

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 1757 (Committee on Judiciary)

Version: July 3, 2023

Hearing Date: July 11, 2023

Fiscal: Yes

Urgency: No

ME

**SUBJECT**

Accessibility: internet websites

**DIGEST**

This bill creates a presumption in state law that a website that meets a specified standard complies with state accessibility requirements.

**EXECUTIVE SUMMARY**

A business that is a public accommodation is prohibited from discriminating on the basis of disability if its operations affect interstate commerce under the federal Americans with Disabilities Act (ADA). The ADA also applies to websites and apps of public accommodations. Pursuant to the Unruh Civil Rights Act, all persons, regardless of disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind. The Unruh Civil Rights Act provides that a violation of the ADA also constitutes a violation of Unruh and subjects a person or entity in violation to actual damages incurred by an injured party, but not less than \$4,000, and any attorney's fees as the court may determine to be proper. There is no specific standard for website compliance with disability law and this has created uncertainty for businesses seeking to comply with law. Some reports indicate that threats of litigation and actual litigation are on the rise with regard to internet website compliance under disability law. The Assembly Committee on Judiciary introduced this bill in response to reports to the Committee of increased website accessibility litigation, especially with regard to small businesses.

In an effort to help small businesses comply with the law regarding website disability access and to ensure more websites are accessible, this bill seeks to encourage businesses to create websites that comply with a specified website standard. Under this bill, if the business' website complies with a specified standard then there is a rebuttable presumption that the business complies with state accessibility requirements and therefore the business is not liable for damages available under the ADA and Unruh Civil Rights Act. Specifically, this bill creates a presumption in state law that a website of a business entity that meets the WCAG 12.1 Level AA standard and avails itself of

the rebuttable presumption described above. This bill allows a person who is denied access to a website to bring a civil cause of action against a person who negligently, intentionally or knowingly built an inaccessible website. Additionally, the bill allows a business that hires such a website designer to recover any statutory damages and attorney's fees paid to website users; and allows public prosecutors to enforce the law by obtaining injunctive relief.

This bill is supported by the Civil Justice Association of California, the California Apartment Association, the California Restaurant Association, and other organizations that support and advocate for businesses. The bill is also supported by a coalition of advocates for disability rights, including the National Federation of the Blind of California, the California Council of the Blind, Disability Rights California, and others. It is opposed by the Karlin Law Firm, a website development business, some merchants associations, some benevolent associations, a few businesses, and 8 individual opponents. The bill is nearly identical to AB 950 (Committee on Judiciary, 2023), which was held in the Assembly Appropriations Committee because of the fiscal portion of AB 950 that is not in AB 1757. AB 950 passed out of the Assembly Judiciary Committee with a vote of 11 to 0.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides, pursuant to the federal Americans with Disabilities Act (ADA), that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. § 12182.)
- 2) Pursuant to Section 508 of the federal Rehabilitation Act, all federal agencies, when they develop, procure, maintain, or use electronic and information technology, must give disabled employees and members of the public access to information that is comparable to access available to others. (29 U.S.C. § 794 d.)
- 3) Holds, pursuant to case law, that the websites and apps of businesses that are public places or places of public accommodation are governed by the ADA, which "applies to the services of a place of public accommodation, not services in a place of public accommodation." (*Nat'l Fed'n of the Blind v. Target Corp.* (N.D. Cal. 2006) 452 F. Supp. 2d 946, 953.)
- 4) Pursuant to the Unruh Civil Rights Act, provides that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind; provides that a violation of the ADA also constitutes a violation of Unruh; and subjects a person or entity in

violation to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civ. Code § 51 *et seq.*)

- 5) Provides, pursuant to the Disabled Persons Act, 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, and also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civ. Code § 54.)
- 6) Entitles individuals with disabilities to full and equal access to public accommodations, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. (Civ. Code § 54.1.)

