

AMENDED IN SENATE AUGUST 15, 2023

AMENDED IN SENATE JULY 13, 2023

AMENDED IN SENATE JULY 3, 2023

AMENDED IN SENATE JUNE 12, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1757

**Introduced by Committee on Judiciary (Assembly Members
Maienschein (Chair), Connolly, Dixon, Haney, Kalra, Pacheco,
Papan, and Reyes)**

March 2, 2023

An act to amend the heading of Part 2.53 (commencing with Section 55.55) of Division 1 of, and to add Sections 55.565 and 55.566 to, the Civil Code, relating to accessibility.

LEGISLATIVE COUNSEL'S DIGEST

AB 1757, as amended, Committee on Judiciary. Accessibility: internet websites.

Existing law imposes liability upon a person who denies, ~~aids~~ *aids*, or incites a ~~denial~~, *denial of*, or makes any discrimination or distinction contrary to, rights afforded by ~~law~~, *law* for actual damages suffered, exemplary damages, a civil penalty, and attorney's fees, as specified, to any person who was denied the specified rights. Existing law also imposes liability upon a person, firm, or corporation that denies or interferes with admittance ~~to~~, or enjoyment ~~of~~, public facilities or otherwise interferes with the rights of an individual with a disability, as specified, for damages and attorney's fees to a person who was denied those rights.

This bill would ~~specify~~ *provide* that statutory damages based upon the inaccessibility of an internet website under these provisions shall only be recovered against an entity, as defined, if the internet website fails to provide equally effective communication or facilitate full and equal enjoyment of the entity's goods and services to all members of the public. The bill would require, in order for a plaintiff to be entitled to statutory damages for internet website inaccessibility, the plaintiff to prove either that ~~they~~ *the plaintiff* personally encountered a *specific* barrier that caused ~~them~~ *the plaintiff* to experience a difference in ~~their~~ *the plaintiff's* access to, or use of, the *internet* website as compared to other users, as specified, or that ~~they were~~ *the plaintiff was* deterred from accessing all or part of the internet website or the content of the *internet* website because of the *internet* website's failure to provide equally effective communication or to facilitate full and equal enjoyment of the entity's goods and services offered to the public. The bill would ~~specify~~ *provide* that an *entity's* internet website is presumed to provide equally effective communication *and to facilitate full and equal enjoyment of the entity's goods and services to all members of the public* for the purpose of determining whether an award of statutory damages is warranted, as specified, if ~~the internet website, taking into account the variety of conforming implementations that may be used to meet the internet website-related accessibility standard, conforms to an internet website-related accessibility standard, as defined.~~ *the internet website has a certain certification by a professional reviewer, as defined, that, among other things, the internet website is designed and intended to conform to the internet website-related accessibility standard, as defined.*

This bill would make it unlawful for ~~any~~ *a* resource service provider, *as defined*, in exchange for remuneration, to intentionally, negligently, *recklessly*, or knowingly construct, license, distribute, or maintain for online use, ~~use~~ an internet website that fails to ~~conform to the internet website-related accessibility standard~~ *or provide equally effective communication or fails to facilitate full and equal enjoyment of the entity's goods and services to all members of the public, including any member of the public who is a person with a disability.* The bill would also make it unlawful for a resource provider to intentionally, negligently, *knowingly*, or *recklessly* make ~~a certain false representation that an internet website conforms to the internet website-related accessibility standard.~~ *representations, including that the resource provider is a professional reviewer or otherwise qualified to assess the*

