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**HEALTH AND SAFETY CODE - HSC**

**DIVISION 13. HOUSING [17000 - 19997]** ( *Division 13 enacted by Stats. 1939, Ch. 60.* )

**PART 5.5. ACCESS TO PUBLIC ACCOMMODATIONS BY PHYSICALLY HANDICAPPED PERSONS [19955 - 19959.5]** ( *Part 5.5 added by Stats. 1969, Ch. 1560.* )

**19955.** (a) The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers.

As used in this section, "hospitals" includes, but is not limited to, hospitals, nursing homes, and convalescent homes.

When sanitary facilities are made available for the public, clients, or employees in such accommodations or facilities, they shall be made available for the physically handicapped.

Any new requirements imposed by the amendments to this section enacted by the Legislature at its 1973–74 Regular Session shall only apply to public accommodations or facilities constructed on or after the effective date of the amendments.

(*Amended by Stats. 1973, Ch. 931.*)

**19955.3.** As used in this part:

(a) "Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or unused under-floor space is more than six feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, the basement or unused under-floor space shall be considered as a story.

(b) "First story" means the lowest story in a building which qualifies as a story and which provides the basic services or functions for which the building is used. A floor level in a building having only one floor level shall be classified as a first story, if the floor level is not more than four feet below grade, for more than 50 percent of the total perimeter, or more than eight feet below grade at any point.

(c) "Mezzanine" means an intermediate floor placed in any story or room. When the total area of any "mezzanine floor" exceeds  $33\frac{1}{3}$  percent of the total floor area in that room, it shall be considered as constituting an additional "story." The clear height above and below a "mezzanine floor" construction shall be not less than seven feet.

(d) "Grade" means the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building.

(*Added by Stats. 1982, Ch. 1416, Sec. 1.*)

**19955.5.** All passenger vehicle service stations, shopping centers, offices of physicians and surgeons, and office buildings constructed in this state with private funds shall adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code. As used in this section, "office building" means a structure wherein commercial activity or service is performed or a profession is practiced, or wherein any combination thereof is performed or practiced in all or the majority of the building or structure.

When sanitary facilities are made available for the public, clients, or employees in these stations, centers, or buildings, they shall be made available for persons with disabilities.

Any new requirements imposed by the amendments to this section by Chapter 931 of the Statutes of 1973 shall only apply to those stations, centers, or office buildings constructed on or after September 30, 1973. Any other new requirements imposed by amendments to this section by Chapter 995 of the Statutes of 1974 shall only apply to those offices or office buildings constructed on or after January 1, 1975.

*(Amended by Stats. 1993, Ch. 1220, Sec. 3. Effective January 1, 1994.)*

**19956.** All public accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code. However, the following types of privately funded multistory buildings do not require accessibility by ramp or elevator above and below the first floor:

(a) Multistoried office buildings, other than the professional office of a health care provider, and passenger vehicle service stations less than three stories high, or less than 3,000 square feet per story.

(b) Any other privately funded multistoried building that is not a shopping center, shopping mall, or the professional office of a health care provider, and that is less than three stories high or less than 3,000 square feet per story if a reasonable portion of all facilities and accommodations normally sought and used by the public in such a building are accessible to and usable by persons with disabilities.

*(Amended by Stats. 1993, Ch. 1220, Sec. 4. Effective January 1, 1994.)*

**19956.5.** Any curb or sidewalk intended for public use that is constructed in this state with private funds shall conform to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code.

This section shall apply, but not be limited in application, to any curb or sidewalk which after construction with private funds will be turned over to a city or county for public use, in order to provide full and easy access to, and use of, such curb or sidewalk by the physically handicapped.

*(Added by Stats. 1972, Ch. 1018.)*

**19957.** In cases of practical difficulty, unnecessary hardship, or extreme differences, a building department responsible for the enforcement of this part may grant exceptions from the literal requirements of the standards and specifications required by this part or permit the use of other methods or materials, but only when it is clearly evident that equivalent facilitation and protection are thereby secured.

*(Added by Stats. 1969, Ch. 1560.)*

**19957.5.** (a) Every city, county, or city and county may appoint a local appeals board composed of five members to hear written appeals brought by any person regarding action taken by the building department of the city, county, or city and county in enforcement of the requirements of this part, including the exceptions contained in Section 19957.

(b) Two members of the appeals board shall be physically handicapped persons, two members shall be persons experienced in construction, and one member shall be a public member.