This bill:

- 1) Defines "Internet website-related accessibility standard" as the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard for the accessibility of internet websites established by the World Wide Web Consortium (W3C) Accessibility Guidelines Working Group on June 5, 2018, or the accessibility standards for Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d) in Part 1194 of Title 36 of the Code of Federal Regulations. To the extent that there is a difference or conflict between the applicable standards for internet websites under WCAG 2.1 Level AA and standards for information or communication technology under Section 508 of the federal Rehabilitation Act of 1973, the more recent WCAG 2.1 Level AA standard shall apply, unless a more stringent update, revision, or replacement to the accessibility standards for Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d) in Part 1194 of Title 36 of the Code of Federal Regulations is adopted by any final rule of the federal Access Board after the date of the enactment of this section, in which case that final rule shall apply to this section.
- 2) Defines "resource service provider" as a person or entity that, in exchange for money or any other form of remuneration, constructs, licenses, distributes, or maintains for online use any internet website or resource to be used within or in conjunction with an internet website.
- 3) Defines "entity" as a business establishment that is open to the public, a public place, or a place of public accommodation or any other business or place that is subject to the provisions of Sections 51, 54, or 54.1.
- 4) Defines "conform" to mean that the entity's internet website meets the criteria specified by the applicable internet website-related accessibility standard, as defined in paragraph (4). For purposes of the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard for the accessibility of internet websites established by the

World Wide Web Consortium (W3C) Accessibility Guidelines Working Group on June 5, 2018, an entity conforms to that standard when the entity's internet website meets all of the Success Criteria set forth in the standard.

- 5) Provides that the term "Internet website" includes all internet web-based technology, including, but not limited to, a mobile site or application, or an app, that can be accessed by a mobile device or other electronic device.
- 6) Provides that statutory damages under subdivision (a) of either Section 52 or Section 54.3 shall only be recovered against an entity based upon the inaccessibility of an internet website developed, procured, maintained, or used by that entity 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, including any member of the public who is a person with a disability.
- 7) Provides that a plaintiff must prove one of the following in order to be entitled to statutory damages for internet website inaccessibility: that the plaintiff personally encountered a barrier that caused the plaintiff to experience a difference in their ability to access or use the website as compared to other users such that the plaintiff was unable to acquire the same information, engage in the same interactions, or enjoy the same services with substantially equivalent ease of use, or to have the same level of privacy and independence as other users who are not persons with a disability; or that the plaintiff was deterred from accessing all or part of the website or the content of the website because of the 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.
- 8) Provides that an internet website is presumed to provide equally effective communication for the purpose of determining whether an award of statutory damages is warranted under subdivision (a) of Section 52 or 54.3, 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 the internet website-related accessibility standard.
- 9) Specifies that the presumption set forth in 8) affects the plaintiff's burden of proof. Specifies that upon the defendant establishing by a preponderance of the evidence that the internet website conforms to the internet website-related accessibility standard, the plaintiff may rebut the presumption with clear and convincing evidence, showing that, notwithstanding the internet website's compliance with the standard, the elements of one of the violations set forth in 7) are established.
- 10) Specifies that this bill is not intended to: limit the rights and remedies available to persons with a disability under federal law, or any other state law; affect whether an entity is responsible under either Section 51 or 51.5 for making its premises accessible to all members of the public, including persons with a disability and including by means of accessing and using the entity's internet website; resolve, or

otherwise address, whether an internet website that is a standalone website-only business and not associated with a business that has a physical location in California is subject to liability under Sections 51, 54, and 54.1; establish a presumption of liability, affect the burden of proof, or otherwise impact a court's determination of liability when an internet website does not conform to the internet website-related accessibility standard and in which case the presumption established in 8) therefore would not apply; require an entity to conform to the internet website-related accessibility standard; or demonstrate an intent by the Legislature, in enacting this section, to deprive or limit the exercise of jurisdiction by federal courts over state law claims brought in conjunction with any federal claim under the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.) or other federal law.