accessibility of an internet website. The bill would ~~authorize a civil action by a person who is unable to obtain equally effective communication or full and equal enjoyment of an internet website, the content of an internet website, or goods and services offered to the public on an internet website, as a result of that violation, with remedies as prescribed.~~ The bill would further authorize a civil action by a person or entity that pays, compensates, or contracts with a resource service provider to construct, license, distribute, or maintain an internet website for the purpose of providing equally effective communication or facilitating full and equal enjoyment of the person or entity’s goods and services to all members of the public, including any member of the public who is a person with a disability, with remedies as prescribed. The bill would also authorize the ~~Attorney General~~ *General, the Civil Rights Department*, or a district attorney, county counsel, or city attorney to bring an action to obtain injunctive or declaratory relief and attorney’s fees and costs. The bill would provide that a provision within a contract between a person or entity and a resource service provider that seeks to waive liability under these provisions, or otherwise shift liability to a person or entity that pays, compensates, or contracts with the resource provider, as provided, is void as a matter of public policy and subject to specified provisions of the Ralph Civil Rights Act of 1976 relating to waiver of rights.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Part 2.53 (commencing with
 2 Section 55.55) of Division 1 of the Civil Code is amended to read:
 3
 4 PART 2.53. ~~ATTORNEY'S~~ ATTORNEY’S FEES AND
 5 STATUTORY DAMAGES IN ACCESSIBILITY STANDARDS
 6 CLAIMS
 7
 8 SEC. 2. Section 55.565 is added to the Civil Code, immediately
 9 following Section 55.56, to read:
 10 55.565. (a) Statutory damages under subdivision (a) of either
 11 Section 52 or Section 54.3 shall only be recovered against an entity
 12 based upon the inaccessibility of an internet website developed,
 13 procured, maintained, or used by that entity if the internet website

1 fails to provide equally effective communication or facilitate full
2 and equal enjoyment of the entity's goods and services to all
3 members of the public, including any member of the public who
4 is a person with a disability.

5 (b) To be entitled to statutory damages for internet website
6 inaccessibility, a plaintiff ~~must~~ *shall* prove one of the following:

7 (1) That the plaintiff personally encountered a *specific* barrier
8 that caused the plaintiff to experience a difference in ~~their~~ *the*
9 *plaintiff's* ability to access or use the *internet* website as compared
10 to other users such that the plaintiff was unable to acquire the same
11 information, engage in the same interactions, or enjoy the same
12 services with substantially equivalent ease of use, or to have the
13 same level of privacy and independence as other users who are
14 not persons with a disability.

15 (2) That the plaintiff was deterred from accessing all or part of
16 the internet website or the content of the *internet* website because
17 of the *internet* website's failure to provide equally effective
18 communication or to facilitate full and equal enjoyment of the
19 entity's goods and services offered to the public.

20 (c) (1) An *entity's* internet website is presumed to provide
21 equally effective communication *and to facilitate full and equal*
22 *enjoyment of the entity's goods and services to all members of the*
23 *public* for the purpose of determining whether an award of statutory
24 damages is warranted under subdivision (a) of Section 52 or ~~54.3,~~
25 ~~if the internet website, taking into account the variety of~~
26 ~~conforming implementations that may be used to meet the internet~~
27 ~~website-related accessibility standard, conforms to the internet~~
28 ~~website-related accessibility standard. 54.3 if both of the following~~
29 ~~criteria are satisfied:~~

30 (A) *The internet website has a certification by a professional*
31 *reviewer that all of the following are true:*

32 (i) *The internet website is designed and intended to conform to*
33 *the internet website-related accessibility standard.*

34 (ii) *The internet website has been tested, in both an automated*
35 *manner and a manual manner by qualified users, and has been*
36 *determined to conform to the internet website-related accessibility*
37 *standard.*

38 (iii) *All third-party content that is available on the entity's*
39 *internet website by means of a link from the internet website and*
40 *that allows members of the public to access, view, utilize, conduct*

1 *transactions with respect to, or in any other way interact with, the*
2 *entity or the entity's goods, services, or presentations, has been*
3 *tested, in both an automated and manual manner, and has been*
4 *determined to conform to the internet website-related accessibility*
5 *standard.*

6 *(B) The certification described in subparagraph (A) meets all*
7 *of the following requirements:*

8 *(i) The certification is made within the prior 12 months or after*
9 *revisions to the internet website that impact accessibility,*
10 *whichever is more recent, and is based on a review that includes*
11 *testing by qualified users.*

