

CONCURRENCE IN SENATE AMENDMENTS

AB 540 (Connolly)

As Amended August 21, 2026

Majority vote

SUMMARY

Adopts various clarifications and updates to the statutes governing the practice of civil law, including the creation of a first look review process for sensitive records.

Major Provisions

- 1) Eliminates the two-court day extension to respond to certain noticed motions served by electronic means.
- 2) Clarifies 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 is not a lawyer referral service so long as the parties comply with the California Rules of Professional Conduct and either of the following is satisfied:
 - a) A potential client is referred 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) A potential client is referred 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.
- 3) Authorizes, upon the stipulation by all parties to a civil action, the parties to utilize a first look procedure.
- 4) Provides that 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, unless the scheduled trial date is less than six months before the date of service.
- 5) Requires a first look notice to contain the following:
 - a) Identification of the category or categories of the documents and tangible things to be made subject to the first look procedure, as specified; and
 - b) The name, address, telephone number, and email address of the records service vendor responsible for managing documents produced under this bill.

- 6) 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 described in this bill.
- 7) Following service of the first look notice, the subpoenaing party or any other party seeking production of records may retain a records service vendor to obtain all records subject to the first look procedure, as specified.
- 8) 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.
- 9) Requires, upon receiving any records identified in the first look notice, the records service vendor to promptly provide them to the first look noticing party, and inform the subpoenaing party of the date when the vendor produced the records to the first look noticing party.
- 10) Requires, if the first look noticing party determines that any records should be withheld, that party to 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.
- 11) Requires the first look 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 calendar preference, in which case the first look noticing party's review must be completed no later than 7 calendar days from receipt.

Senate Amendments

- 1) Adopt a first look procedure.
- 2) Clarify attorney referral rules when a potential client is referred 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.

COMMENTS

This bill represents the semi-annual effort between the California Defense Counsel and the Consumer Attorneys of California to put forward a consensus measure making various technical changes to the laws governing the practice of civil litigation in California. This year's bill advances three policy goals. First, the bill reforms the timeline for responding to various noticed motions that are served electronically to reflect the proliferation of electronic communications in the practice of law. Secondly, the bill clarifies reforms enacted in last year's SB 370 (Umberg) Chap. 645, Stats. 2025 to prevent the laws banning illegitimate client referrals from inadvertently impacting the wholly legitimate, and legally required, referrals of clients due to subject matter expertise required by the Rules of Professional Conduct. Finally, this bill enacts a voluntary "first look" procedure whereby parties to litigation can screen medical records subject to discovery and proactively redact sensitive, but non-relevant, medical information before the documents are produced to opposing counsel.

As the bill relates to notice timelines, the bill makes California law consistent with the Federal Rules of Civil Procedure, which eliminated its three-day additional time to respond for service by electronic means in 2016, 15 years after it first adopted the extension.

As it relates to attorney referrals, this bill clarifies recent legislation to reign in the worst practices of so called "billboard lawyers." Last year the Legislature approved SB 370 (Umberg) Chap. 645, Stats. 2025, which amended the State Bar Act to provide enhanced statutory remedies for the violation of the prohibitions and regulations on lawyer referral services. One aspect of that bill permitted for private enforcement of the law via the state's Unfair Competition Law or false advertising statutes. While these statutes are certainly legitimate tools for policing overzealous attorney advertising and referrals, the existing law is raising some questions about its interaction with the existing Rules of Professional Conduct that governs the legal professions.

Specifically, some litigators worry about SB 370's interplay with Rule 1.1 of the Rules of Professional Conduct. That rule states, in pertinent part, that:

If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes to be competent. (Rules of Professional Conduct, Rule 1.1 (c), emphasis added.)

Given that attorneys are legally required to refer matters to other counsel when they lack proficiency with a specific aspect of a case, some worry that SB 370 will impose legal liability on attorneys who refer matters to others in compliance with the ethical standards governing the practice of law.

To avoid such an outcome, this measure would exempt from the SB 370 framework referrals that occur when an attorney or law firm did not affirmatively solicit the client and the matter eventually evolves to implicate an area of the law outside of their expertise. So long as the referral is to an attorney with the appropriate expertise, such a referral would not expose attorneys to liability. Similar protections are provided to attorneys and firms who must refer clients to others to handle workload-related constraints. This is simply codifying a long-standing practice, that pre-dates the pervasive advertising practices of "billboard lawyers," and provides legal clarity to ethical attorneys.

Finally, this bill adopts a "first look" process for civil discovery. Due to the broad scope of the information obtainable in the Civil Discovery Act, some less-than-relevant information can be obtained by opposing counsel. This is especially true when medical records are sought, as a person's medical history can be lengthy and involve nearly every condition, injury, or treatment for which a party sought care. Such information can also be highly sensitive including if a person obtained certain reproductive care, mental health treatments, or gender affirming care, regardless of that information's relevance to a given legal matter.

Seeking to protect non-relevant sensitive medical information, this bill establishes a voluntary "first look" procedure whereby a party can review their medical records prior to them being provided to opposing counsel and redact sensitive, non-relevant, medical information. The bill establishes the procedures for how the first look will occur and how opposing parties can contest overly broad redactions. The bill recognizes that many attorneys already, informally, permit such

actions when there is trust between legal counsel. This bill simply provides a clear legal framework for such a process. Recognizing that the process may not work in highly adversarial situations, the bill provides that the first look process is only applicable “upon stipulation by all parties to the action.”

According to the Author

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.

Arguments in Support

This bill is co-sponsored by the Consumer Attorneys of California and California Defense Counsel. In support of the bill the sponsors jointly write:

First, 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.

This 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. Plaintiff and defense stakeholders worked extensively to refine this procedure. AB 540 gives both sides the opportunity to try this approach voluntarily, evaluate how it works in practice, and begin addressing the unnecessary disclosure of sensitive information without interfering with legitimate discovery. For these reasons, we respectfully request your support.

Arguments in Opposition

None on file

FISCAL COMMENTS

None

VOTES:**ASM JUDICIARY: 12-0-0**

YES: Kalra, Dixon, Bauer-Kahan, Bryan, Connolly, Essayli, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

ASSEMBLY FLOOR: 76-0-4

YES: 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

ABS, ABST OR NV: Alvarez, Bennett, Davies, Wicks

UPDATED

VERSION: August 21, 2026

CONSULTANT: Shiran Zohar / JUD. / (916) 319-2334

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