



November 29, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding certain civil lawsuits (A.G. File No. 21-0029, Amendment No. 1).

Background

Civil Cases. Civil cases are noncriminal lawsuits filed in court where individuals, businesses, or government entities sue to protect, enforce, and/or obtain compensation for violations of their rights. Civil cases are generally resolved by (1) dismissal of the case prior to trial, (2) settlement prior to trial, or (3) court or jury trial. Two examples of civil cases include:

- **Tort Claims.** Tort claims are lawsuits in which plaintiffs allege another party is legally responsible for intentionally or negligently causing an injury or property damage. (Tort claims do not include lawsuits alleging that a contract has been broken.) These can be individual claims or class-action claims in which lawsuits represent the interests of a group of individuals.
- **Statutory Consumer Protection Claims.** State law authorizes plaintiffs to file lawsuits to ensure state consumer protection laws are enforced. Specifically, these are lawsuits in which plaintiffs allege that another party engaged in illegal, unfair, or deceptive business practices or advertising. These particular claims also include lawsuits related to warranties for goods. Similar to tort claims, consumer protection claims can be individual claims or class-action claims.

State law, along with court rules, specify the rules and processes that must be followed in civil cases. Such rules and processes can differ based on various factors—including the complexity of the case, the action being sought from the court, and the specifics of the claim itself. For example, state law generally requires that plaintiffs file tort claims within two years of an alleged injury or three years of alleged personal property damage. State law also authorizes cases generally seeking less than \$10,000 to be filed in small claims court in which attorney

representation is prohibited. In contrast, attorney representation is permitted in civil cases filed outside of small claims court.

In addition, certain statutory consumer protection claims require a minimum 30-day pre-lawsuit notification period before a lawsuit can be filed in court. During this period, plaintiffs are required to provide defendants with certain information in order to allow both parties to determine whether they can settle the case outside of court.

Parties in civil cases are typically required to pay various court fees that help offset state trial court costs. For example, plaintiffs generally must pay a \$435 fee in order to file a lawsuit that seeks to recover more than \$25,000. In addition, parties in a civil case seeking a jury trial must pay a minimum \$150 fee.

Administrative Claims Against Government. State law generally requires individuals seeking monetary compensation from state or local government entities first file an administrative claim with the government they are seeking compensation from before they can file a civil lawsuit in court. Claims generally must be presented within six months of an alleged injury or personal property damage or within one year for all other claims. If the state or local government denies the claim, claimants have six months to file a civil lawsuit in court. If the claim is not responded to within a given time period (generally 45 days), the claimant has two years from the date of injury or damage to file a civil lawsuit in court.

Attorney Contingency Fee Contracts. State law generally requires attorneys enter into written contracts with clients to specify what services are being provided and how the attorneys will be compensated. For example, clients can agree to pay attorneys through an hourly billing contract or a contingency fee contract. Under a contingency fee contract, clients typically pay only if their attorneys win their cases. Attorneys generally pay for up-front litigation costs related to the case (such as court fees and evidence collection costs) and receive a percentage of the money that their client receives after settling or winning the case. The specific percentage varies based on individual agreements between attorneys and their clients, but is typically higher for those cases that are more complex or riskier.

State law places limits on contingency fee agreements in a few civil cases, such as prohibiting them in family law cases and imposing limits on the contingency fee percentage in medical malpractice cases. For cases where there are no limits, a common contingency fee percentage is currently around 33 percent. In certain civil cases (such as statutory consumer protection claims), attorneys may receive additional payments in addition to contingency fees. Specifically, state law authorizes winning plaintiffs to ask the court for their monetary compensation to include a specific amount for attorney fees—generally calculated based on the number of hours worked by the attorney.