- 11) Provides that the above provisions apply to civil actions filed on or after January 1, 2024.
- 12) Provides that it is unlawful for any resource service provider, in exchange for money or any other form of remuneration, to do either of the following: intentionally, negligently, or knowingly construct, license, distribute, or maintain for online use, an internet website that fails to conform to the internet website-related accessibility standard; or intentionally, negligently, or recklessly make a false representation that an internet website conforms to the internet website-related accessibility standard.
- 13) Provides that 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 the violation, may bring a civil action against a resource service provider for violating 12). The remedies for this violation are the remedies provided in subdivision (a) of Section 52.
- 14) Provides that a person or entity that pays, compensates, or contracts with, the 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, may bring a civil action against a resource service provider for violating 12).
- 15) Provides that if a plaintiff prevails under 14) then the plaintiff shall be entitled to collect all damages, including, but not limited to, any statutory damages and attorney's fees paid by the person or entity as a result of a lawsuit against the person or entity pursuant to Sections 51, 54, and 54.1, based upon the inaccessibility of the person or entity's website, and all costs of bringing their internet website into conformance to the internet website-related accessibility standard.
- 16) Provides that the Attorney General or a district attorney, county counsel, or city attorney may bring an action against a resource service provider to obtain injunctive or declaratory relief and attorney's fees and costs.

- 17) Provides that a provision within a contract between a person or entity and a resource service provider that seeks to waive liability under this section, or otherwise shift the liability to a person or entity that pays, compensates, or contracts with the resource service provider, as described, is void as a matter of public policy and subject to subdivision (c) of Section 51.7.
- 18) Provides that this section does not limit or alter the application of other laws, including, but not limited to, Sections 51, 54, and 54.1, or the ability of a plaintiff to bring a civil action under any other theory of the law, including, but not limited to, breach of contract, implied warranty of merchantability, or false or deceptive advertising.
- 19) Provides that the provisions regarding resource service providers in this bill are not intended to do any of the following: limit the rights and remedies available to a person with disabilities under the federal law or any other state law; affect whether an entity is responsible under either Section 51 or 51.5 for making its premises accessible to all members of the public, including persons with a disability and including by means of accessing and using the entity's internet website; resolve, or otherwise address, whether an internet website that is a standalone website-only business and not associated with a business that has a physical location in California is subject to liability under Sections 51, 54, and 54.1; establish a presumption of liability, affect the burden of proof, or otherwise impact a court's determination of liability when an internet website does not conform to the internet website-related accessibility standard; require an entity to conform to the internet website-related accessibility standard; or demonstrate an intent by the Legislature, in enacting this section, to deprive or limit the exercise of jurisdiction by federal courts over state law claims brought in conjunction with any federal claim under the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.) or other federal law.

### COMMENTS

#### 1. Stated need for the bill

According to the author:

[AB 1757] would help address internet website accessibility for persons with disabilities by creating presumption in state law that if the website of a business meets WCAG standards developed by the World Wide Web Consortium (W3C), it complies with California's Unruh Civil Rights Act and Disabled Persons Act. By creating this rebuttable presumption, the bill would reduce litigation over whether business' websites are ADA compliant.

By providing appropriate liability protections for ensuring accessible websites and providing a clear standard for being in compliance, AB 950 would result in

greater accessibility and reduced litigation regarding the accessibility of websites.

The California Apartment Association, in support of the bill writes:

I am writing to extend CAA's support for AB 1757, your bill that would create a legal presumption that a business website that meets the existing compliance standard developed by the World Wide Web Consortium (W3C Standard) complies with accessibility requirements for business websites in California. Unfortunately, litigious attorneys are abusing the Americans with Disabilities Act (ADA) by suing businesses with claims of ADA violations for failure to make their websites accessible to the public. AB 1757 would curtail this activity by codifying a widely used compliance standard for businesses to follow. The W3C Standard was adopted in 2018 and has been the compliance standard for state websites for the past five years. By applying an objective standard for businesses to follow, AB 1757 strikes a balance between business interests and consumer protection in a commonsense manner.

A coalition of advocates for disability rights, including the National Federation of the Blind of California, the California Council of the Blind, and others, writes the following in support of this bill:

This bill is the result of negotiation between disability advocates and the business community. It presents a balanced, reasoned approach to website accessibility litigation that promotes access for people with disabilities while also protecting businesses from frivolous litigation and unscrupulous providers of website products and services.