12 *(ii) The certification is posted, or available by means of a clearly*
13 *marked link, on the home page of the entity's internet website.*

14 *(iii) The certification includes a statement from the professional*
15 *reviewer explaining how that person qualifies to be a professional*
16 *reviewer. If the professional reviewer is not a Certified*
17 *Professional in Web Accessibility (CPWA) with a certificate issued*
18 *by the International Association of Accessibility Professionals*
19 *(IAAP), the professional reviewer shall list the type of certification*
20 *that person has obtained from another source of professional*
21 *training for front-end internet website developers, as well as the*
22 *criteria for issuance of that certificate, in order to demonstrate*
23 *that the criteria are equivalent to, or higher than, the requirements*
24 *for the issuance of a CPWA certificate.*

25 *(2) The presumption set forth in paragraph (1) affects the*
26 *plaintiff's burden of proof. Upon the defendant establishing by a*
27 *preponderance of the evidence that the internet website conforms*
28 *to the internet website-related accessibility standard, criteria set*
29 *forth in paragraph (1) are satisfied and that the entity's internet*
30 *website is therefore presumed to provide equally effective*
31 *communication and to facilitate full and equal enjoyment of the*
32 *entity's goods and services to all members of the public, the*
33 *plaintiff may rebut the presumption with clear and convincing*
34 *evidence, showing that, notwithstanding the internet website's*
35 *conformance to the standard, presumption set forth in paragraph*
36 *(1), the elements of one of the violations set forth in subdivision*
37 *(b) are established.*

38 *(3) A defendant who qualifies for the presumption set forth in*
39 *paragraph (1) is entitled to seek a court stay and early evaluation*
40 *conference, as described in Section 55.54.*

1 (4) *The Judicial Council may adopt a form, or modify its existing*
2 *forms, to implement this section. Before the Judicial Council*
3 *promulgates a modified form, an entity covered by this part and*
4 *served with an action regarding an internet website may use or*
5 *adapt the existing form implementing Section 55.54.*

6 (d) This section ~~is not intended to~~ *does not* do any of the
7 following:

8 (1) Limit the rights and remedies available to persons with a
9 disability under federal law, or any other state law.

10 (2) Affect whether an entity is responsible under either Section
11 51 or 51.5 for making its premises accessible to all members of
12 the public, including persons with a disability and including by
13 means of accessing and using the entity's internet website.

14 (3) Resolve, or otherwise address, whether an internet website
15 that is a standalone website-only business and not associated with
16 a business that has a physical location in California is subject to
17 liability under Sections 51, 54, and 54.1.

18 (4) Establish a presumption of liability, affect the burden of
19 proof, or otherwise impact a court's determination of liability ~~when~~
20 ~~an internet website does not conform to the internet website-related~~
21 ~~accessibility standard and in which case if~~ the presumption
22 established in paragraph (1) of subdivision (c) ~~therefore would~~
23 ~~does not apply; apply or if a plaintiff does not seek statutory~~
24 ~~damages.~~

25 (5) ~~Require~~ (A) *Subject to subparagraph (B), require* an entity
26 *to conform to the internet website-related accessibility standard.*
27 *standard or impose liability upon the entity for the inaccessibility*
28 *of an internet website or resource that is accessed by any links*
29 *that navigate the user from the entity's internet website to a*
30 *third-party internet website.*

31 (B) *An entity shall comply with both of the following:*

32 (i) *An entity shall not unduly rely on links to third-party*
33 *resources as a means of evading its responsibility to provide an*
34 *internet website that provides equally effective communication*
35 *and facilitates full and equal enjoyment of the entity's goods and*
36 *services to all members of the public, including any member of the*
37 *public who is a person with a disability.*

38 (ii) *If a user is required, in order to access, view, utilize, conduct*
39 *transactions with respect to, or in any other way interact with the*
40 *business of the entity or the entity's goods, services, or*

1 *presentations via the internet, to utilize a link to third-party content,*
2 *the entity shall ensure that the third-party content complies with*
3 *the internet website-related accessibility standard.*

4 (6) Demonstrate an intent by the Legislature, in enacting this
5 section, to deprive or limit the exercise of jurisdiction by federal
6 courts over state law claims brought in conjunction with any federal
7 claim under the Americans with Disabilities Act (42 U.S.C. Sec.
8 12101 et seq.) or other federal law.

