant provides a copy of a disability access certificate, demonstrates that the project is necessary to address an alleged violation of a construction-related access standard or a violation noted in a CASp report, and, if project plans are necessary for approval, has had a CASp review the project plans for compliance with all applicable construction-related accessibility standards."

When corrections are needed at a business, many times a building permit is required. This law adds some language to require local agencies to expedite the permit process for applicants that meet three prerequisites, 1) provide a copy of the blue CASp certificate (which would mean you've completed a CASp Report, 2) demonstrate that the permit is for correcting violations listed in a complaint or CASp Report, and 3) if you have plans for the permit, you've had a CASp review them for compliance.

Now for the actual changes to the laws...

Section 55.53 of the Civil Code is amended to read:

55.53. (a)(4) The CASp shall file, within 10 days of inspecting a business pursuant to subparagraph (A) of paragraph (3) of subdivision (g) of Section 55.56, a notice with the State Architect for listing on the State Architect's Internet Web site, as provided by subdivision (d) of Section 4459.7 of the Government Code, indicating that the CASp has inspected the business, the name and address of the business, the date of the filing, the date of the inspection of the business, the name and license number of the CASp, and a description of the structure or area inspected by the CASp.

If a business is looking to enjoy the "fix it" benefits in this law, The CASp preparing the report for their business must file specific details of the report and business with the State Architect's office. In the past, there was never a requirement to send any information to the State.

(5) The CASp shall post the notice described in paragraph (4), in a form prescribed by the State Architect, in a conspicuous location within five feet of all public entrances to the building on the date of the inspection and instruct the business to keep it in place until the earlier of either of the following:

(A) One hundred twenty days after the date of the inspection.

(B) The date when all of the construction-related violations in the structure or area inspected by the CASp are corrected.

Not only do the CASp's have to send information to the State, a public notice of the inspection has to be posted at all public entrances to the business. The CASp has to post the public notice on the date of the inspection, but has 10 days to notice the State.

Section 55.56 of the Civil Code is amended to read:

55.56. (e) (1) The following technical violations are presumed to not cause a person difficulty, discomfort, or embarrassment for the purpose of an award of minimum statutory damages in a construction-related accessibility claim, as set forth in subdivision (c), where the defendant is a small business, as described by subparagraph (B) of paragraph (2) of subdivision (g), the defendant has corrected, within 15 days of the service of a summons and

complaint asserting a construction-related accessibility claim or receipt of a written notice, whichever is earlier, all of the technical violations that are the basis of the claim, and the claim is based on one or more of the following violations:

Here's the section that explains how some minor violations won't apply to the minimum statutory damages. In order for this to apply, the business has to be a "small business", all of the minor violations have to be fixed in 15 days, and the minor violation has to be one of the following:

(A) **Interior signs**, other than directional signs or signs that identify the location of accessible elements, facilities, or features, when not all such elements, facilities, or features are accessible.

Directional signs will typically have arrows or information indicating where an accessible feature is located. Signs that indicate an accessible element when others are not accessible, would include the ISA symbol on a restroom door. The only other required signs that would be considered minor violations could be the tactile signs that are required when a sign is designating a permanent use of a room or space. Those might be considered minor violations that don't cause difficulty to a person using a wheelchair, but would cause difficulty to a visually impaired person looking for a room.

(B) The lack of **exterior signs**, other than parking signs and directional signs, including signs that indicate the location of accessible pathways or entrance and exit doors when not all pathways, entrance and exit doors are accessible.

There aren't many signs required in exterior spaces that are not parking or directional signs. The "tow-away" sign may be the only other exterior sign that could be considered a minor violation. Those signs are custom for the business location and take about 15 days to purchase as it is.

(C) The **order in which parking signs are placed** or the exact location or wording of parking signs, provided that the parking signs are clearly visible and indicate the location of accessible parking and van-accessible parking.

There are only a couple of specific requirements for the order in which parking signs have to be placed that would fall under this exception; the height to the bottom of the sign and the location in front of the stall. The only "wording" required in the code for parking signs is "MIN FINE \$250" and "VAN ACCESSIBLE".

(D) The **color of parking signs**, provided that the color of the background contrasts with the color of the information on the sign.

There isn't actually a requirement for the color of parking signs. The only mention of color in the codes is for the pavement markings.

(E) The **color of parking lot striping**, provided that it exists and provides sufficient contrast with the surface upon which it is applied to be reasonably visible.

The color of paint markings at parking stalls is the blue border around the access aisle, and the blue in the 36 inch square ISA at the stall. So if your contractor used pink paint, you'll have 15 days to have a better contractor paint it over with blue!

(F) **Faded, chipped, damaged, or deteriorated paint** in otherwise fully compliant parking spaces and passenger access aisles in parking lots, provided that it indicates the required dimensions of a parking space or access aisle in a manner that is reasonably visible.

This sounds good for businesses who just painted their stalls a few years ago, and have faded paint. The problem is going to be who decides what "reasonably visible" means.

(G) The presence or condition of **detectable warning surfaces on ramps**, except where the ramp is part of a pedestrian path of travel that intersects with a vehicular lane or other hazardous area.