The undersigned organizations envision a world where all disabled people have power and are treated with dignity and respect. Such a world is only possible when people with disabilities have equal access to the information, resources, services, and products that are available to others. In today's world, website accessibility is a critical component of equal access.

AB 1757 advances the goals of the Americans with Disabilities Act and California's civil rights laws. Equity, inclusion, and access are key principles that disability advocates continue to hold as central to our work. Ensuring that websites are accessible to people with disabilities – and that aggrieved individuals have an avenue for recourse when they are not – advances these principles.

AB 1757 brings us closer to the world we seek to bring into fruition. In this world, people with disabilities are supported, valued, included in their communities, afforded the same opportunities as people without disabilities, and make their own decisions.

The Civil Justice Association of California, California Restaurant Association, in a coalition with other groups, writes the following in support of AB 1757:

A growing trend in ADA lawsuits is in website accessibility; in California alone, we saw a 23% spike in lawsuits from 2019 to 2020.<sup>1</sup> The absence of clear standards in the digital space has spawned this wave of litigation. While there are a few recent California court decisions that helped provide guidance and mitigate some lawsuit filings, many businesses continue to get hit with suits and demand letters. These lawsuits not only harm small business owners but also undermine the original intent of the ADA.

AB 1757 attempts to address these shakedown lawsuits by giving businesses guidelines for how a website can be accessible to those with communication disabilities. We appreciate the Assembly Judiciary Committee for their efforts to help businesses that are trying to ensure website accessibility for their customers and to protect themselves against lawsuits.

CJAC and other business groups have argued for years that we need federal guidelines that give businesses clear direction on website accessibility so they can avoid needless lawsuits and those with communication barriers can have full and fair access to website content. We believe in reforms that make the ADA more accessible and effective for those it was designed to protect, while also reducing the number of frivolous lawsuits that only serve to hurt businesses and consumers.

2. Expands legislative efforts to provide relief to small businesses

California's disability access laws have long operated to ensure that people with disabilities can utilize businesses and places of public accommodation in this state. In spite of their important civil rights functions, these laws have sometimes generated controversy due to a high-volume of claims made by a relatively small group of litigants and law firms. One way the Legislature has addressed this issue is through the California Certified Access Specialist Program. Under this program businesses can request a trained inspector to examine their establishment and point out any changes that are needed to ensure compliance with disability access standards. If the business proceeds to undertake necessary upgrades, the business receives temporary immunity from disability access lawsuits.

SB 269 (Roth, Ch. 13, Stats. 2016), was enacted to protect businesses with 50 or fewer employees from liability for minimum statutory damages in a construction-related accessibility claim for the 120-day period after the business has obtained an inspection of its premises by a CAsp, allowing the business to identify and correct violations during that period. SB 269 also established a presumption that certain "technical violations" of construction-related accessibility standards (such as faded paint on parking spaces or missing signage) do not constitute grounds for a

complaint under Unruh as long as those violations are corrected within 15 days of the business owner being notified about them. AB 2093 (Steinorth, Ch. 379, Stats. 2016), was enacted to require a commercial property owner to disclose on every lease form or rental agreement, whether or not the property being leased has undergone inspection by a CASp. AB 1521 (Committee on Judiciary, Ch. 755, Stat. 2015) was enacted to provide additional information and legal resources to small business owners to help them minimize their liability for ADA violations. It also limited the practice of high-volume lawsuits motivated by quick settlement with business owners, rather than correction of ADA violations.

As stated above, existing law provides certain protections to businesses who actively seek out a CASp inspection prior to being sued for construction-related accessibility violations. These small businesses are entitled to a 90-day stay and an early evaluation conference. They also qualify for reduced minimum statutory damages of \$1000 per violation if the violations are corrected within 120 days. In addition, existing law extends similar protections to small businesses that have not had a CASp inspection. These small businesses qualify for minimum statutory damages of \$2000 per violation if the violations are cured within 30 days.

