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March 10, 2017

Honorable Devon Mathis
California State Assembly
Capitol Building, Room 2111
Sacramento, CA 95814

RE: AB 150 (MATHIS) – OPPOSE

Dear Assembly Member Mathis:

Disability Rights California, a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, strongly opposes AB 150. This bill is scheduled for hearing in the Assembly Judiciary Committee on March 14, 2017.

The Disabled Persons Act (DPA) provides that "individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places." See California Civil Code Section 54 through 55.2.

AB 150 establishes notice requirements before bringing an action against a small business for access violations under the DPA. This bill defines a small business as 50 or fewer full time employees. It requires the aggrieved person to provide notice, including specific details about the violations, and exactly how to remedy the violations. The notice must be provided to the business at least 6 months before filing a complaint. The bill precludes any legal action if a business makes a "good faith effort" to correct the violation.

By requiring a notice and cure period, this bill treats people with disabilities as second class citizens

This bill treats people with disabilities as second class citizens by targeting them for additional procedural and legal barriers other protected classes do not encounter before they can enforce their rights. It shifts the burden to the person with the disability to inform the defendant, with specificity, of not only all violations but also how to fix them. Further, the bill only requires a business owner to make a “good faith effort” to correct violations, however, “good faith effort” is not defined. Therefore, access violations could continue indefinitely; much time will be spent litigating what constitutes “good faith.” This result will do nothing to further disability access.

AB 150 makes it virtually impossible for a victim of discrimination to comply with the notice requirements without an attorney. Since violations will be forgiven after notice is given, the cost and burden of enforcing their access rights will fall on people with disabilities, many of whom have limited resources to pursue compliance. Notice requirements have repeatedly been rejected by the Legislature. This is a policy the state of California should not endorse or promote.

Timelines for correcting access violations should not be extended

People with disabilities have already made many concessions and given up much of their civil rights to address claims of purported abuse by the business community. Increasing the time period to 6 months to correct violations is unjustified. There have been major policy reforms in this area, including: SB 1608 (Corbett, 2008), SB 1186 (Steinberg, 2012) and SB 269 (Roth, 2016). These measures made various changes to the law. SB 1186 allowed for a reduction in damages and a specific time period to correct construction-related barriers. SB 269 further increased the time to fix violations, if a business obtains a certified access specialist (CASp) inspection, to 120 days, and even longer if the fix requires a building permit. SB 269, in particular, was just enacted. There is no evidence to suggest that the current policy reforms or time periods to fix problems are not workable or insufficient.

Legislation should promote compliance rather than encouraging businesses to “wait to get caught”

Current law serves as a deterrent to noncompliance, thereby preventing violations and helping to ensure access. Rather than encouraging businesses to wait and see if they are caught, this bill should provide

incentives to businesses to comply, such as collecting additional fees on business licenses to help fund CASp inspections and needed improvements (SB 1186 already requires \$1 be collected to fund education activities); lease provisions to ensure landlords have buildings inspected and brought into compliance before they are leased (SB 1186 requires leases to state whether they have been inspected for accessibility); educational material and training programs for businesses when they apply for a business license; inspection programs similar to those conducted by health and safety departments; and providing tax credits for access changes and CASp inspections to improve accessibility and enable businesses to stay open.

Common access problems don't require lengthy correction periods

The California Commission on Disability Access (CCDA) identified the top ten access problems – four of the top ten involve parking.¹ Parking is one of the easiest access issues to understand and correct. Other common access problems such as accessible paths of travel are also easy to understand and correct. Information about access requirements is easy to find. Unfortunately, rather than businesses proactively assessing their properties to find and correct barriers, compliance too often depends on individual complaints and lawsuits.

Federal and state laws promote full inclusion of people with disabilities and have been on the books for decades

California access laws are more than 30 years old. Californians with disabilities have the same rights under the Unruh Civil Rights Act as other protected classes – the right to bring litigation to enforce access laws, damages, and attorney's fees. The Americans with Disabilities Act (ADA) was enacted because "individuals with disabilities continually encounter various forms of discrimination, including the discriminatory effects of architectural barriers and failure to make modifications to existing facilities."

Any proposed revisions to access laws must be considered in this context: federal and state disability access laws and regulations are vital to the promotion of the total integration of people with disabilities into social and economic life. Further, California access laws and policies have been in effect for decades and businesses still fail to evaluate their properties to ensure people with disabilities have full and equal access to them.

It is essential to remember that the current law contains the minimum

standards needed to provide access and already takes into account such things as whether a building pre-existed the adoption of the law, whether barrier removal is achievable and what resources are available to do so. Any changes to existing law must fully maintain the state's commitment to ensuring individuals with disabilities have full and free use and enjoyment of public facilities and accommodations. Let's have meaningful up front access improvement efforts rather than efforts to stop enforcement of the civil rights of people with disabilities.

Please contact me if you have any questions about our opposition to this bill.

Sincerely,

A handwritten signature in black ink that reads "Evelyn M. Abouhassan". The signature is fluid and cursive, with the first name being the most prominent.

Evelyn Abouhassan
Senior Legislative Advocate
Disability Rights California

cc: Justin Turner, Legislative Director, Office of Assembly Member Mathis
Honorable Chair and Members, Assembly Judiciary Committee
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee

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