

Date of Hearing: August 30, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 540 (Connolly) – As Amended August 21, 2026

FOR CONCURRENCE

SUBJECT: MOTIONS: FILING AND SERVICE REQUIREMENTS

SYNOPSIS

This bill reflects the semi-annual measure co-sponsored by the Consumer Attorneys of California, on behalf of the plaintiffs' bar, and California Defense Counsel, on behalf of the state's civil defense attorneys. These regular consensus measures are designed to promote useful and mutually agreed upon reforms to the laws that govern the state's civil justice system. This typically non-controversial measure is the product of extensive negotiations between the sponsors and aims to promote balanced reforms to the civil justice system

This year's bill advances three policy reforms. 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 mentioned, this bill is co-sponsored by the Consumer Attorneys of California and California Defense Counsel. The measure is also supported by the Child Support Directors Association of California. The parties applaud the measure as a series of common-sense reforms to improve the civil litigation system. Several local agencies, school boards, and insurers for local agencies have informally raised concerns to the Committee regarding the first look process. These agencies fear, despite the voluntary nature of the process, that the first look procedures will significantly undermine the agencies' ability to defend themselves against claims of childhood sexual assault on the part of government employees. Although the bill explicitly states that the procedure is only utilized "upon stipulation by all parties to the action" the proponents of the measure have agreed to work with these stakeholders on clarifying clean-up legislation in 2027, and the author plans to submit a letter to the Assembly Journal reinforcing the intent that the first look process is wholly voluntary. With these pledges, the bill has no known opposition.

This bill was previously heard and unanimously approved by this Committee in March 2025 but is being reheard for a vote to concur in Senate amendments due to the significant additions to the measure adopted in the Senate.

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. Specifically, **this bill:**

- 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 as provided in 4) through 13).
- 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.
- 12) Provides that a failure to comply with 10) or 11) constitutes a waiver of all objections, and upon such failure, the records service vendor must immediately produce all documents obtained through the first look procedure to the subpoenaing party without exclusion or redaction.
- 13) Provides that nothing in this bill is to be construed to prevent a party from seeking a protective order or constitute a new form of discovery.

EXISTING LAW:

- 1) Authorizes the court to order electronic service on a person represented by counsel who has appeared in an action or proceeding. (Code of Civil Procedure Section 1010.6 (b)(1).)
- 2) Requires a person represented by counsel, who has appeared in an action or proceeding, to accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission, if electronic filing is mandated by the court. (Code of Civil Procedure Section 1010.6 (b)(2).)
- 3) Permits a person to consent to electronic service by doing either of the following:
 - a) Serving a notice on all parties and filing the notice with the court; or
 - b) Manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. (Code of Civil Procedure Section 1010.6 (c).)
- 4) Requires the court, on or after July 1, 2025 and in any action in which a party or other person is subject to mandatory electronic service or has consented to electronic service in accordance with 2) or 3), to electronically serve any document issued by the court that the court is required to transmit, deliver, or serve, as specified. (Code of Civil Procedure Section 1010.6 (d).)
- 5) Authorizes each superior court to adopt local Rules of Court permitting electronic filing of documents, subject to rules adopted by the Judicial Council. (Code of Civil Procedure Section 1010.6 (e).)

- 6) Defines “electronic service” as service of a document, on a party or other person, by either electronic transmission or electronic notification, and that electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party or other person’s attorney, or through an electronic filing service provider. (Code of Civil Procedure Section 1010.6 (a)(1).)
- 7) Provides that notice and a motion for summary judgment must be served on all parties at least 81 days before the scheduled hearing, and that if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery the required 81-day notice period is increased by two court days. (Code of Civil Procedure Section 437c (a)(2).)
- 8) Provides that all moving and supporting papers for certain motions must be served and filed at least 16 court days before the hearing, and that if the notice of motion is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery the required 16-day notice period is increased by two court days. (Code of Civil Procedure Section 1005 (b).)
- 9) Prohibits a lawyer referral service from being owned or operated, in whole or in part, directly or indirectly, by those lawyers to whom, individually or collectively, more than 20 percent of referrals are made. (Business and Professions Code Section 6155 (b).)
- 10) Provides that the following are not lawyer referral services for the purpose of 9):
 - a) A plan of legal insurance as defined in the Insurance Code;
 - b) A group or prepaid legal plan, whether operated by a union, trust, mutual benefit or aid association, public or private corporation, or other entity or person, as specified;
 - c) A program having as its purpose the referral of clients to attorneys for representation on a pro bono basis; and
 - d) A nonprofit organization that partners with a referral service, as specified. (Business and Professions Code Section 6155 (c).)
- 11) Provides that any individual, partnership, association, corporation, or other entity, including, but not limited to, any person or entity having an ownership interest in a lawyer referral service, that engages, has engaged, or proposes to engage in violations of statutory provisions, including 9), and State Bar of California regulations governing lawyer referral services is liable for the following:
 - a) Discipline by the State Bar of California;
 - b) Civil penalties in accordance with the Unfair Competition Law or false advertising statutes. (Business and Professions Code Section 6155.1, 17206 & 17536.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