In an effort to help small businesses comply with the law regarding website disability access and to ensure more websites are accessible, this bill creates a rebuttable presumption in state law that a website of a business entity that meets a specific standard (WCAG 12.1 Level AA) conforms to state accessibility requirements and therefore is not liable for damages. Additionally, a civil cause of action can be brought by a business or a public prosecutor against a person who intentionally, negligently, or knowingly builds an inaccessible website. These provisions will ensure that a business that takes steps under the statute to make their websites accessible will be able to operate without being under threat of litigation.

There is no specific standard for website compliance with disability law and this has created uncertainty for businesses seeking to comply with law. Some reports indicate that threats of litigation and actual litigation are on the rise with regard to internet website compliance under disability law. The Assembly Committee on Judiciary introduced this bill in response to reports to the Committee of increased website accessibility litigation, especially with regard to small businesses.

### 3. WCAG

As explained by the Assembly Judiciary Committee in their analysis of AB 950 (Committee on Judiciary, 2023):

In the absence of a specific standard for website compliance, courts and government entities sometimes rely on private standards developed by technology and accessibility experts, including the World Wide Web Consortium (W3C), the main international standards organization for the

Internet. As part of their Web Accessibility Initiative, W3C has promulgated a series of web accessibility guidelines, including the Web Content Accessibility Guidelines (WCAG). WCAG standards are a set of recommendations for making Web content more accessible, particularly for people with disabilities. The first set of accessibility guidelines, called WCAG 1.0 became a W3C recommendation in May of 1999. The guidelines have been updated since then. WCAG 2.0 was published in December 2008 and became an ISO standard in October 2012. WCAG 2.1 became a W3C Recommendation in June of 2018. WCAG 2.2 is in the process of being developed and could be released this year.

WCAG 2.1 retains WCAG 2.0 in its entirety, but adds 17 additional success criteria to the 2.0 standard. The new success criteria are intended to address viewing of content on mobile devices and provide additional success criteria to improve the experience of individuals with low vision and cognitive impairments. W3C's overview of the additional success criteria in version 2.1 can be accessed at the WCAG website: <https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/>. Regarding the level of compliance within each version of the standard, "Level A is a *subset* of Level AA. There are 25 criteria that you have to meet to reach Level A. To reach Level AA you have to meet 13 more criteria *in addition to* the 25 for Level A." (<https://myaccessible.website/blog/wcaglevels/wcag-levels-a-aa-aaa-difference>.)

Courts and government entities have relied upon WCAG standards in addressing accessibility issues and compliance, particularly in settlement agreements and consent decrees. For example:

- In 2013, DOJ entered into a settlement agreement with Louisiana Tech University that encompassed not only the University's website, but also all electronic and information technology, instructional materials and online courses. (*See Settlement Agreement with Louisiana Tech University*, DJ #204-33-116 (July 22, 2013), *available at* <https://www.ada.gov/louisiana-tech.htm>.)
- In 2014, the National Federation of the Blind and DOJ entered into a consent decree with HRB Digital LLC and HRB Tax Group, Inc., agreeing that H&R Block's website and apps would comply with the WCAG 2.0 AA standards by January 1, 2016. (*National Federation of the Blind, et al v. HRB Digital LLC and HRB Tax Group, Inc.*, Civil Action No. 1:13-cv-10799-GAO, United States District Court for the State of Massachusetts, Boston Division, Consent Decree – *available at* <https://www.ada.gov/hrb-cd.htm>.)
- In August of 2016, DOJ notified the University of California, Berkeley, that large segments of its free, publicly available audio and video

content (including its YouTube channel, iTunes U platform, and Open Online Courses) were not accessible to individuals with hearing, vision, or manual disabilities. The letter observed that, “While the University of California’s Information Technology Accessibility Policy adopts the WCAG 2.0 AA technical standard, which provides clear parameters for ensuring online content is accessible to individuals with disabilities, UC Berkeley has not ensured compliance with its policy.” (See Letter dated August 30, 2016 to University of California, Berkeley, available at [https://www.ada.gov/briefs/uc\\_berkeley\\_lof.pdf](https://www.ada.gov/briefs/uc_berkeley_lof.pdf).)