Proposal

Establishes New Pre-Lawsuit Notification Process. This measure establishes a new, minimum 60-calendar day pre-lawsuit notification process in tort and statutory consumer protection claims. Under this process, plaintiffs seeking to file such lawsuits must provide defendants with written notification of the amount being sought, justification for why the

defendants are legally responsible, and evidence supporting the claim. Plaintiffs are also required to make the evidence available for inspection to the defendants within 14 days of being requested to do so by the defendants. This is intended to allow both parties to determine whether they can settle the case outside of court. If plaintiffs and defendants agree to settle the case, plaintiffs' cases would be permanently resolved. We note this process replaces the existing statutorily required minimum 30-day pre-lawsuit notification period for certain statutory consumer protection claims.

Imposes Limit on Attorney Contingency Fee Agreements. This measure limits the compensation attorneys can collect through contingency fee agreements in tort and statutory consumer protection lawsuits that are filed in court if settlement is not reached during the above pre-lawsuit notification process. Specifically, for tort lawsuits, the measure prohibits attorneys from receiving more than 20 percent of the amount recovered for their clients (not including the up-front litigation costs paid by attorneys). This requirement does not apply to lawsuits, such as medical malpractice cases, where there is an existing limit on attorney contingency fees in state law. For statutory consumer protection lawsuits, this 20 percent limit also applies. However, in those statutory consumer protection claims where existing law authorizes winning plaintiffs to ask the court for attorney fees in addition to contingency fee agreements, this measure requires plaintiffs to choose whether attorney compensation will be made through the court or through their contingency fee agreement.

Fiscal Effects

As discussed below, this measure could have varying fiscal effects on the state and local governments. However, the magnitude of these effects will depend primarily on how attorneys, plaintiffs, and defendants respond to the measure. For example, it is unclear the extent to which the pre-settlement notification process or the limit on attorney contingency fees specified in the measure would reduce the number or change the mix of civil lawsuits filed in court, such as the proportion of claims heard in small claims court. The magnitude of these effects will also depend on how the measure is interpreted and implemented by the courts. For example, the measure does not clearly specify how certain proposed requirements interact with existing processes, such as how the new pre-settlement notification process will apply to class-action lawsuits and claims against the government.

State Court Costs. This measure could impact state court workload and costs in different ways. On the one hand, court workload and costs could be reduced due to a reduction in the number of civil cases being filed. For example, cases may not be filed if claims are successfully settled through the pre-lawsuit notification process or if attorneys pursue fewer cases due to the new compensation limits. On the other hand, court workload and costs could increase for cases that are ultimately filed if the amount of time needed to process and resolve such cases increases. This could happen in a variety of ways. For example, courts might have new workload related to resolving procedural disputes on whether the requirements of the pre-settlement notification process have been met. In addition, courts may spend more time related to cases that are filed but are not as well-prepared. This could happen if the measure's compensation limits result in attorneys taking on fewer cases resulting in more plaintiffs choosing to represent themselves. The net fiscal impact of the above changes on state courts is unknown.

Other Fiscal Effects. This measure could result in various other fiscal impacts. For example, the measure could result in increased costs to the state and local governments for Medi-Cal (the state's Medicaid program). When a Medi-Cal recipient receives a settlement, judgement, or award from a third party as compensation for injuries, the California Department of Health Care Services is required by state and federal law to recover funds from the recipient for any related services paid for by Medi-Cal. However, the state and local governments would be unable to recover as much of these funds if the measure results in some Medi-Cal recipients being unable to successfully file and resolve lawsuits to obtain monetary compensation for injuries. This could occur if attorneys decline to pursue lawsuits on behalf of these individuals due to the limit on compensation and these individuals cannot afford to pursue lawsuits themselves. Conversely, the state and local governments could experience decreased costs if they ultimately pay less to settle or resolve cases filed against them in court. The net impact of these various effects on the state and local governments is unknown.

Summary of Major Fiscal Effects. This measure would have the following major fiscal effect:

- Unknown net impact on state courts that would depend primarily on how attorneys, plaintiffs, and defendants respond to this measure, as well as how the measure is interpreted and implemented by the courts.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance