

THIRD READING

Bill No: AB 540
Author: Connolly (D)
Amended: 8/21/26 in Senate
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

SENATE JUDICIARY COMMITTEE: 9-0, 8/26/26

AYES: Umberg, Niello, Ashby, Caballero, Durazo, Laird, Reyes, Weber Pierson, Wiener

NO VOTE RECORDED: Allen, Stern, Valladares, Wahab

ASSEMBLY FLOOR: 76-0, 4/1/25 (Consent) - See last page for vote

SUBJECT: Civil actions and attorneys

SOURCE: Consumer Attorneys of California
California Defense Counsel

DIGEST: This bill removes the two-day extension to procedural timelines where service is effectuated by electronic service, establishes a “first look” procedure to protect sensitive medical and personal information in civil litigation, subject to stipulation of the parties, and also clarifies what constitutes a lawyer referral service under the State Bar Act.

Senate Floor Amendments of 8/21/26 establish a voluntary first look procedure for discovery requests of sensitive medical and personal information

ANALYSIS:

Existing law:

- 1) Permits electronic service of documents in a civil action, consistent with specified requirements, except that a document is required to be served by

certified or registered mail, electronic service of the document is not authorized. (Code of Civil Procedure (Code Civ. Proc.) § 1010.6(a).)

- a) Provides for mandatory electronic service in a civil action in specified situations. (Code Civ. Proc. § 1010.6(b).)
 - b) Provides that any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days, but the extension shall not apply to extend the time for filing any of the following: a notice of intention to move for new trial; a notice of intention to move to vacate judgment under Section 663a; or a notice of appeal. (Code Civ. Proc. § 1010.6(a)(3)(B).)
- 2) Establishes the Civil Discovery Act to provide procedures by which parties to a civil action may conduct and obtain “discovery.” (Code Civ. Proc. §§ 2016.010 et seq.)
 - 3) Provides that generally any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.)
 - 4) Prohibits, under the State Bar Act, an individual, partnership, corporation, association, or any other nongovernmental entity from operating for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and prohibits an attorney from accepting a referral of such potential clients, unless: the service is certified by the State Bar and is operated in conformity with minimum standards for a lawyer referral service established by the State Bar and approved by the California Supreme Court; and the combined charges to the potential client by the referral service and the attorney to whom the potential client is referred do not exceed the total cost that the client would normally pay if no referral service were involved. (Business and Professions Code [Bus. & Prof. Code] § 6155(a).) Authorizes any person to bring a civil action for a violation of this prohibition for statutory damages, as provided, attorney’s fees, injunctive relief, and any other relief the court deems proper. (Bus. & Prof. Code § 6156.5)

This bill:

- 1) Establishes a first look procedure upon stipulation by all parties to the action. The parties may agree to modify the first look procedures by written stipulation only.
- 2) Authorizes, in any civil action in which documents or writings pertaining to a party or non-party that is a natural person, or to a decedent, are, or are reasonably expected to be, sought through discovery, that party or the successor-in-interest or personal representative of the decedent, may serve a notice of request for first look procedure (first look notice) on all other parties to the action.
 - a) A party may not serve a first look notice if the scheduled trial date is less than six months before the date of service.
- 3) Requires the first look notice to include both of the following:
 - a) identification of the category or categories of the documents and tangible things to be made subject to the first look procedure; and
 - b) the name, address, telephone number, and email address of the records service vendor responsible for managing documents produced under this section.
 - c) For purposes of a), the following categories of records apply:
 - i) Records reflecting any medical treatment or service provided to the noticing party or decedent.
 - ii) Records reflecting any psychiatric treatment or service provided to the noticing party or decedent.
 - iii) Records reflecting any drug or alcohol addiction treatment or service provided to the noticing party or decedent.
 - iv) Records reflecting the noticing party's sexual history, sexual activity, reproductive health, or medical treatment or related service provided to the noticing party or decedent.
 - v) Pathology materials, including, but not limited to, tissue and cytology, of the noticing party or decedent.