9 (e) For purposes of this section, the following definitions apply:
10 *section:*

11 (1) “Conform” means that the entity’s internet ~~website~~ *website,*
12 *taking into account the variety of conforming implementations,*
13 *meets the criteria specified by the applicable internet*
14 *website-related accessibility standard, as defined in paragraph (4).*
15 *standard. For purposes of the Web Content Accessibility*
16 *Guidelines (WCAG) 2.1 Level AA standard for the accessibility*
17 *of internet websites established by the World Wide Web*
18 *Consortium (W3C) Accessibility Guidelines Working Group on*
19 *June 5, 2018, an entity conforms to that standard—when if the*
20 *entity’s internet website meets all of the Success Criteria set forth*
21 *in the—standard. standard, except if conformance to the standard*
22 *is either not necessary or not possible due to the nature of the data*
23 *sought to be presented on the internet website, and any instance*
24 *of nonconformance does not impact the ability of a person with a*
25 *disability to acquire information, engage in interactions, and enjoy*
26 *the services of the entity’s internet website with an ease of use and*
27 *level of privacy that is substantially equivalent to the experience*
28 *of other users who are not persons with a disability.*

29 (2) “Entity” means a business establishment that is open to the
30 public, a public place, or a place of public accommodation or any
31 other business or place that is subject to the provisions of Sections
32 51, 54, or 54.1.

33 (3) “Internet website” includes all internet web-based
34 technology, including, but not limited to, a mobile site or
35 application, or an app, that can be accessed by a mobile device or
36 other electronic device.

37 (4) “Internet website-related accessibility standard” means the
38 Web Content Accessibility Guidelines (WCAG) 2.1 Level AA
39 standard for the accessibility of internet websites established by
40 the World Wide Web Consortium (W3C) Accessibility Guidelines

1 Working Group on June 5, 2018, or the accessibility standards for
2 Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C.
3 Sec. 794d) in Part 1194 of Title 36 of the Code of Federal
4 Regulations. To the extent that there is a difference or conflict
5 between the applicable standards for internet websites under
6 WCAG 2.1 Level AA and standards for information or
7 communication technology under Section 508 of the federal
8 Rehabilitation Act of 1973, the more recent WCAG 2.1 Level AA
9 standard shall apply, unless a more stringent update, revision, or
10 replacement to the accessibility standards for Section 508 of the
11 federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d) in Part
12 1194 of Title 36 of the Code of Federal Regulations is adopted by
13 any final rule of the federal ~~Access Board~~ *United States*
14 *Architectural and Transportation Barriers Compliance Board*
15 after the date of the enactment of this section, in which ~~ease~~ *case*,
16 that final rule shall apply to this section.

17 (5) “*Professional reviewer*” means an expert in internet website
18 design and accessibility who has a professional certificate in
19 internet website accessibility issued by the World Wide Web
20 Consortium (W3C), a certificate as a Certified Professional in
21 Web Accessibility (CPWA) issued by the International Association
22 of Accessibility Professionals (IAAP), or a certification issued by
23 another source of professional training for front-end internet
24 website developers with criteria for issuance that are equivalent
25 to, or higher than, the requirements for the issuance of a CPWA
26 certificate.

27 (f) This section applies to any civil action filed on or after
28 January 1, 2024.

