

Governor Schwarzenegger signed SB 1608, authored by Senator George Runner (R-Lancaster) and Assemblyman Cameron Smyth (R-Santa Clarita), in or about October 2008 and most provisions have already gone into effect as of July 1, 2009. The following brief breakdown of SB 1608 is discussed in greater detail on Pages 3-7.

- 1. Businesses Can Hire a CASp (Certified Access Specialist) a person business owners can be assured has been tested and certified by the state as an expert in disability access laws.*
- 2. Businesses should request a CASp inspection report detailing what was inspected. Without one, business owners will not have proof of the inspection.*
- 3. If the CASp determines that corrections are needed in order for the site to be approved, the business owner is entitled to a written report identifying changes that need to be made and recommended reasonable timeframes for fixes.*
- 4. Business owners should keep the inspection report confidential and in a safe place. If they are sued, the CASp inspection report will entitled them to request a 90-day stay of the lawsuit and an Early Evaluation Conference. (See below) Without a CASp report the owners are barred from this benefit.*
- 5. Businesses whose structures have been approved by CASps should request a window sign signifying they have been CASp-inspected. This will send a message to potential Plaintiff's that the business has taken proactive steps to comply with the disability access laws and is not an easy target.*
- 6. SB 1608 requires a minimum continuing education requirement for building inspectors and architects on disability access laws. New state disability access commission California Commission on Disability Access (CCDA) is created.*
- 7. SB 1608 gives CASp-approved businesses the following tools to help resolve unnecessary litigation and encourage early resolution:*
 - a. Businesses that have been CASp-inspected before being sued — and only those businesses — are entitled to request a 90-day stay of the lawsuit and an Early Evaluation Conference (EEC). The EEC is a court-run conference between the parties*
 - b. The Defendant must file a request form with the Court within 30 days of being sued. The form is required to be delivered with the lawsuit. The court will grant the stay and EEC upon receipt of the request and schedule a time for the conference, within 50 days from the filing of the request. The plaintiff and defendant will be directed to appear in person at the time of the conference.*
 - c. Defendants must file with the Court the CASp inspection report no later than 15 days before the EEC and serve a copy on the Plaintiff. Failure to do so may*

lift the stay absent a showing of good cause. The confidentiality of the report must be maintained until the conclusion of the lawsuit.

d. The Plaintiff must file with the Court and serve the Defendant with a statement that includes the basis for the claimed violations, amount of damages claimed, amount of attorney's fees and costs incurred to date, and any settlement demands.

8. SB 1608 also established reforms that help to reduce inappropriate attorney fees and demands:

a. SB 1608 requires that written demands for money by Plaintiff's attorneys be accompanied by an explanation of the legal rights of the building owner/tenant, including the ability to contact their insurance company as well as an attorney experienced with ADA lawsuits. Failure to comply may be reported to the State Bar.

b. SB 1608 will help to ensure that damages may be claimed only when a Plaintiff personally encountered a violation or was deterred from gaining access on a particular occasion. SB 1608 clarifies that a denial of full and equal access constitutes only one violation per distinct facility for purposes of damages. Damages may not be recovered for each and every single offense that may exist at the particular facility. The Plaintiff may not recover for violations that may have existed at a facility but which never caused harm or injury to the Plaintiff, either in the form of an encounter or deterrence on a particular occasion.

c. SB 1608 gives the Court authority to consider, among other relevant factors, reasonable written settlement offers made and rejected by either party in determining the amount of an attorneys' fees award.

End.

FULL BREAKDOWN OF SB 1608

California SB 1608 is designed to promote and increase compliance with laws providing equal public access in places of business to individuals with disabilities, while reducing unwarranted litigation that does not advance that goal.

Business owners can ensure compliance and reduce chances of getting sued under the disability access laws by ensuring that their buildings are in compliance. SB 1608 provides several ways to help business owners:

- *Businesses Can Hire a CASp. A Certified Access Specialist (CASp) is a person business owners can be assured has been tested and certified by the state as an expert in disability access laws. SB 1608 sets up a process whereby business owners can voluntarily hire a CASp to inspect their buildings to ensure compliance with disability access standards and obtain an inspection report as proof they did so. A link to a list of certified CASp inspectors is available at www.calchamber.com/ADA.*

Businesses should begin the process of obtaining an inspection as soon as possible.