- d) Records include, but are not limited to, medical and billing records, imaging records, including, but not limited to, X-rays, sonography (ultrasound), computed tomography scans, magnetic resonance imaging, and positron emission tomography scans.
- 4) Provides that, absent a stipulation of the parties or order of the court, no party, other than the first look noticing party, may obtain any records described in the first look notice other than by means of the first look procedure.
 - 5) Authorizes the subpoenaing party or any other party seeking production of records to retain a records service vendor to obtain all records subject to the first look procedure following service. The subpoenaing party or parties must advise the records service vendor that the vendor is subject to all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191) and the California Consumer Privacy Act of 2018 (Title 1.81.5 (commencing with Section 1798.100) of Part 4 of Division 3 of the Civil Code).
 - 6) Requires, no later than three business days following a request from a subpoenaing party or a records service vendor, the first look noticing party or the successor-in-interest or personal representative of the decedent to provide executed authorizations to the subpoenaing party or the records service vendor.
 - 7) Provides that if the first look noticing party determines that any records should be withheld, that party must provide the subpoenaing party or records service vendor with a privilege log identifying, for each document withheld, sufficient factual information for any other parties to evaluate the merits of that claim. If the first look noticing party determines that no records should be withheld, that party must inform the subpoenaing party or records service vendor at the earliest opportunity.
 - 8) Requires the first look noticing party's review to be completed no later than 30 calendar days from receipt of the records from the records service vendor, unless the matter has been granted preference under Section 36 of the Code of Civil Procedure, in which case the first look noticing party's review must be completed no later than 7 calendar days from receipt.
 - a) If the day for completion falls on a weekend or court holiday, the time for compliance is extended to the next court day.

- b) The time for completion may be altered only by written stipulation of the parties. A failure to comply within the time period specified shall be deemed a misuse of the discovery process.
 - c) The records service vendor shall not release the records to the subpoenaing party or other parties before the expiration of the notice period above.
- 9) Provides that failure to comply with 7) and 8), above, constitutes a waiver of all objections, and upon such failure, the records service vendor shall immediately produce all documents obtained through the first look procedure to the subpoenaing party without exclusion or redaction.
- a) A failure to comply may be treated as a misuse of the discovery process
- 10) Provides that the first look provisions are not to be construed to prevent a party from seeking a protective order. To avoid unreasonable delay in the production of records, the party seeking the protective order concurrently applies for an ex-parte order shortening time. Any motion for protective order may be treated as a misuse of the discovery process.
- 11) Provides that an individual attorney or a group of individual attorneys practicing together, whether in a partnership, corporation, or association, that does not operate, in whole or in part, as a referral service, who are actively representing clients for whom they are personally providing legal services, and, incidental to their active representation of their clients, refer a potential client to another attorney under either of the following circumstances when in compliance with the California Rules of Professional Conduct:
- a) refers a potential client to another attorney on a matter that the referring attorney or group of attorneys did not affirmatively solicit and involves an area of the law outside of their expertise but within the area of expertise of the attorney to whom the potential client is referred; or
 - b) refers a potential client to another attorney on a matter that is within the area of expertise of the referring attorney or group of attorneys, but exceeds their caseload or capabilities or does not meet their criteria for representation.
- 12) Removes the two-day extension to procedural timelines where service is effectuated by electronic service

Comments

The Civil Discovery Act (“the Act”) applies to every civil action and special proceeding of a civil nature, unless there is a statutory exception. (Code Civ. Proc. § 2016.010 et seq.) Discovery is the formal exchange of evidentiary information and materials between parties to a pending action. Generally, the Act permits any party to a civil action to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter in the pending action or to the determination of any motion made in that action, if the matter is either admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.) Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property.

This bill seeks to establish a voluntary first look procedure to protect sensitive medical and personal information in civil litigation, subject to stipulation of the parties. The sponsors of this bill, the Consumer Attorneys of California and the California Defense Counsel note that this addresses section of the bill addresses:

A real and growing problem: health care providers often produce an individual's entire medical file in response to a records request, including highly private information that has nothing to do with the lawsuit. A person pursuing a claim for a broken arm following a car accident, for example, should not unnecessarily have unrelated, sensitive reproductive health information disclosed simply because it exists in their medical records. AB 540 expressly encompasses sensitive records.

