

## RESOLUTION 04-01-2022

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 52, to read as follows:

1 § 52

2 (a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction  
3 contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages,  
4 and any amount that may be determined by a jury, or a court sitting without a jury, up to a  
5 maximum of three times the amount of actual damage but in no case less than four thousand  
6 dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto,  
7 suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

8 (b) Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or  
9 conspires in that denial, is liable for each and every offense for the actual damages suffered by  
10 any person denied that right and, in addition, the following:

11 (1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary  
12 damages.

13 (2) A civil penalty of twenty-five thousand dollars (\$25,000) to be awarded to the person  
14 denied the right provided by Section 51.7 in any action brought by the person denied the right, or  
15 by the Attorney General, a district attorney, or a city attorney. An action for that penalty brought  
16 pursuant to Section 51.7 shall be commenced within three years of the alleged practice.

17 (3) Attorney's fees as may be determined by the court.

18 (c) Whenever there is reasonable cause to believe that any person or group of persons is  
19 engaged in conduct of resistance to the full enjoyment of any of the rights described in this  
20 section, and that conduct is of that nature and is intended to deny the full exercise of those rights,  
21 the Attorney General, any district attorney or city attorney, or any person aggrieved by the  
22 conduct may bring a civil action in the appropriate court by filing with it a complaint. The  
23 complaint shall contain the following:

24 (1) The signature of the officer, or, in his or her absence, the individual acting on behalf  
25 of the officer, or the signature of the person aggrieved.

26 (2) The facts pertaining to the conduct.

27 (3) A request for preventive relief, including an application for a permanent or temporary  
28 injunction, restraining order, or other order against the person or persons responsible for the  
29 conduct, as the complainant deems necessary to ensure the full enjoyment of the rights described  
30 in this section.

31 (d) Whenever an action has been commenced in any court seeking relief from the denial  
32 of equal protection of the laws under the Fourteenth Amendment to the Constitution of the  
33 United States on account of race, color, religion, sex, national origin, or disability, the Attorney  
34 General or any district attorney or city attorney for or in the name of the people of the State of  
35 California may intervene in the action upon timely application if the Attorney General or any  
36 district attorney or city attorney certifies that the case is of general public importance. In that  
37 action, the people of the State of California shall be entitled to the same relief as if it had  
38 instituted the action.

39 (e) Actions brought pursuant to this section are independent of any other actions,  
40 remedies, or procedures that may be available to an aggrieved party pursuant to any other law.

41 (f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of  
42 Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment  
43 and Housing pursuant to Section 12948 of the Government Code.

44 (g) The court shall not award injunctive relief as provided in subsection (c)(3), above, or  
45 attorney's fees as provided in subdivision (a), above, unless within 90 days prior to filing  
46 suit hereunder the plaintiff provides the defendant with written notice that plaintiff believes that  
47 defendant is in violation of Section 51 by failing to provide access to disabled persons as  
48 required by any law with respect to property owned, leased or otherwise occupied and controlled  
49 by defendant. The written notice shall describe, with specificity and particularity, the alleged  
50 violation and inform defendant that a complaint may be filed if the violation is not corrected  
51 within ninety (90) days of the date of the notice.

52 (h) If, after receiving the notice prescribed in subdivision (g), defendant corrects the  
53 violation within 90 days of the notice or before plaintiff files a complaint, such that the property  
54 owned, lease or otherwise occupied and controlled by defendant is now in compliance with all  
55 existing laws regarding disabled access, the plaintiff shall not be entitled to obtain injunctive  
56 relief as provided in subsection(c)(3), above; nor shall plaintiff be entitled to an award of  
57 attorney's fees, as provided in subsection (a), above, except that plaintiff shall be entitled to an  
58 attorney fee of five hundred dollars (\$500), to be paid by defendant to plaintiff upon correction  
59 of the violation. If defendant fails to make this payment, plaintiff may file a complaint in court  
60 and, notwithstanding paragraph (g) of this section, may seek actual attorney fees and costs  
61 incurred in such an action.

62 (i) For any person who has given the notification provided for in subdivision (g) of this  
63 section, the time within which to commence an action pursuant to this section shall be extended  
64 by an additional ninety (90) days.

65 (gj) This section does not require any construction, alteration, repair, structural or  
66 otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or  
67 modification that is otherwise required by other provisions of law, to any new or existing  
68 establishment, facility, building, improvement, or any other structure, nor does this section  
69 augment, restrict, or alter in any way the authority of the State Architect to require construction,  
70 alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other  
71 laws.

72 (hk) For the purposes of this section, "actual damages" means special and general  
73 damages. This subdivision is declaratory of existing law.

74 (il) Subdivisions (b) to (f), inclusive, shall not be waived by contract except as provided  
75 in Section 51.7.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

## **STATEMENT OF REASONS**

The Problem: Existing law provides that any plaintiff may bring a complaint alleging that a defendant has created disability access barriers, and may recover attorney fees for the resulting

lawsuit. The result is almost always the correction of the access barriers by the defendant, removing the problem and promoting disability access; however, in order to settle the action, defendant must pay plaintiff's attorney fees. These attorney fees are, almost without exception, the entirety of the benefit that plaintiff receives, and it goes to plaintiff's attorneys. This has led to a cottage industry of "disability strike" suits where plaintiff's lawyers around the state employ professional plaintiffs who file hundreds of suits per year against businesses. The businesses then have no choice but to settle the case, and while the barriers to access are removed, the businesses pay an unreasonable cost in the form of plaintiff's attorney fees that weren't necessary in the first place.

The Solution: This resolution solves the problem by requiring any plaintiff to provide pre-suit written notice of a disability access barrier. If the defendant ignores the notice or fails to fix the problem, the suit can go forward. But if the defendant fixes the issue, neither injunctive relief nor attorney fees are available, and no suit may be filed. In order to continue to incentivize attorneys to assist disabled persons, the business must pay a flat attorney fee of \$500 when the violation is corrected. The resolution will unclog court dockets and continue to promote the real goal of Section 51, improving access for disabled persons, without benefiting plaintiff's attorneys and professional plaintiffs and embittering businesses who are less likely to be receptive to disability advocacy under current law.

#### **IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

#### **CURRENT OR PRIOR RELATED LEGISLATION**

No known prior or similar pending legislation. Similar to Resolution 07-08-2007, which was approved in principle.

#### **AUTHOR AND/OR PERMANENT CONTACT**

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#### **RESPONSIBLE FLOOR DELEGATE**

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