29 SEC. 3. Section 55.566 is added to the Civil Code, to read:

30 55.566. (a) It is unlawful for ~~any~~ a resource service provider,
31 in exchange for money or any other form of remuneration, to do
32 either of the following:

33 (1) Intentionally, negligently, *recklessly*, or knowingly construct,
34 license, distribute, or maintain for online ~~use~~, *use* an internet
35 website that fails to ~~conform to the internet website-related~~
36 ~~accessibility standard~~. *provide equally effective communication*
37 *or fails to facilitate full and equal enjoyment of the entity’s goods*
38 *and services to all members of the public, including any member*
39 *of the public who is a person with a disability.*

1 (2) Intentionally, negligently, *knowingly*, or recklessly make a
2 false representation ~~that an internet website conforms to the internet~~
3 ~~website-related accessibility standard.~~ *of any of the following:*

4 (A) *An internet website provides equally effective communication*
5 *and facilitates full and equal enjoyment of the entity’s goods and*
6 *services to all members of the public, including any member of the*
7 *public who is a person with a disability.*

8 (B) *An internet website qualifies for the certification described*
9 *in subdivision (c) of Section 55.565.*

10 (C) *The resource provider is a professional reviewer or*
11 *otherwise qualified to assess the accessibility of an internet website.*

12 (b) The following parties may bring a civil action pursuant to
13 subdivision (a):

14 (1) ~~(A) A person who is unable to obtain equally effective~~
15 ~~communication or full and equal enjoyment of an internet website,~~
16 ~~the content of an internet website, or goods and services offered~~
17 ~~to the public on an internet website, as a result of the violation.~~

18 ~~(B) The remedies for a violation of this section pursuant to this~~
19 ~~paragraph are the remedies provided in subdivision (a) of Section~~
20 ~~52.~~

21 ~~(2)~~

22 (1) (A) A person or entity that pays, compensates, or contracts
23 with, the resource service provider to construct, license, distribute,
24 or maintain an internet website for the purpose of providing equally
25 effective communication or facilitating full and equal enjoyment
26 of the person or entity’s goods and services to all members of the
27 public, including any member of the public who is a person with
28 a disability.

29 (B) A plaintiff who prevails under this paragraph shall be
30 entitled to collect all damages, including, but not limited to, any
31 statutory damages and attorney’s fees paid by the person or entity
32 as a result of a lawsuit against the person or entity pursuant to
33 Sections 51, 54, and 54.1, based upon the inaccessibility of the
34 person or entity’s website, and all costs of bringing their internet
35 website into conformance to the internet website-related
36 accessibility standard.

37 ~~(e) Notwithstanding subdivision (b), the Attorney General~~

38 (2) *The Attorney General, the Civil Rights Department, or a*
39 *district attorney, county counsel, or city attorney may bring an*
40 *action under this section to obtain the following:*

1 ~~(1)~~

2 (A) Injunctive or declaratory relief.

3 ~~(2)~~

4 (B) Attorney’s fees and costs.

5 ~~(d)~~

6 (c) A provision within a contract between a person or entity and
7 a resource service provider that seeks to waive liability under this
8 section, or otherwise shift the liability to a person or entity that
9 pays, compensates, or contracts with the resource service provider,
10 as described under paragraph (2) of subdivision (b), is void as a
11 matter of public policy and subject to subdivision (c) of Section
12 51.7.

13 ~~(e)~~

14 (d) This section does not limit or alter the application of other
15 laws, including, but not limited to, Sections 51, 54, ~~and~~ 54.1, *and*
16 55, or the ability of a plaintiff to bring a civil action under any
17 other theory of the law, including, but not limited to, breach of
18 contract, implied warranty of merchantability, or false or deceptive
19 advertising.

20 ~~(f)~~

21 (e) (1) For purposes of this section, the following terms have
22 the same meanings as ~~provided in subdivision (e) of~~ *defined in*
23 Section 55.565:

24 (A) “Conform.”

25 (B) “Entity.”

26 (C) “Internet website.”

27 (D) “Internet website-related accessibility standard.”

28 (E) “*Professional reviewer*.”