The ONLY place detectable warnings are required on "ramps" is where the ramp is part of a pedestrian path of travel that cross a vehicular way or hazard!

(f) Statutory damages may be assessed pursuant to subdivision (a) based on each particular occasion that the plaintiff was denied full and equal access, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred.

This makes it clearer that the minimum statutory damages are NOT \$4,000 for each non-compliant barrier on the site, but for each occasion (visit to the site).

(g)(1) Notwithstanding any other law, a defendant's liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of one thousand dollars (\$1,000) for **each offense** if the defendant demonstrates that it has corrected all construction-related violations that are the basis of a claim within 60 days of being served with the complaint, and the defendant demonstrates any of the following:

Great, now the term "each offense" was added to the text...why not use "violation" or "occasion" that was used in (f). Either way, the minimum damages can be lowered from \$4,000 to \$1,000 if everything was fixed within 60-days and falls under on of the following criteria:

(A) The structure or area of the alleged violation was determined to be "CASp-inspected" or "meets applicable standards" and, to the best of the defendant's knowledge, there were no modifications or alterations that impacted

compliance with construction-related accessibility standards with respect to the plaintiff's claim that were completed or commenced between the date of that determination and the particular occasion on which the plaintiff was allegedly denied full and equal access.

The barrier listed in the complaint was already inspected by a CASp and hasn't been touched since.

(B) The structure or area of the alleged violation was the subject of an inspection report indicating "CASp determination pending" or "Inspected by a CASp," and the defendant has either implemented reasonable measures to correct the alleged violation before the particular occasion on which the plaintiff was allegedly denied full and equal access, or the defendant was in the process of correcting the alleged violation within a reasonable time and manner before the particular occasion on which the plaintiff was allegedly denied full and equal access.

The barrier was part of a CASp Report and was fixed or is in the process of being fixed.

(C) For a claim alleging a construction-related accessibility violation filed before January 1, 2018, the structure or area of the alleged violation was a new construction or an improvement that was approved by, and passed inspection by, the local building department permit and inspection process on or after January 1, 2008, and before January 1, 2016, and, to the best of the defendant's knowledge, there were no modifications or alterations that impacted compliance with respect to the plaintiff's claim that were completed or commenced between the completion date of the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

If the barrier was new construction as part of a permit between 2008 and 2016.

(D) The structure or area of the alleged violation was new construction or an improvement that was approved by, and passed inspection by, a local building department official who is a certified access specialist, and, to the best of the defendant's knowledge, there were no modifications or alterations that affected compliance with respect to the plaintiff's claim that were completed or commenced between the completion date of the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

If the barrier was new construction inspected and approved by a Building Official CASp.

(2) Notwithstanding any other law, a defendant's liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of two thousand dollars (\$2,000) for each offense if the defendant demonstrates both of the following:

This section allows for the minimum damages to be reduced from \$4,000 to \$2,000 for each offense...if BOTH of the following apply.

(A) The defendant has corrected all construction-related violations that are the basis of a claim within 30 days of being served with the complaint.

All of the violations are fixed within 30 days.

(B) The defendant is a small business that has employed 25 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Economic Development Department, and has average annual gross receipts of less than three million five hundred thousand dollars (\$3,500,000) over the previous three years, or for the years it has been in existence if less than three years, as evidenced by federal or state income tax returns. The average annual gross receipts dollar amount shall be adjusted biannually by the Department of General Services for changes in the California Consumer Price Index for All Urban Consumers, as compiled by the Department of Industrial Relations. The Department of General Services shall post that adjusted amount on its Internet Web site.

The business is technically a "small business".

(3) (A) Notwithstanding any other law, a defendant shall not be liable for minimum statutory damages in a construction-related accessibility claim, with respect to a violation noted in a report by a certified access specialist (CASp), for a period of 120 days following the date of the inspection if the defendant demonstrates compliance with each of the following:

Here's where the 120-days comes into play. First of all, the 120 days starts from the date of the CASp inspection.

No inspection, no benefit. EACH of the following have to be done to get the benefit of the 120-days:

(i) The defendant is a business that, as of the date of inspection, has employed 50 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Employment Development Department.

Business can't have more than 50 employees.

(ii) The structure or area of the alleged violation was the subject of an inspection report indicating "CASp determination pending" or "Inspected by a CASp."

The area of the violation was a part of a CASp Inspection and Report.

(iii) The inspection predates the filing of the claim by, or receipt of a demand letter from, the plaintiff regarding the alleged violation of a construction-related accessibility standard, and the defendant was not on notice of the alleged violation prior to the CASp inspection.

The CASp Inspection was done BEFORE the filing of the claim or demand letter. This may surprise businesses who are excited to wait around to be sued, then get 120-days to fix their problems and not have to pay damages! Doesn't work that way.

(iv) The defendant has corrected, within 120 days of the date of the inspection, all construction-related violations in the structure or area inspected by the CASp that are noted in the CASp report that are the basis of the claim.

The violations have to actually be fixed within the 120 days.