- In November of 2018, the National Federation of the Blind announced a settlement agreement with Alameda County, California, in which the county agreed to utilize WCAG 2.1 AA in making its election website accessible. (See <https://www.nfb.org/about-us/press-room/alameda-county-will-make-voting-more-accessible-blind>.)
- In January of 2019, the Ninth Circuit Court of Appeals observed in *Robles* that “the district court can order compliance with WCAG 2.0 as an equitable remedy if, after discovery, the website and app fail to satisfy the ADA.” (*Robles, supra*, 913 F.3d at p. 907.)

#### 4. Opposition

In opposition, the Karlin Law Firm writes:

The bill, while laudable in its attempt to address the problem of a lack of standards and safe harbors in this critical area, not only falls short, but it has the complete opposite effect by indirectly suggesting that the WCAG guidelines are somehow objective, testable, standards that are easily measured. They are not by any stretch of the imagination. The proponents of the bill seem to believe that compliance with any version of WCAG can be measured by some simple test. It cannot. The WCAG was not designed to be a testable, measurable standard, but instead was designed only as a set of “guidelines,” with the understanding that compliance with “guidelines” is often, if not always, a matter of opinion. In short, the so-called “safe harbor” contained in the bill is none at all, but in fact, is a dangerous bay filled with hidden reefs that will destroy any vessel that enters. [ . . . ]

Assembly Bill 1757 (“AB 1757”), in part, would indirectly elevate Web Content Accessibility Guidelines 2.1 (“WCAG 2.1”) as some type of safe harbor and thereby suggesting by implication that it is one “standard” for determining website accessibility. The “G” in WCAG refers not to any type of objective or measurable standard, but rather to set of “Guidelines.”

In opposition, EcomBack writes:

On behalf of EcomBack, a website accessibility development firm that helps small businesses build and remediate website accessibility, I write to express our deep concerns regarding Assembly Bill 1757 (“AB 1757”), which would codify Web Content Accessibility Guidelines 2.1 AA (“WCAG 2.1”) as the standard for determining website accessibility. We have helped over 75 businesses make their websites accessible over the past year and understand the nuances and technicalities of website accessibility. We find it appalling that AB 1757 is a Gut & Amend of AB 950 which was put in the suspense file, and all costs that were associated with the bill were gutted from the text.

WCAG 2.1 has never been approved as a set of workable standards or guidelines for determining a website’s compliance with the ADA, has been rejected as a minimum standard of compliance by the Ninth Circuit in *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905 (9th Cir. 2019), and is directly contrary to the standard set by *Robles* (“impedes access to the goods and services of the physical [location]”) for determining whether a website complies with the Americans with Disabilities Act (“ADA”). By adopting WCAG 2.1 as the standard for website accessibility which almost no websites actually meet and permitting statutory damages of \$4,000 for each “visit” to a website and specifically permitting lawsuits against website designers and others, this amendment will open the floodgates for Unruh Act litigation in California against businesses, especially small and micro businesses still recovering from the COVID-19 pandemic.

In response, the author asserts:

It is inaccurate to say — as EcomBack alleges-- that WCAG guidelines have “never been approved as a set of workable standards or guidelines for determining a website’s compliance with the ADA.” In fact, courts and government entities repeatedly have relied upon WCAG guidelines as standards for compliance, including in consent decrees and court settlements. The history of reliance upon WCAG guidelines as a standard for website accessibility is discussed in detail in the Assembly Judiciary Committee’s analysis of AB 950 (Maienschein), this bill’s predecessor. Furthermore, for the past five years, the State of California has relied upon WCAG guidelines to verify that websites of its agencies are accessible, requiring each agency to certify their compliance with WCAG guidelines.