New Business Window Sign Available Soon

- *The price can be negotiated for this service. It will pay to shop around and obtain trusted referrals.*
- *Either building owners or tenants or both together can order a CASp inspection.*
- *Businesses should ensure when they hire a CASp that the CASp provides an inspection report detailing what was inspected. SB 1608 requires the CASp to notify you of the right to an inspection report. Without one, business owners will not have proof of the inspection.*
- *If the CASp determines that corrections are needed in order for the site to be approved, the business owner is entitled to a written report identifying changes that need to be made and recommended reasonable timeframes for fixes.*
- *Business owners should keep the inspection report confidential and in a safe place. If they are sued, the CASp inspection report will entitle them to request a 90-day stay of the lawsuit and an Early Evaluation Conference. Without a CASp report the owners are barred from this benefit.*



- *Businesses should request and post a CASp window sign. Businesses whose structures have been approved by CASps will be able to request a window sign signifying they have been CASp-inspected. The window sign will send the message that the business has taken proactive steps to comply with the disability access laws and is not an easy target.*
- *Improved expertise in new construction and building inspections. The bill also requires a minimum continuing education requirement for building inspectors and architects on disability access laws, to help reduce the problem of new construction failing to comply. By July 2010, the local building inspection offices will be required to have at least one CASp on staff, available to provide consultation.*
- *New state disability access commission part of the solution. SB 1608 created a new California Commission on Disability Access (CCDA), which will be a 17-member state advisory commission made up of legislative and gubernatorial appointees from both the disability and business communities. The commission will be assigned the task of evaluating and providing recommendations on further disability access issues having an impact on the disability and business communities.*

The commission's duties will include:

- *Establishing a website resource for businesses that provides information on compliance with disability access laws.*
- *Establishing a master checklist for building inspectors to use in determining compliance with disability access laws, which also can be used as a guide for business owners.*
- *Evaluating continuing education requirements for those involved in building construction.*
- *Evaluating whether SB 1608 reforms are working as they should and are effective.*
- *Deadline for state to address inconsistencies between state and federal regulations. A significant frustration for the business community has been inconsistent federal and state regulations — compliance with one may mean violation of the other. For the first time ever, SB 1608 establishes a deadline of December 31, 2010, for the state to propose amendments to the federal government that resolves these inconsistencies.*

If a business owner does get sued, SB 1608 helps to encourage early resolution of the lawsuit?

SB 1608 gives CASp-approved businesses some tools for helping to resolve unnecessary litigation and encouraging early resolution.