(B) Notwithstanding any other law, a defendant who claims the benefit of the reduction of, or protection from liability for, minimum statutory damages under this subdivision shall disclose the date and findings of any CASp inspection to a plaintiff if relevant to a claim or defense in an action.

To get the benefit of the 120-days, the business will need to prove that the alleged violation was in fact listed in the CASp Report.

(4) A defendant may claim the protection from liability for minimum statutory damages under paragraph (3) only once for each structure or area inspected by a CASp, unless the inspected structure or area has undergone modifications or alterations that affect the compliance with construction-related accessibility standards of those structures or areas after the date of the last inspection, and the defendant obtains an additional CASp inspection within 30 days of final approval by the building department or certificate of occupancy, as appropriate, regarding the modification or alterations.

It sounds like you only get to use the 120-days "fix-it card" once.

(5) If the defendant has failed to correct, within 120 days of the date of the inspection, all construction-related violations in the structure or area inspected by the CASp that are noted in the CASp report, the defendant shall not receive any protection from liability for minimum statutory damages pursuant to paragraph (3), unless a building permit is required for the repairs which cannot reasonably be completed by the defendant within 120 days and the defendant is in the process of correcting the violations noted in the CASp report, as evidenced by having, at least, an active building permit necessary for the repairs to correct the violation that was noted, but not corrected, in the CASp report and all of the repairs are completed within 180 days of the date of the inspection.

If the corrections required need a building permit, the 120-days can be extended to 180-days if a permit is in place.

(6) This subdivision shall not be applicable to intentional violations.

Good thing.

(8) This subdivision shall apply only to claims filed on or after the effective date of Chapter 383 of the Statutes of 2012, except for paragraphs (3), (4), and (5), which shall apply only to claims filed on or after the effective date of Senate Bill 269 of the 2015–16 Regular Session. Nothing in this subdivision is intended to affect a complaint filed before those dates, as applicable.

These benefits to reduce the damages aren't going to apply to complaints filed before the law was signed.

(j) For purposes of this section, the "structure or area inspected" means one of the following: the interior of the premises, the exterior of the premises, or both the interior and exterior.

This is new language that will need to be included in the CASp Reports to be clear which "area" was inspected.
There are only three choices: Inside, Outside, or Both.

Section 4459.7 of the Government Code is amended to read:

4459.7. (a) (2) The State Architect shall publish and regularly update on its Internet Web site easily accessible lists of all of the following:

(A) Businesses that have obtained a CASp inspection and have filed, or a CASp has filed on their behalf, a notice pursuant to paragraph (4) of subdivision (a) of Section 55.53 of the Civil Code.

(B) Businesses which have been inspected by a certified access specialist on or after January 1, 2017, including the date of the inspection.

The State is now going to be posting which businesses have been inspected and have CASp Reports.

(d) By January 1, 2017, the State Architect shall develop a process by which a certified access specialist (CASp) may notify the State Architect that a structure or area on the premises of a business has been inspected by a CASp and to notify the public that the business has a "CASp determination pending," or has been "Inspected by a CASp," as provided by paragraph (3) of subdivision (g) of Section 55.56 of the Civil Code, which shall include the name and address of the business, the date of the notification, the date of the inspection of the business, the name and license number of the CASp, and a description of the structure or area inspected by a CASp.

Starting in January 2017, the State will have a process for CASp's to notify them which businesses have been inspected.

(e) By January 1, 2017, the State Architect shall develop a form for a business to notify the public that the business has obtained a CASp inspection pursuant to paragraph (3) of subdivision (g) of Section 55.56 of the Civil Code, which shall include the date of the notification, the date of the inspection, and a description of the structure or area inspected by a CASp.

Starting in January 2017, the State will be providing a form to be used for CASp's to public post on businesses with inspections.

Article 4 (commencing with Section 65946) is added to Chapter 4.5 of Division 1 of Title 7 of the Government Code, to read:

Article 4. Expedited Review

65946. (b) A local agency shall expedite review of a project application if the project applicant meets all of the following conditions:

Here is the language that requires local agencies provide an expedited review of permit applications. In order to benefit from the expedited review, the applicant must do ALL of the following:

(1) The applicant provides a copy of a disability access inspection certificate, provided by a CASp pursuant to subdivision (e) of Section 55.53 of the Civil Code, pertaining to the site of the proposed project.

A copy of the blue CASp Certificate must be provided. This proves that a CASp Report has been done for the facility.

(2) The applicant demonstrates that the proposed project is necessary to address either an alleged violation of a construction-related accessibility standard or a violation noted in a written inspection report.

Proof has to be given that the reason the applicant is asking for a permit is because they have been issued a legal complaint. The expedited review will not apply to businesses trying to fix barriers within 120-days before they get sued.

(3) If project plans are necessary for the approval of a project, the applicant has had a CASp review the project plans for compliance with all applicable construction-related accessibility standards.

The plans submitted for the permit must be reviewed by a CASp prior to being submitted to the local agency.

My advice:

1. Get a lawyer
2. Get a CASp Report
3. Fix the barriers at your business
4. Don't wait to get sued!