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

session's effort clarifies the rules related to lawyer referrals required by the California Rules of Professional Conduct, updates electronic filing timelines, and creates a first look process for redacting non-relevant sensitive information during civil discovery. In support of this bill the author states:

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.

Of note, this measure is back before the Committee as recent amendments added several new provisions. Given that this bill was previously heard and unanimously approved by this Committee in March 2025, the remainder of this analysis will focus on the new provisions not previously heard by this Committee. For a complete analysis of the provisions of the bill previously heard by this Committee please see the Committee's prior analysis of the introduced version of this measure. (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 540 (2025-2026 Reg. Session) as introduced Feb. 11, 2025.)

This bill clarifies the definition of a lawyer referral service to ensure that standard, and sometimes mandatory, referrals of clients between attorneys does not subject an attorney to discipline or civil liability. For the past several years this Committee and the Senate Committee on Judiciary have focused on improving attorney ethics and cracking down on the questionable behavior of so called "billboard lawyers." These firms, which are often backed by hedge fund investments, engage in aggressive marketing to recruit clients and in many cases then refer these clients to other firms in return for a financial stake in the ultimate outcome of the case.

As a part of the Judiciary Committees' efforts to reign in the worst of these practices, 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.

This bill adopts a “first look” process for protecting non-relevant yet sensitive personal information in civil discovery. In civil litigation, which lacks formal law enforcement involvement, discovery is the formal exchange of evidentiary information and materials between parties to a pending action. Discovery is designed to permit parties to discover relevant facts before cases reach trial. Unless otherwise provided in law, every civil matter is governed by the rules provided in the Civil Discovery Act (Code of Civil Procedure Section 2016.010 *et seq.*) The Civil Discovery Act provides that any party to a civil action is permitted to obtain discovery regarding any matter, not otherwise 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 of Civil Procedure Section 2017.010.)

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.

Although the bill triggers the first look process only “upon stipulation by all parties to the action,” some local governments, school boards, and municipal insurance providers have expressed grave concerns to this Committee that the bill will significantly curtail their ability to defend against claims of childhood sexual assault by government employees. While subdivision (a) of the proposed could arguably be written in a far more active voice, the bill is clearly triggered by stipulation of all parties and thus the first look process is wholly voluntary. If a local government or school board believes that the first look process will hinder their defense in any manner, the local agency remains free to refuse to stipulate to its use.

While the local agencies’ angst is understandable, especially in light of allegations of capping and the filing of fraudulent claims by several law firms involved in childhood sexual assault

litigation (Rebecca Ellis, *In the biggest sex abuse settlement in U.S. history, some claim they were paid to sue*, Los Angeles Times (Oct. 2, 2025) available at: <https://www.latimes.com/california/story/2025-10-02/settlement-story-ab218-sex-abuse>), this wholly voluntary process should not undermine the rights of the accused. Nonetheless, the author is pledging to draft a letter to the Assembly Journal to further underscore the voluntary nature of the first look program. Additionally, the supporters of this measure (representing both plaintiff's and defense counsel) have agreed to work with interested stakeholders during the interim to develop clarifying language that can be inserted into legislation in 2027 to better express the voluntary nature of the first look process and ameliorate the concerns of local governments.

ARGUMENTS IN SUPPORT: As noted, 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. AB 540 expressly encompasses sensitive records concerning reproductive health, sexual history, psychiatric care, and addiction treatment.

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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Defense Counsel (co-sponsor)

Consumer Attorneys of California (co-sponsor)

Child Support Directors Association of California

Opposition

None on file

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334