(c) The appeals board shall conduct hearings on written appeals made under subdivision (a) and may approve or disapprove interpretations of this part and enforcement actions taken by the building department of the city, county, or city and county. All such approvals or disapprovals shall be final and conclusive as to the building department in the absence of fraud or prejudicial abuse of discretion. The appeals board shall adopt regulations establishing procedural rules and criteria for the carrying out of its duties under this part.

*(Added by Stats. 1976, Ch. 700.)*

**19958.** The building department of every city, county, or city and county shall enforce this part within the territorial area of its city, county, or city and county. The responsibility for enforcing Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code in its application under this part shall be by such building department within the territorial area of its city, county, or city and county.

"Building department" means the department, bureau, or officer charged with the enforcement of laws or ordinances regulating the erection or construction, or both the erection and construction, of buildings.

*(Added by Stats. 1969, Ch. 1560.)*

**19958.5.** The district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General may bring an action to enjoin a violation of this part.

*(Amended by Stats. 2003, Ch. 872, Sec. 7. Effective January 1, 2004.)*

**19958.6.** (a) A person who violates Section 19952, 19955, 19955.5, 19956, 19956.5, or 19959 or any of the regulations implementing those sections that have been promulgated by the State Architect pursuant to Section 4450 of the Government Code and approved by the California Building Standards Commission shall be subject to a civil penalty of two thousand five hundred dollars (\$2,500) for each violation.

(b) A person who remains in violation of the statutes and regulations specified in subdivision (a) for more than 90 days after receipt of written notice from a governmental agency identifying the violation shall be subject to an additional civil penalty of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each violation for each additional day that the violation remains. In assessing the amount of the civil penalty under this subdivision, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

- (1) The nature and seriousness of the violations.
- (2) The number of violations.
- (3) The persistence of the violations.
- (4) The willfulness of the defendant's conduct.
- (5) The defendant's assets, liabilities, and net worth.
- (6) Any economic benefit to the defendant resulting from the violation.

A court may suspend a portion of any penalty imposed pursuant to this subdivision to the extent that the person, despite diligent efforts, cannot complete all steps necessary to correct a violation within the 90-day period. Any suspension of daily penalties shall be conditioned on adherence to a court-ordered schedule for correcting the violation.

(c) When imposing penalties under either subdivision (a) or (b), the court shall impose a separate civil penalty for each violation of the statutes and implementing regulations mentioned in subdivision (a). Multiple identical violations at one facility may be deemed to constitute one violation if the court finds that the multiplicity of violations did not significantly increase the degree to which access was compromised.

(d) Every civil action brought under this section shall be brought in the name of the people of the state by the district attorney, the city attorney, the county counsel if the district attorney does not bring an action, the Department of Rehabilitation acting through the Attorney General, or the Attorney General. An action brought in the name of the people of the state shall not preclude an action being brought by an injured person under other applicable laws.

(e) (1) If the action is brought by the Department of Rehabilitation acting through the Attorney General, or by the Attorney General, the civil penalties shall be paid to the Treasurer. Upon prevailing, the Attorney General shall be entitled to recover all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(2) If the action is brought by the district attorney, or the county counsel, the civil penalties shall be paid to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by the city attorney, the civil penalties shall be paid to the treasurer of the city bringing the action. Upon prevailing, the city attorney shall be entitled to recover all costs of investigating and prosecuting the action, including, but not limited to, expert fees, reasonable attorney's fees, and costs.

*(Added by Stats. 2003, Ch. 872, Sec. 8. Effective January 1, 2004.)*

**19959.** Every existing public accommodation constructed prior to July 1, 1970, which is not exempted by Section 19956, shall be subject to the requirements of this chapter when any alterations, structural repairs or additions are made to such public accommodation. This requirement shall only apply to the area of specific alteration, structural repair or addition and shall not be construed to mean that the entire building or facility is subject to this chapter.

*(Amended by Stats. 1974, Ch. 545.)*

**19959.5.** If a violation of Section 19955, 19955.3, 19955.5, 19956, 19956.5, 19957, 19957.5, or 19959 is alleged or the application or construction of any of these sections is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each party shall serve a copy of the party's brief or petition and brief, on the State Solicitor General at the Office of the Attorney General. No brief may be accepted for filing unless the proof of service shows service on the State Solicitor General. Any party failing to comply with this requirement shall be given a reasonable opportunity to cure the failure before the court imposes any sanction and, in that instance, the court shall allow the Attorney General reasonable additional time to file a brief in the matter.

