

## NEWS ALERT

### Senate Bill 1186 Seeks to Protect Businesses from Predatory ADA Lawsuits

Written By Kathleen Patterson

Attorney Spotlight



Kathleen J. Patterson

Kathleen J. Patterson presently serves as a senior trial attorney with the law firm of Homan & Stone. Her practice includes handling complex, multi-party general liability actions, ADA defense, construction defect, real property actions, mechanic's liens, workers compensation, automobile accident cases, premises liability, as well as general liability litigation. In addition to the practice of law, Ms. Patterson actively serves her community through her philanthropic efforts and support of America's military.

We are pleased to announce that in September 2012, Governor Brown signed (SB) 1186 reforming California's Americans With Disabilities Act (ADA) access law. This bipartisan bill authored by Senate President Pro Tem Darrell Steinberg (Democrat - Sacramento) and Sen. Bob Dutton (Republican - Rancho Cucamonga), is designed to help alleviate the threat of predatory lawsuits (so called "drive by lawsuits") businesses face from unscrupulous "disabled access" lawyers as well as promote increased compliance with building codes addressing disabled access.

According to State Senator Dutton, "There is a serious problem in California where unscrupulous attorneys are filing shakedown lawsuits against businesses in an effort to gain an easy payday with no intention of improving access for the disabled community." Dutton added that he is pleased the governor saw the importance of signing SB 1186 to help curb these abuses and develop additional tools for businesses to ensure their establishments meet the requirements of the Act.

SB 1186, which was passed by two-thirds of the legislature, is hailed as a comprehensive and significant reform to California's ADA law. This bill received significant attention in Sacramento as California currently has 40 percent of the nation's ADA lawsuits, but only 12 percent of the country's disabled population.

**Among its provisions that go into effect immediately, the passage of this bill:**

- \*Prohibits "demand for money" letters in connection with construction-related access issue
- \*Requires attorneys to send a notice letter at least 30 days prior to filing a lawsuit
- \*Prevents "stacking" of multiple claims to increase monetary damages
- \*Significantly reduces damages against business owners who correct alleged violations within 60 days of receiving a complaint
- \*Requires landlords to disclose whether their buildings or properties are state-certified and in compliance with ADA laws

**SB1186 also establishes priorities for the California Commission on Disabled Accessibility ("CCDA") including:**

- \*If a business is in a location that was completed after January 1, 2008, or for any business in California that has received a Certified Access Specialist (CASP) inspection, that business will have 60 days to fix a violation, and its statutory damages may be reduced from \$4,000 to \$1,000 - a 75% reduction.
- \*Small businesses with 25 or fewer employees that have not had a CASp inspection will have 30 days to fix a violation, and can see their statutory damages reduced from \$4,000 to \$2,000 - a 50% reduction.
- \*While SB 1186 ends "demand for money" letters from attorneys, letters may still be sent to a business alerting them of a potential violation or infraction. Attorneys sending those letters are also required to send a copy of the letter to the California State Bar where it will be examined to ensure that it meets the requirements of this new law.
- \*Attorneys sending letters notifying businesses of potential violations will also be required to send a copy of letters sent to businesses to the CCDA who will be compile a "Top 10" list of violations to be posted on its website by July 1, 2013, listing the attorneys and law firms who are filing the bulk of the lawsuits.



The American with Disabilities Act (ADA) is a federal civil rights law enacted on July 26, 1990. It is intended to protect qualified persons with disabilities from discrimination in employment, government services and programs, transportation, public accommodations, and telecommunications. ADA defines a disability as a physical or mental impairment that substantially limits one or more major life activities. A person is considered disabled if the person has such a physical or mental impairment, has a record of such an impairment, or is regarded as having an impairment.

SB 1186 also provides an avenue for local cities and counties to expand the CASp program in their communities to help bring businesses into ADA compliance and develop tools to educate the business community in expanding ADA access.

It is noted that SB 1186 makes a distinction between intentional and unintentional violations. While a business or property owner would be eligible for reduced damages if the violation is unintentional and is fixed within the statutory time frame, the law preserves the full statutory damages liability for intentional violations. Some opponents of the bill, however, strongly disagreed with these provisions and claimed it would seriously harm compliance and roll back crucial rights under the Unruh Act.

The bill was opposed by several disability advocacy groups, but despite the opposition, SB 1186 passed the Assembly on August 31st by a vote of 77 to 0, and the State Senate on September 1st by a vote of 34 to 3. Senators Noreen Evans, chair of the Senate Judiciary Committee, Ellen Corbett and Loni Hancock - all Democrats - were the only legislators in either house to oppose the bill. Governor Brown signed the bill into law on September 19, 2012.

It should be noted that SB1186 only modifies California's ADA statute. The Federal American Disabilities Act, codified at 42 U.S.C., remains unchanged by this law.



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