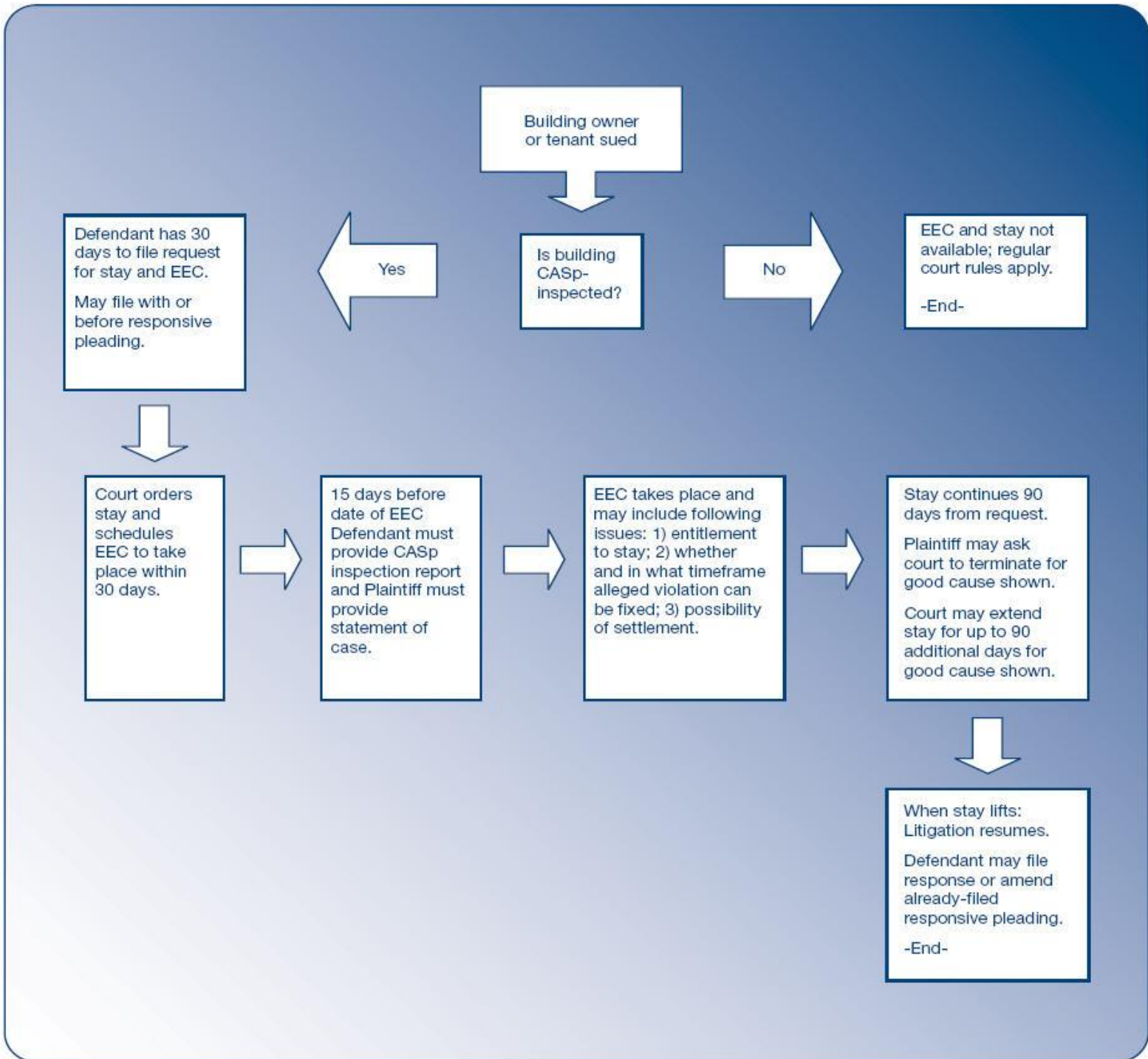
- *90-day stay of the lawsuit and early evaluation conference. Businesses that have been CASp-inspected before being sued — and only those businesses — are entitled to request a 90-day stay of the lawsuit and an Early Evaluation Conference (EEC).*
- *The EEC will be a court-run conference between the parties, at which the parties will have the opportunity to explore whether the lawsuit can be settled.*
- *Requesting the stay and EEC. A Defendant must file a request form with the court within 30 days of being sued. The appropriate form is required to be delivered with the lawsuit, but all necessary forms and instructions also will be made available on the state's court self-help website later this year. A link to this information will be posted at www.calchamber.com/ADA when it becomes available.*

The court will grant the stay and EEC upon receipt of the request and schedule a time for the conference, within 50 days from the filing of the request. The plaintiff and defendant will be directed to appear in person at the time of the conference.

- *Defendant must provide the CASp inspection report. No later than 15 days before the EEC, the defendant absolutely must file with the court and provide the Plaintiff with a copy of the CASp inspection report. If the Defendant does not do so, the Court may lift the stay absent a showing of good cause. The confidentiality of the report must be maintained until the conclusion of the lawsuit.*

The Plaintiff, in turn, must provide the Court and Defendant with a statement that includes the basis for the claimed violations, amount of damages claimed, amount of attorney's fees and costs incurred to date, and any settlement demands.

Use of Certified Access Specialists Encourages Resolution of Lawsuits



SB 1608 also established important reforms that will help to reduce inappropriate attorney monetary demands and provide significant clarifications in the law for both plaintiffs and defendants concerning recoverable damages and settlement offers:

- ***Attorneys who issue demands for money must also provide the business owner with an advisory statement. SB 1608 requires that written demands for money by attorneys be accompanied by an explanation of the legal rights of the building owner/tenant, including the ability to contact their insurance company as well as an attorney experienced with ADA lawsuits. In addition, the advisory will explain that receipt of a demand for money does not necessarily mean the business is liable.***

Attorneys who fail to comply may be reported to the State Bar. The advisory statement will be available in multiple languages on the state court website.

- ***Multiple damages may not be recovered at a single facility. SB 1608 will help to ensure that damages may be claimed only when a Plaintiff personally encountered a violation or was deterred from gaining access on a particular occasion. SB 1608 clarifies that a denial of full and equal access constitutes one violation per distinct facility for purposes of damages. Damages may not be recovered for each and every single offense that may exist at the particular facility.***

In addition, the Plaintiff may not recover for violations that may have existed at a facility but which never caused harm or injury to the Plaintiff, either in the form of an encounter or deterrence on a particular occasion.

- ***Parties will be encouraged to consider reasonable settlement offers. SB 1608 clarifies that a Court can consider, among other relevant factors, reasonable written settlement offers made and rejected by either party in determining the amount of an attorneys' fees award at the conclusion of a case.***