

Kimball, Tirey & St. John LLP

Legal Alert

Help for Property Owners Facing ADA Claims: Governor Brown Signs Senate Bill 269

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New Senate Bill 269 may help property owners sued for violation of handicapped accessibility (ADA) laws.

It provides protection for claims filed on and after May 10, 2016.

Previous law allowed handicapped people to sue property and business owners if the property violated handicapped accessibility codes, the handicapped person personally encountered accessibility barriers, and the handicapped person experienced difficulty, discomfort, or embarrassment because of the violation. Under existing law, a defendant is liable for actual damages, plus minimum statutory damages for each instance of discrimination relating to a construction-related accessibility standard.

New SB 269 exempts a defendant from liability for minimum statutory damages for structures or areas inspected by a certified access specialist for 120 days, if specified conditions are met. SB 269 requires 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.

SB 269 also helps protect against an award of minimum statutory damages for some minor technical violations. It establishes a rebuttable presumption, for the purpose of an award of minimum statutory damages, that certain minor technical violations (listed below) do not cause a plaintiff to experience difficulty, discomfort, or embarrassment, if specified conditions are met. For the following minor technical violations, where the defendant is a small business and the defendant has corrected, within 15 days of the service of a Summons and Complaint, all of the minor technical violations that are the basis of the claim, the plaintiff may not claim statutory damages:

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

(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.

It has not yet been fully determined how this bill will affect other disability access claims.

For more information, see

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB269. For assistance in defending against ADA/handicapped accessibility claims, contact Kimball, Tirey & St. John LLP attorney Craig McMahon at Craig.McMahon@kts-law.com or (800) 574-5587.

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