It also is inaccurate to say — as EcomBack alleges-- that WCAG guidelines were “rejected as a minimum standard of compliance by the Ninth Circuit in *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905 (9th Cir. 2019).” In fact, the Ninth Circuit observed in a footnote of its decision in that case that, “WCAG 2.0 guidelines have been widely adopted, including by federal agencies, which conform their

public-facing, electronic content to WCAG 2.0 level A and level AA Success Criteria.” (*Robles, supra*, at p. 902, fn. 1.) The Ninth Circuit reversed the district court’s dismissal of the plaintiff’s complaint against Domino’s, alleging a violation of the ADA based upon accessibility issues with Domino’s website and app based in part on non-compliance with WCAG guidelines; sent the case back to the district court; expressed no opinion about whether or not Domino’s website or app complied with the ADA; and observed that “the district court *can* order compliance with WCAG 2.0 as an equitable remedy if, after discovery, the website and app fail to satisfy the ADA.” (*Robles, supra*, 913 F.3d at p. 907 [emphasis added].)

It seems clear that the aspect of AB 1757 that EcomBack, a website development firm, really objects to is its provision imposing liability on website development firms when they “intentionally or knowingly” design websites which do not comply with WCAG guidelines. Yet this provision will demonstrably help small businesses that now face sole liability for access violations. It is a fair way to spread liability and costs, especially after a small business hires a website design company to make its website accessible. As a whole, this bill will assist virtually all businesses (except perhaps website design firms like EcomBack) by clarifying the law and providing an important presumption against liability for those businesses that *choose* to design websites in compliance with WCAG 2.0 guidelines.

### **SUPPORT**

American Property Casualty Insurance Association  
California Apartment Association  
California Association of Realtors  
California Business Properties Association  
California Council of the Blind  
California Credit Union League  
Californians for Disability Rights, Inc.  
California Foundation for Independent Living Centers  
California Restaurant Association  
Civil Justice Association of California  
Consumer Attorneys of California  
Cooperative of American Physicians  
Disability Rights Advocates  
Disability Rights California  
Disability Rights Education and Defense Fund  
Los Angeles Area Chamber of Commerce  
National Federation of the Blind of California

## **OPPOSITION**

Balboa Village Merchants Association  
Chinatown Merchants Association  
Coalition for Fair Access  
EcomBack<sup>1</sup>  
Fillmore Merchants Association  
Goodman's  
Hop Wo Benevolent Association  
Jack Sen Benevolent Association  
Karlin Law Firm  
Potrero Dogpatch Merchants Association  
Quong Fook Tong Association  
Trimex reality and Loan  
Valencia Corridor Merchants Association  
Yee Fung Toy Family Association  
8 Individuals who own or manage small businesses

## **RELATED LEGISLATION**

### **Pending Legislation:**

AB 950 (Committee on Judiciary, 2023) is substantially similar to this bill and was held on suspense in the Assembly Appropriations Committee.

AB 1404 (Carrillo, 2023) is a companion bill to AB 1757 and requires specified notice to be provided in website accessibility demand letters. AB 1404 is scheduled to heard on the same day as this bill.

### **Prior Legislation:**

AB 2123 (Chau, 2019) was similar to AB 1757. The bill would have created a presumption in state law that a website of a business that meets WCAG 2.1 Level A and AA standards complies with state accessibility requirements. The bill was not heard at the author's request and died without a hearing in the Assembly Judiciary Committee.

AB 434 (Baker, Ch. 780, Stats. 2017) requires the director of each state agency or entity and the chief information officer of that state agency or entity to biennially post on the home page of the agency's or entity's Internet Web site a signed certification that the agency's or entity's Internet Web site is in compliance with specified accessibility standards. The signed certification must specify that the director and chief information

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<sup>1</sup> The Committee received a letter from the President of EcomBack listing forty-one organizations and businesses that the President asserts are in opposition to AB 1757. These 41 entities are not listed as opposition in the analysis because the Committee was not provided with individual names or signatures affiliated with the entities. A copy of this letter is on file with the Committee.

officer have determined that the Internet Web site is in compliance with Sections 7405 and 11135, and the Web Content Accessibility Guidelines 2.0, or a subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria.

**PRIOR VOTES:**

This bill was gut and amended on June 12, 2023 to address a different topic, thus all prior votes are irrelevant.

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