



## Bill Analysis

Author: Chau

Sponsor:

Bill Number: AB 2123

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Introduced: March 10, 2020

Attorney: Shane Hofeling

Related Bills: See Legislative  
History

Amended: May 4, 2020

## SUBJECT

Internet Website Accessibility Claims – Statutory Damages

## SUMMARY

This bill would under the Civil Code, specify the circumstances a plaintiff must prove to be entitled to statutory damages with respect to a claim that an entity's internet website is inaccessible.

## RECOMMENDATION

No position

## SUMMARY OF AMENDMENTS

The March 10, 2020, amendments replaced "business establishment or public place of public accommodation" with "entity" with respect to damages related to internet website accessibility and modified what the plaintiff needs to prove to be entitled to statutory damages.

The May 4, 2020, amendments state that this provision does not affect whether an entity is responsible under specified provisions of the Civil Code for making its premises accessible to all members of the public, including its internet website.

This is the department's first analysis of this bill.

## REASON FOR THE BILL

According to the author's fact sheet, the reason for this bill is to, "provide liability protections, under California law, for businesses who make their websites accessible to people with disabilities."

## **ANALYSIS**

This bill would under the Civil Code do the following:

- Rename Part 2.53 (commencing with Section 55.55) of Division 1 of the Civil Code.
- Specify that statutory damages based upon the inaccessibility of an entity's internet website in violation of various provisions of the Civil Code shall only be recovered if the plaintiff proves either:
  - The plaintiff personally encountered a barrier that interfered with their ability to access the website and that caused the plaintiff to experience a difference in their ability to access or use the website compared to other users that were not disabled.
  - The plaintiff was deterred from accessing the website because it failed to provide equally effective communication or to facilitate full and equal enjoyment of the entity's goods and services to the public, including any member of the public who is disabled.

### *Effective/Operative Date*

Assuming enactment by September 30, 2020, this bill would be effective and operative on January 1, 2021.

### *Federal/State Law*

#### *Federal Law*

In 1998, Congress amended the Rehabilitation Act of 1973 to require federal agencies and State agencies or contractors that receive federal funding to make their electronic and information technology accessible to people with disabilities. The law (29 U.S.C. § 794 (d)) applies to all federal agencies when they develop, procure, maintain, or use electronic and information technology.

On January 18, 2017, the U.S. Access Board issued a final rule that updates accessibility requirements for information and communication technology in the federal sector covered by Section 508 of the Rehabilitation Act. The rule references Level A and Level AA Success Criteria and Conformance Requirements in Web Content Accessibility Guidelines WCAG 2.0 issued by the World Wide Web Consortium's Web Accessibility Initiative (WAI).

### *State Law*

State law requires state agencies and departments to comply with Section 508 of the federal Rehabilitation Act. Current state law lacks provisions specifying the circumstances that must exist to trigger statutory damages with respect to a claim that an entity's internet website is inaccessible.

Current state law requires each state agency's Director and Chief Information Officer to biennially certify that the agency's internet website is accessible, as specified.

### *Implementation Considerations*

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

It is unclear whether this bill would apply to state agencies because the terms "public place," and "place of public accommodation" are undefined. For clarity and to ensure consistency with the author's intent this bill should be amended.

### *Technical Considerations*

None noted.

### *Policy Considerations*

None noted.

## **LEGISLATIVE HISTORY**

AB 434 (Baker, et al., Statutes 2017, Chapter 780) requires all state agencies, including the Franchise Tax Board (FTB) to post on the home page of its Internet Web site before July 1, 2019, and before July 1 biennially thereafter, a certification signed by the agency's director and chief information officer that the agency's Internet Web site is in compliance with Sections 7405 and 11135 of the Government Code, and the Web Content Accessibility Guidelines 2.0, or a subsequent version, as published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria. The FTB has met the certification requirements of AB 434.

## **PROGRAM BACKGROUND**

None.

## **FISCAL IMPACT**

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

This bill, as amended on May 4, 2020, would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

## **LEGAL IMPACT**

None noted.

## **APPOINTMENTS**

None noted.

## **SUPPORT/OPPOSITION**

To be determined.

## **ARGUMENTS**

To be determined.

## **LEGISLATIVE STAFF CONTACT**

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