29 (2) (A) For purposes of this section, “resource service provider”
30 means a person or entity that, in exchange for money or any other
31 form of remuneration, constructs, licenses, distributes, or maintains
32 for online use any internet website or resource to be used within
33 or in conjunction with an internet website.

34 (B) “*Resource service provider*” *does not mean either of the*
35 *following:*

36 (i) *A person or entity that provides hosting or hardware support*
37 *to an internet website, but does not design, construct, or control*
38 *the internet website, or resource to be used within or in conjunction*
39 *with an internet website, in any manner that affects the ability of*
40 *the website or resource to provide equally effective communication*

1 *and facilitates full and equal enjoyment of an entity's goods and*
2 *services to all members of the public, including any member of the*
3 *public who is a person with a disability.*

4 *(ii) An individual who is hired by a resource service provider,*
5 *but does not have a contract directly with the entity who owns the*
6 *website, including a manual accessibility tester.*

7 ~~(g)~~

8 *(f) This section is not intended to does not do any of the*
9 *following:*

10 (1) Limit the rights and remedies available to a person with
11 disabilities under the federal law or any other state law.

12 (2) Affect whether an entity is responsible under either Section
13 51 or 51.5 for making its premises accessible to all members of
14 the public, including persons with a disability and including by
15 means of accessing and using the entity's internet website.

16 (3) Resolve, or otherwise address, whether an internet website
17 that is a standalone website-only business and not associated with
18 a business that has a physical location in California is subject to
19 liability under Sections 51, 54, and 54.1.

20 (4) Establish a presumption of liability, affect the burden of
21 proof, or otherwise impact a court's determination of liability ~~when~~
22 *if* an internet website does not conform to the internet
23 website-related accessibility standard.

24 ~~Require (A) Subject to subparagraph (B), require an entity~~
25 ~~to conform to the internet website-related accessibility standard.~~
26 ~~standard or impose liability upon the entity for the inaccessibility~~
27 ~~of an internet website or resource that is accessed by any links~~
28 ~~that navigate the user from the entity's internet website to a~~
29 ~~third-party internet website.~~

30 *(B) An entity shall comply with both of the following:*

31 *(i) An entity shall not unduly rely on links to third-party*
32 *resources as a means of evading its responsibility to provide an*
33 *internet website that provides equally effective communication or*
34 *facilitates full and equal enjoyment of the entity's goods and*
35 *services to all members of the public, including any member of the*
36 *public who is a person with a disability.*

37 *(ii) If a user is required, in order to access, view, utilize, conduct*
38 *transactions with respect to, or in any other way interact with the*
39 *business of the entity or the entity's goods, services, or*
40 *presentations via the internet, to utilize a link to third-party content,*

1 *the entity shall ensure that the third-party content complies with*
2 *the internet website-related accessibility standard.*

3 (6) Demonstrate an intent by the Legislature, in enacting this
4 section, to deprive or limit the exercise of jurisdiction by federal
5 courts over state law claims brought in conjunction with any federal
6 claim under the Americans with Disabilities Act (42 U.S.C. Sec.
7 12101 et seq.) or other federal law.

8 (7) Establish liability under subdivision (a) ~~when~~ *if* a resource
9 service provider ~~constructs, licenses, distributes, or maintains~~
10 *establishes that, after the date when the resource service provider*
11 *constructed, licensed, distributed, or maintained* for online use an
12 ~~internet website that fails to conform to the internet website-related~~
13 ~~accessibility standard, but the internet website provides~~ *website*
14 *or resource to be used within, or in conjunction with, an internet*
15 *website, or issued the certification described in subdivision (c) of*
16 *Section 55.565, an entity other than the resource service provider,*
17 *without the knowledge or permission of the resource service*
18 *provider, altered the internet website or resource in a manner that*
19 *directly resulted in the internet website or resource no longer*
20 *providing* equally effective communication and ~~facilitates~~
21 *facilitating* full and equal enjoyment of the entity's goods and
22 services to all members of the public, including any member of
23 the public who is a person with a disability.