The sponsors note that stakeholders worked to refine this procedure and that it provides both sides with the opportunity to voluntarily use the first look procedure, evaluate how it works in practice, and begin addressing the unnecessary disclosure of sensitive information without interfering with legitimate discovery.

Last year, SB 370 (Umberg, Chapter 645, Statutes of 2025) amended the State Bar Act to provide a statutory remedy for the violation of the prohibitions and regulations on lawyer referral services. This bill clarifies that an individual attorney or a group of individual attorneys practicing together that do not operate as a referral service, who are actively representing clients for whom they are personally providing legal services, and, incidental to their active representation of their clients, refer a potential client to another attorney under either of the

following circumstances and in compliance with the California Rules of Professional Conduct:

- refers a potential client to another attorney on a matter that the referring attorney or group of attorneys did not affirmatively solicit and involves an area of the law outside of their expertise but within the area of expertise of the attorney to whom the potential client is referred; or
- refers a potential client to another attorney on a matter that is within the area of expertise of the referring attorney or group of attorneys, but exceeds their caseload or capabilities or does not meet their criteria for representation.

The Code of Civil Procedure establishes various timelines for serving and filing notices and motions and supporting or responsive documentation. The relevant statutes extend these timelines in certain situations. For instance, if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the relevant period is generally extended by two days.

Current law establishes rules and procedures for the electronic service of documents in civil cases, including providing which parties must make and accept, and which parties may elect to make and accept, service through electronic means. The relevant statute provides that any period of notice, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days, except as specified. This bill clarifies that these two-day extensions do not apply to electronic service.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/26/26)

California Defense Counsel (source)
Consumer Attorneys of California (source)
Child Support Directors Association of California

OPPOSITION: (Verified 8/26/26)

None received

ARGUMENTS IN SUPPORT: The author writes:

As amended, AB 540 addresses three related but distinct areas in the practice of civil law. These three issues include streamlining the timeframes in the Code of

Civil Procedure for electronic service of documents in civil cases, clarifying provisions of current law relating to referrals by lawyers pursuant to the State Bar Act, and creating a new voluntary template for a “first look” in civil discovery, to prevent the unnecessary release of irrelevant personal information in the exchange of documents.

The Consumer Attorneys of California (CAOC) and California Defense Counsel (CDC), the sponsors of the bill, write in support stating:

AB 540 retains its existing provisions clarifying that electronic service of specified motions does not trigger the additional time applicable to certain other methods of service, eliminating unnecessary confusion in calculating motion deadlines. Amendments have been adopted in this section based on feedback from the Judicial Council last year.

Second, the bill clarifies the rules governing attorney-to-attorney referrals under Business and Professions Code section 6155. The amendments make clear that attorneys actively representing clients are not operating a lawyer referral service merely because, incidental to their practice, they refer a potential client to another attorney when the matter falls outside their expertise, exceeds their capacity, or does not meet their criteria for representation. This provides needed clarity while preserving California's existing regulation of certified lawyer referral services. The State Bar was also consulted in drafting this clarification language.

Third, AB 540 creates a voluntary “first look” procedure to better protect sensitive medical and personal information in civil litigation. The procedure applies only when all parties stipulate and allows sensitive records to be reviewed for privacy and relevance before they are provided to the requesting party.

ASSEMBLY FLOOR: 76-0, 4/1/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Arambula, Ávila Farías, Bains, Bauer-Kahan, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, DeMaio, Dixon, Elhawary, Ellis, Essayli, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo,

Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis,
Ward, Wilson, Zbur, Rivas

NO VOTE RECORDED: Alvarez, Bennett, Davies, Wicks

Prepared by: Amanda Mattson / JUD. / (916) 651-4113

8/27/26 9:05:42

**** **END** ****