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March 26, 2018

Honorable Mark Stone
Chair, Judiciary Committee
California State Assembly
Capitol Building, Room 3146
Sacramento, CA 95814

RE: AB 3158 (MATHIS) – OPPOSE

Dear Assembly Member Stone:

Disability Rights California (DRC), a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, **strongly opposes AB 3158**. This bill is scheduled for hearing in the Assembly Judiciary Committee on April 3, 2018.

Among other provisions, AB 3158 establishes notice requirements and places the burden on the person with a disability who encounters an access barrier to send a written notice specific enough to allow a business owner or operator to identify the barrier, including the provisions of the state access laws or the Americans with Disabilities Act (ADA) being violated. Once the business receives notice, the legislation allows up to 120 days, to fix even simple access barriers. The measure precludes any legal action if a business makes a “good faith effort” toward “substantial progress” to fix the access barriers.

AB 3158 fundamentally limits the ability to enforce disability civil rights laws. It is important to note that the access laws do not require state inspectors to enforce the law or fine business owners for noncompliance. While fire marshals protect us from fires, there are no disability inspectors to make sure businesses comply with the access laws. When a business

violates the law, people with disabilities are the only ones who can hold them accountable through a private lawsuit. Therefore, current law serves as a deterrent to noncompliance, preventing violations and helping to ensure access.

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, of the access violations. Further, the bill only requires a business owner or operator to make a “good faith effort” toward “substantial progress” to correct violations. As such, access violations could continue indefinitely as long as the business owner takes minimal action, as defined in the bill.

Efforts to add notice and cure requirements decrease accessibility and make it more difficult to enforce disability civil rights. These requirements have repeatedly been rejected by the Legislature and are not ones the state of California should now 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. 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. There is no evidence to suggest that the current policy reforms are not workable or insufficient.

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

Rather than encouraging businesses to wait and see if they are caught, this bill should provide incentives to businesses to comply, such as funding CASp certification and training on state and federal access laws (SB 1186 required \$1 be collected on business licenses to fund education activities;

AB 1379 (Thurmond, 2017) increased building permit and business license fees to fund local jurisdiction CAsp certification and training); lease provisions to ensure landlords have buildings inspected and brought into compliance before they are leased (SB 1186 required leases to state whether they have been inspected for accessibility); educational material and training programs for businesses when they apply for a business license or building permits (See proposed AB 3002 (Grayson)); inspection programs similar to those conducted by health and safety departments; providing tax credits for access changes and CAsp inspections to improve accessibility and enable businesses to stay open; and small business loan programs, to provide resources to businesses to come into compliance AB 1230 (Gomez, 2015) established the California Americans with Disabilities Small Business Capital Access Loan Program, AB 1553 (Cervantes, 2017) expanded the size of a business eligible for the access loans, and the proposed AB 1547 (Quirk-Silva) that further seeks to increase eligibility for the access loans).

Common access problems do not require lengthy correction periods

In California, the California Commission on Disability Access (CCDA) identified the top ten access problems – four of the top 10 involve parking (<https://ccda.ca.gov/reports>). 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 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.

AB 3158 fundamentally harms progress toward an accessible integrated society for Californians with disabilities. For these reasons, we oppose this measure.

Sincerely,

A handwritten signature in cursive script that reads "Evelyn M. Abouhassan".

Evelyn Abouhassan
Senior Legislative Advocate
Disability Rights California

cc: Honorable Devon Mathis, California State Assembly
Justin Boman, Legislative Director, Office of Assembly Member
Mathis
Honorable Members, Assembly Judiciary Committee
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee