



CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA

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Amdt. # /

November 10, 2021

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**INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**

Re: Initiative 21-0029, The Pre-Lawsuit Notice and Opportunity to Settle Act -
Amendment Number One

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment #1 to Initiative No. 21-0029 "The Pre-Lawsuit Notice and Opportunity to Settle Act." The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

Thank you for your time and attention processing my request.

Sincerely,


Kyla Christoffersen Powell

PRE-LAWSUIT NOTICE AND OPPORTUNITY TO SETTLE ACT**SECTION 1. STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE.**

- A. Californians place high value on access to justice in our civil courts. But, because California courts are overloaded with nearly a million cases per year, justice can be delayed or denied.
- B. Often, consumer claims can be resolved without filing lawsuits, which are expensive and can take years to resolve.
- C. Under our current legal system, lawyers are incentivized to file unnecessary lawsuits, over-litigate, and delay resolution so they can charge more fees.
- D. Through contingency fee agreements, many lawyers who represent injured consumers take 40% or more of the money their clients recover in court – money intended to compensate victims for their injuries.
- E. California’s legal system should put the interests of injured consumers ahead of the interests of trial lawyers.
- F. Therefore, the people of California hereby enact the “Pre-Lawsuit Notice and Opportunity to Settle Act” which creates a 60-day window for injured consumers and others to obtain recovery from whomever harmed them before filing a lawsuit.
- G. If injured consumers are unable to obtain recovery during the 60 days, they may bring suit; but their lawyers’ fees will be limited to no more than 20% of the amount their clients recover.
- H. Since 1946, the federal government has limited the amount attorneys can receive for settling cases against it to 20% of the amount recovered for their clients.
- I. Adopting this ample percentage in California preserves the ability of consumers to find ethical, high-quality lawyers to represent them while protecting injured consumers from excessive fees and unnecessary delays.

SECTION 2. NOTICE AND REASONABLE OPPORTUNITY TO RESOLVE LEGAL DISPUTES PRIOR TO FILING LAWSUIT.

Chapter 0.5 (commencing with Section 310) is added to Part 2, of Title 2, of the Code of Civil Procedure to read:

310.(a) Any claimant seeking a remedy or penalty from another person shall provide that person notice and a reasonable opportunity to resolve the matter prior to commencing a civil action against that person in court.

(b) The notice required herein, shall:

(1) Be in writing and directed by the claimant or claimant’s attorney to the person or persons to be sued;

(2) Be personally served or sent by certified mail, return receipt requested, to the person's residential address, or to the person's designated agent for service of process;

(3) Prominently state that it is a: "NOTICE OF LEGAL CLAIM AND OPPORTUNITY TO RESOLVE PRIOR TO COMMENCING A LAWSUIT IN COURT";

(4) State the time period for which the offer to settle shall remain open for acceptance, which shall be not less than 60 calendar days from the date the notice is personally served or received by certified mail;

(5) State the amount of any monetary payment requested, or any corrective remedy requested, from the person receiving the notice for the full and final settlement of the claim;

(6) State the name of any other person who has been or will be provided notice required herein for the same claim;

(7) State facts known to the claimant establishing the person's responsibility for the claim including the date and location of the incident or incidents giving rise to the claim;

(8) Provide a detailed description of all known and reasonably anticipated damages, restitution, or injuries sustained by the claimant, and any evidence in any form supporting the claim for damages or injuries;

(9) State the claimant's legal basis for seeking a monetary remedy, monetary penalty, or corrective remedy from the person;

(10) State that the claimant or the claimant's attorney will, upon request, provide or make available for inspection within 14 calendar days any evidence in the claimant's possession identified in subsections (7), (8) and (9); and

(11) State that the claimant is offering a full and final unconditional release for the person from all present and future liability giving rise to the claim for the monetary remedy, monetary penalty, or corrective remedy sought.

(c) The statute of limitations applicable to the claim shall be tolled during the notice period required herein.

(d) The notice and opportunity to resolve requirement, herein, shall supersede any other notice of claim requirement in any other statutory claim that is less than 60 days.

(e) Compliance with this section is jurisdictional and failure to comply with this section shall be grounds for a demurrer under Section 430.10(a) of the Code of Civil Procedure to a complaint filed against a defendant who was not provided the notice required.

310.5.(a) Notwithstanding Section 6147 of the Business and Professions Code, an attorney shall not contract for or collect a contingency fee in excess of twenty percent (20%) of the amount recovered for the claimant if the claimant files a civil action in court following the expiration of the notice period required by Section 310.

(b) If the amount recovered is paid pursuant to a statutory claim that also provides for, or otherwise allows, a court to award attorneys' fees to a claimant's attorney, the claimant shall either choose to pay fees pursuant to the contingency fee contract from the amount recovered, or authorize the claimant's attorney to seek a contingency fee award from the court, but not both. In no event may the total amount paid to the claimant's attorney, pursuant to the agreement or court awarded fee, exceed the limit imposed by this section. Upon filing a request for attorneys' fees with the court, the claimant's attorney shall certify that the claimant's attorney has not and will not collect contingency fees from the claimant from any portion of the amount recovered.

(c) This section shall not apply to any claim that is subject to a limit on attorney contingency fees that existed on January 1, 2021.

311. For purposes of Sections 310 and 310.5:

(a) "Amount recovered" means the total sum of any monetary remedy or monetary penalty paid to a claimant, exclusive of the costs incurred and paid on the claimant's behalf, whether paid through settlement, arbitration or judgment.

(b) "Claimant" means a person or persons who have (a) a tort claim, or (b) a statutory claim, where the claimant seeks to obtain a monetary remedy, monetary penalty, corrective remedy, or any combination thereof, against another person or persons.

(c) "Contingency fee" means any monetary compensation, however calculated, that is payable to an attorney only if there is an amount recovered for a claimant, whether by agreement between the claimant and the claimant's attorney, or awarded by a court pursuant to any statute.

(d) "Corrective remedy" means the repair, replacement, or modification of a consumer good.

(e) "Monetary remedy" means the sum paid to a claimant to compensate the claimant for injury, damage, or restitution, whether by statute or common law.

(f) "Monetary penalty" means the sum paid to the claimant to punish the person from whom the penalty is imposed, whether by statute or common law.

(g) "Statutory claim" means a claim under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code, Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code, or Chapter 1 (commencing with Section 1790) of Title 1.7 of Part 4 of Division 3 of the Civil Code.

SECTION 4. GENERAL PROVISIONS

A. If any provision of this act or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications or the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

B. This act is intended to be comprehensive. It is the intent of the people that in the event this act or acts relating to the same subject shall appear on the same statewide election ballot, the

provisions of the other act or acts shall be deemed to be in conflict with this act. In the event that this act receives a greater number of affirmative votes, the provisions of this act shall prevail in their entirety, and all provisions of the other act or acts shall be null and void.